



**Legislative History of the  
Convention on the Rights of the Child  
(1978 - 1989)**

**ARTICLE 37**

**(CHILDREN DEPRIVED OF THEIR LIBERTY)**

**ARTICLE 40**

**(ADMINISTRATION OF JUVENILE JUSTICE)**

*The Legislative History of the Convention on the Rights of the Child (1978-1989)* was prepared with the support of Rädde Barnen (Swedish Save the Children). It consists of a series of 45 booklets covering the drafting and adoption of each article of the Convention, as well as the preamble, based on United Nations records. This series will ultimately be collected and produced in a single set of volumes.

HR/1995/Ser.1/articles.37 + 40

**ARTICLE 37**

**(CHILDREN DEPRIVED OF THEIR LIBERTY)**

**ARTICLE 40**

**(THE ADMINISTRATION OF JUVENILE JUSTICE)**

Table of contents

<b>I.</b>	<b>FINAL TEXT ADOPTED BY THE GENERAL ASSEMBLY (1989)</b> . . . . .	<b>4</b>
<b>II.</b>	<b>FIRST POLISH DRAFT CONVENTION AND COMMENTS (1978)</b> . . . . .	<b>6</b>
	A. Colombia . . . . .	7
<b>III.</b>	<b>FIRST READING (1979-1988)</b> . . . . .	<b>7</b>
	A. 1979: Proposal submitted to the Working Group . . . . .	7
	1. Norway and Sweden . . . . .	7
	B. 1979: Revised Polish draft . . . . .	8
	C. 1982: Modified proposal presented by Poland . . . . .	8
	D. 1982: Proposal submitted to the Working Group . . . . .	9
	1. Joint NGO proposal . . . . .	9
	E. 1984: Proposals submitted to the Working Group . . . . .	9
	1. Canada . . . . .	9
	2. International Federation of Women in Legal Careers and the International Abolitionist Federation . . . . .	10
	3. International Social Service (ISS) . . . . .	10
	4. NGO Ad Hoc Group . . . . .	10
	F. 1985: Proposals submitted to the Working Group . . . . .	11
	1. NGO Ad Hoc Group . . . . .	11
	G. 1986: Modified proposal presented by Poland . . . . .	12
	H. 1986: Proposals submitted to the Working Group . . . . .	13
	1. Canada . . . . .	13
	2. NGO Ad Hoc Group . . . . .	13
	I. 1986: Discussion and adoption at the Working Group . . . . .	15
	J. 1988: Proposal submitted to the Working Group . . . . .	26
	1. World Federation of Methodist Women . . . . .	26
	K. 1988: Discussion at the Working Group . . . . .	26
	L. Text as adopted at the first reading . . . . .	27

**ARTICLE 37**

**(CHILDREN DEPRIVED OF THEIR LIBERTY)**

**ARTICLE 40**

**(THE ADMINISTRATION OF JUVENILE JUSTICE)**

Table of contents (continued)

<b>IV. TECHNICAL REVIEW (1988)</b> .....	28
A. Comment by the Social Development Division, Centre for Social Development and Humanitarian Affairs .....	29
B. Comment by UNICEF .....	29
C. Additional comments and clarifications by the Secretariat .....	30
D. Background note submitted by the Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs .....	31
<b>V. SECOND READING (1988-1989)</b> .....	38
A. Proposals submitted to the Working Group at the second reading .....	39
1. India .....	39
2. Mexico .....	39
3. Venezuela .....	41
4. Latin American Meeting .....	41
B. Discussion and adoption at the second reading .....	41
C. Statement made during the adoption of the report .....	59
1. Japan .....	59
<b>VI. CONSIDERATION BY THE COMMISSION ON HUMAN RIGHTS, THE ECONOMIC AND SOCIAL COUNCIL AND THE GENERAL ASSEMBLY</b> .....	60
<b>VII. RELATED REFERENCES</b> .....	60
<b>ANNEX 1</b> Organizations participating in the NGO Ad Hoc Group .....	61
<b>ANNEX 2</b> Related articles of the Convention .....	62

**ARTICLE 37**

**(CHILDREN DEPRIVED OF THEIR LIBERTY)**

**ARTICLE 40**

**(THE ADMINISTRATION OF JUVENILE JUSTICE)**

**I. FINAL TEXT ADOPTED BY THE GENERAL ASSEMBLY (1989)**

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

**ARTICLE 37**

**States Parties shall ensure that:**

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;**
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;**
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;**
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.**

## **ARTICLE 40**

1. States Parties recognize the right for every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's re-integration and the child's assuming a constructive role in society.

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

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

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

(ii) to be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) to have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision order; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

## II. FIRST POLISH DRAFT CONVENTION AND COMMENTS (1978)

*In a letter dated 17 January 1978 addressed to the Director of the Division of Human Rights (see E/CN.4/1284), the Permanent Representative of Poland to the United Nations Office at Geneva proposed that "The question of the Convention on the Rights of the Child" be included in the agenda of the thirty-fourth session of the Commission of Human Rights. At that session, the Polish delegation presented a draft resolution (E/CN.4/L.1366) which contained a draft convention based upon the provisions of the 1959 Declaration of the Rights of the Child. The resolution was subsequently revised (E/CN.4/L.1366/Rev.1) and two additional articles (XI and XII) were added to the draft convention annexed in the final version of the draft resolution (E/CN.4/L.1366/Rev.2) which was then adopted by the Commission on Human Rights (see E/CN.4/1292, pages 122 to 127) as resolution 20 (XXXIV) of 8 March 1978. In that resolution, the Secretary-General was requested to invite Member States, competent specialized agencies, regional, intergovernmental organizations and non-governmental organizations to communicate to him their views, observations and suggestions concerning the draft convention submitted by Poland. Although there was no reference to the issues of deprivation of liberty or the administration of justice in the first Polish draft convention, the comments received on the draft from Colombia did raise those concerns.*

## A. Colombia

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

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

(...)

2. A child who engages in asocial behaviour shall be given special treatment in which his condition and dignity are duly respected.

### III. FIRST READING (1979-1988)

*In 1979, the Commission on Human Rights decided to establish an informal open-ended working group to meet for one week to consider the question of a draft convention on the rights of the child during the session of the Commission. The Working Group met again in 1980 and was authorized in 1981 and each year thereafter to meet prior to the Commission session. In 1988, the Working Group met for two weeks in order to complete the first reading. A single article, which was based on article 20 of the revised Polish draft and covered both present articles 37 and 40 of the convention, was discussed and adopted by the Working Group in 1986. This article was referred to as article 19 throughout the first reading.*

*The substance of present articles 37 and 40 was also discussed under a single article (article 19) during the first part of the second reading. The Working Group subsequently decided to divide article 19 into two articles, 19 and 19 bis, which became articles 37 and 40 respectively.*

#### A. 1979: PROPOSAL SUBMITTED TO THE WORKING GROUP

##### 1. Norway and Sweden

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

#### Article IX

Add the following:

"A child may never, under any circumstances be subject to torture or cruel, inhuman or degrading treatment, or threats thereof, for the purpose of obtaining from the child, the parents or any other person, information, confessions or acts, or for any other purpose."

**B. 1979: REVISED POLISH DRAFT**

*A revised version of the draft convention was included in a note verbale dated 5 October 1979 addressed to the Division of Human Rights from the Permanent Representation of the Polish People's Republic to the United Nations in Geneva. This draft formed the basis for discussion at the 1980 session of the Working Group. The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.*

Article 20

1. The child undergoing penal procedure shall have the right to special treatment and privileges.
2. The child shall not be liable to capital punishment. Any other punishment shall be adequate to the particular phase of his development.
3. The penitentiary system shall be aimed at re-education and re-socialization of the sentenced child. It should enable the child to serve the sentence of deprivation or limitation of freedom in a special manner, and in particular, in separation from adult offenders.

**C. 1982: MODIFIED PROPOSAL PRESENTED BY POLAND**

*At its 1982 session, the Working Group had before it an elaboration of the draft convention which had been made available to the General Assembly in 1981 (see A/C.3/36/6) by the Polish delegation with a view to facilitate the drafting process. That document contained the text of the articles which had already been adopted as well as a number of modified proposals which had been made at the Working Group. The following text is taken from A/C.3/36/6, part II.*

Article 19

1. The child undergoing penal procedure shall have the right to special treatment and privileges.
2. The child shall not be liable to capital punishment. Any other punishment shall be adequate to the subsequent phase of his development.



3. The penitentiary system shall be aimed at re-education and re-socialization of the sentenced child. It shall enable the child to serve the sentence of deprivation or limitation of freedom under special circumstances and, in particular, in separation from adult offenders.

**D. 1982: PROPOSAL SUBMITTED TO THE WORKING GROUP**

1. **Joint NGO Proposal (Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress)**

*The following is taken from E/CN.4/1982/WG.1/WP.1, page 6.*

It is considered that the text of the Polish proposal in A/C.3/36/6 provides an acceptable basis, with the following suggested amendments:

"1. A child accused of committing a criminal offence shall have the rights to special treatment and privileges.

"2. In accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights, a child shall not be liable to capital punishment. Any other punishments shall be appropriate to the stage of the child's development.

"3. Such punishment shall be aimed at re-education and social re-integration of the convicted child. Where the child is sentenced to a period of deprivation of liberty, the child shall be kept apart from adult offenders and shall receive the care and assistance necessary, commensurate with the child's age."

**E. 1984: PROPOSALS SUBMITTED TO THE WORKING GROUP**

1. **Canada**

*For the text of this proposal, which was resubmitted to the Working Group in 1985, see paragraph 88 under section I below.*

**2. International Federation of Women in Legal Careers and the International Abolitionist Federation**

*The following is taken from E/CN.4/1983/NGO/33, which appeared after the 1983 session.*

Article 20 (Criminal proceedings)

We would like the following sentence added to this article:

"The personnel responsible for the re-education of juvenile offenders shall receive social and humanitarian educational training which will facilitate the re-integration of children into society".

**3. International Social Service (ISS)**

*The following is taken from E/CN.4/1984/WG.1/WP.3.*

Article 20

(...)

ISS proposes the addition of a paragraph dealing with the problem of unaccompanied minors sentenced or detained in a foreign country, and suggests the following draft text:

"The States Parties to the present Convention will facilitate the transfer of each foreign minor sentenced on their territory to the State of his parents or guardians, to serve his correctional sentence there."

**4. NGO Ad Hoc Group (see annex 1 for participating organizations)**

*The following was proposed to the Working Group at its 1984 session (see Report of Informal Consultations among Non-governmental Organisations, December 1983) and was subsequently reproduced in E/CN.4/1985/WG.1/WP.1, pages 12-14.*

1. A child in a penal institution or undergoing penal procedures shall have his /her rights guaranteed and be entitled to special treatment.
2. Capital punishment shall not be imposed for acts committed by persons under the age of 18.
3. Torture or other forms of cruel, inhuman or degrading punishment, including the imposition of solitary confinement or corporal punishment, shall be prohibited.

4. The States Parties to the present Convention undertake to ensure that as a rule sentences of imprisonment shall not be imposed on children, and furthermore recognise that in all circumstances where corrective measures are imposed, rehabilitation, including education and vocational training, shall be the primary consideration and shall take precedence over punishment.

5. Facilities shall be provided to ensure the effective separation of children from adult offenders, and shall be staffed by personnel specially trained to provide the child with care and assistance appropriate to the child's needs and age.

## **F. 1985: PROPOSALS SUBMITTED TO THE WORKING GROUP**

### **1. NGO Ad Hoc Group (see annex 1 for participating organizations)**

*The following proposals were made available to the Working Group at its 1985 session (see Informal Consultations among Non-governmental Organisations, Report on conclusions, December 1984).*

#### Article dealing with the administration of justice

1. (a) All penal proceedings involving children, including supervision of the execution of sentences, shall be entrusted to a specialized and appropriately trained judicial authority.

(b) This judicial authority shall benefit from the support of qualified and specialized staff at all stages of the proceedings.

2. All proceedings shall be conducted in accordance with internationally and nationally recognized norms of due process of law.

3. The States Parties shall ensure that no special class of penal offences exists for children; behaviour not considered to be an offence when engaged in by an adult shall not be considered as such when engaged in by a child.

4. In cases where a child and an adult have jointly committed an offence, they shall be subject to separate procedures.

6. The States Parties to the present Convention shall facilitate the transfer of each foreign child sentenced on their territory to the State where the child's parents or others responsible for the care of the child are living, in accordance with the safeguards and provisions of the Model Agreement on the Transfer of Prisoners, subject to the consent of the child and, save in exceptional circumstances, that of the child's parents or of others responsible for his/her care. The States Parties shall, in addition, ensure that all concerned are informed of their rights in this respect at an early stage in the proceedings.

### Article dealing with penal questions

1. When a child is found to have committed an offence, priority shall be given to educational measures rather than to punishment. Rehabilitation including education and vocational training shall be the primary consideration in all cases.
2. Capital punishment and sentences of life imprisonment shall not be imposed for acts committed by persons under the age of 18.
3. Torture or other forms of cruel, inhuman or degrading punishment, including the imposition of solitary confinement or corporal punishment, shall be prohibited.
4. (a) If, taking into account the age of the child and the seriousness of the facts, detention or placement in a closed institution is determined to be absolutely necessary, this shall be imposed for a fixed maximum period which shall be as brief as possible.  
  
(b) Facilities shall be provided to ensure the effective separation of children from adult offenders, and shall be staffed by personnel specially trained to provide the child with care and assistance appropriate to the child's age and needs.
5. All children deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the person.
6. Children shall have the right to visits from their family or legal guardians.

*The following related proposal concerning present article 28 (education) was also submitted to the Working Group at its 1985 session (see Informal Consultations among Non-governmental Organisations, Report on Conclusions, December 1984).*

[new paragraph]

States Parties shall ensure that school discipline is administered in a manner reflective of the child's human dignity. No methods shall be used which are either physically or mentally cruel or degrading.

### **G. 1986: MODIFIED PROPOSAL PRESENTED BY POLAND**

*At its 1986 session, the Working Group had before it an elaboration of the draft convention which had been made available to the General Assembly in 1985 (see A/C.3/40/3) by the Polish delegation with a view to expediting the drafting process. That document contained the text of the articles which had already been adopted as well as a*

number of modified proposals which had been made at the Working Group. The following text is taken from A/C.3/40/3, paragraph 12.

#### Article 19

1. The States Parties to the present Convention shall ensure that the child subject to penal procedures shall be treated in a manner commensurate with his phase of development, with his reformation and social rehabilitation in view.
2. The States Parties to the present Convention shall guarantee that no child shall be arbitrarily detained or imprisoned, sentenced to death, subject to cruel, inhuman or degrading treatment or punishment.
3. The States Parties to the present Convention shall provide that the child sentenced to deprivation or limitation of freedom shall serve his sentence in separation from adult offenders.

#### **H. 1986: PROPOSALS SUBMITTED TO THE WORKING GROUP**

##### **1. Canada**

*For the text of this proposal, see paragraph 90 in section J below.*

##### **2. NGO Ad Hoc Group (see annex 1 for participating organizations)**

*The following proposal, which was contained in Informal Consultations among Non-governmental Organisations, Report on conclusions, December 1985, is taken from E/CN.4/1986/WG.1/WP.1, pages 53-54.*

#### Draft article 19

##### **19A: GENERAL PRINCIPLES GOVERNING THE SYSTEM OF THE ADMINISTRATION OF JUSTICE**

1. The child shall benefit from all rights and guarantees applicable to judicial and penal procedures and administration, as contained in all other international or regional instruments. All proceedings, including those during the investigation phase, shall be conducted in accordance with internationally and nationally recognized norms of due process of law. All proceedings shall be appropriate to the stage of the child's development, and in no case shall the age of the child serve as a basis for derogations from the recognized norms of due process of law.
2. No child shall be placed in penal facilities unless charged with a criminal offence. Penal law and facilities shall not be used as a substitute for child welfare procedures and facilities.

3. The States Parties to the present Convention shall ensure that no special class of penal offences exists for children; behaviour not considered to be an offence when engaged in by an adult shall not be considered as such when engaged in by a child.

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

5. Torture or other forms of cruel, inhuman or degrading treatment or punishment, including the imposition of solitary confinement and corporal punishment, shall be prohibited.

6. The child shall have the right of access to legal counsel from the moment of being taken into custody.

#### 19B: PENAL PROCEDURE

1. (a) All penal proceedings involving children, including supervision of the execution of sentences, shall be entrusted to a specialized and appropriately trained judicial authority.

(b) This judicial authority shall be given the support of qualified and specialized staff at all stages of the proceedings.

2. Detention awaiting trial shall be used only as a measure of last resort, for the shortest possible period of time which shall not exceed the prescribed penalty for the offence and in no case exceed three months. Whenever possible, it shall be replaced by alternative measures such as close supervision, protective care, placement with a family or in an educational setting or home.

3. In cases where a child and an adult have jointly committed an offence, they shall be subject to separate procedures.

#### 19C. SENTENCING

1. When a child is found to have committed an offence, priority shall be given to educational rather than to punitive measures. Rehabilitation, including education and vocational training, shall be the primary consideration in all cases and shall aim at social integration.

2. As far as possible, these measures shall be applied by leaving the child in his/her normal environment and, if necessary, with the assistance of qualified and specialized persons.

3. Capital punishment shall not, in any circumstances, be imposed for acts committed by persons under the age of 18.

4. Sentences of life imprisonment shall not, in any circumstances, be imposed for acts committed by persons under the age of 18.
5. If, taking into account the age of the child and the seriousness of the facts, detention or placement in a closed institution is determined to be absolutely necessary, this shall be imposed only for a fixed maximum period which shall be as brief as possible.
6. The States Parties to the present Convention shall facilitate the transfer of each foreign child sentenced on their territory to the State where the child's parents or others responsible for the care of the child are living, in accordance with the safeguards and provisions of the Model Agreement on the Transfer of Prisoners, subject to the consent of the child and, save in exceptional circumstances, that of the child's parents or of others responsible for his/her care. The States Parties shall, in addition, ensure that all concerned are informed of their rights in this respect at an early stage in the proceedings.
7. Provision shall be made for periodic review of sentences, conditions of placement, and for a procedure for challenging the treatment accorded to children in these circumstances.

#### 19D. TREATMENT IN CUSTODY

1. Facilities shall be provided to ensure the effective separation of children from adult offenders. They shall be staffed by personnel specially trained to provide the child with care and assistance appropriate to the child's age and needs.
2. While in custody, children shall receive all individual assistance of a social, educational (including vocational training), psychological, medical and physical nature that they may require in view of their age and personality. Efforts shall be made to ensure that children are not educationally disadvantaged on release from custody.
3. Children deprived of their freedom shall have the right to correspond with their family or legal guardians, and to receive regular visits from them.
4. The rights and guarantees contained in paragraphs 1-3 of the present article apply equally to children in detention awaiting trial.

#### I. 1986: DISCUSSION AND ADOPTION AT THE WORKING GROUP

*The following is taken from the 1986 report of the Working Group to the Commission on Human Rights, E/CN.4/1986/39, paragraphs 88-123.*

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

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

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

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

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

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



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

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

In addition, a proposal was submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention in document E/CN.4/1986/WG.1/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 a basis for discussion of the first paragraph of the article to be adopted by the Working Group, while for its second paragraph the Group might take as the basis for discussion the compromise text prepared by the informal working party.

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

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

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

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

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

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

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

#### Paragraph 1

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

95. The representative of the United States of America did not agree with the term "found guilty" and suggested replacing it by the words "subject to penal or juvenile justice proceedings". She also stated the understanding of her delegation that this article covers both adult criminal proceedings or juvenile justice proceedings when a child has committed what would be a criminal offence if committed by an adult. In this connection, the representative of Japan felt some

hesitation about the expression "subject to juvenile justice proceedings" since it will cover family court proceedings in his country, and reserved his position until paragraph 2 was drafted. The observer for the Netherlands opposed this wording and suggested replacing it by the words "children who are accused of or recognized as having infringed the penal law". The representative of the United States accepted the Netherlands' proposal.

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

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

#### Paragraphs 2, 3 and 4

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

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

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

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

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

- (b) Capital punishment or life imprisonment is not imposed for crimes committed by persons below eighteen years of age,
- (c) Children accused of infringing the penal law:
  - (i) Are informed promptly of the charges against them and, as of the time of being accused, are provided with legal assistance in the preparation and presentation of their defence,
  - (ii) Are presumed innocent until proven guilty according to law,
  - (iii) Have the matter determined according to law in a fair hearing within a reasonable period of time by an independent and impartial tribunal, and
  - (iv) If found guilty are entitled to have their conviction and sentence reviewed by a higher tribunal according to law.

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

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

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

#### Paragraph 2

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

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

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

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

#### Subparagraph (a)

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

#### Subparagraph (b)

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

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

106. After a further exchange of views, the Working Group adopted subparagraph (b) as follows: "Capital punishment or life imprisonment without possibility of

release is not imposed for crimes committed by persons below eighteen years of age,".

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

Subparagraph (c)

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

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

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

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

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

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



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

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

### Paragraph 3

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

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

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

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

### Paragraph 4

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

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

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

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

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

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

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

## **J. 1988: PROPOSAL SUBMITTED TO THE WORKING GROUP**

### **1. World Federation of Methodist Women**

*The following is taken from E/CN.4/1988/WG.1/WP.27.*

#### Add article 19 [2](c)(ii)

"This assistance shall also be available for children who are detained following a trial."

## **K. 1988: DISCUSSION AT THE WORKING GROUP**

*The following is taken from the 1988 report of the Working Group to the Commission on Human Rights, E/CN.4/1988/28, paragraph 223.*

A. Proposals deferred to the second reading

223. The representative of Venezuela supported a proposal submitted by the World Federation of Methodist Women (E/CN.4/1988/WG.1/WP.27) on assistance to children in detention following trial. It was suggested that the proposal be amended to read: "This assistance shall also be available to children throughout any period of detention". The proposal was supported by some, while others wondered whether such a provision was really needed. Most of the participants preferred not to discuss an article adopted long ago and suggested that the proposal be taken up at the second reading of the draft convention, by which time an appropriate formulation could be found.

**L. TEXT AS ADOPTED AT THE FIRST READING**

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

Article 19

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

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

- (a) no child is arbitrarily detained or imprisoned or subjected to torture, cruel, inhuman or degrading treatment or punishment;
- (b) capital punishment or life imprisonment without possibility of release is not imposed for crimes committed by persons below 18 years of age;
- (c) children accused of infringing the penal law
  - (i) are presumed innocent until proven guilty according to law;
  - (ii) are informed promptly of the charges against them and, as of the time of being accused, have legal or other appropriate assistance in the preparation and presentation of their defence;

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

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

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

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

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

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

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

#### IV. TECHNICAL REVIEW (1988)

*By a letter addressed to the Secretary-General (see E/CN.4/1988/28, paragraph 248), the Working Group requested that a technical review of the draft convention be undertaken by the United Nations Secretariat in advance of the second reading. Among the aims of the technical review were to identify overlap and repetition between and within draft articles; to check for linguistic consistency and accuracy in the text; to compare the standards established with those in other widely accepted human rights instruments; and to make recommendations as to how any overlaps or inconsistencies might be corrected in the second reading.*

*The Secretary-General subsequently requested comments on matters within their respective mandates of a number of the specialized agencies and other United Nations bodies, as well as the International Committee of the Red Cross. Those comments were compiled in the Technical Review of the text of the draft Convention on the Rights of the Child (E/CN.4/1989/WG.1/CRP.1 and Add. 1-2), which was taken into account by the Working Group during the second reading of the draft Convention.*

**A. Comment by Social Development Division, Centre for Social Development and Humanitarian Affairs**

*The following is taken from E/CN.4/1989/WG.1/CRP.1, pages 38-39.*

Paragraph 1 does not make any reference to the fact that children, in principle, should neither be considered criminally responsible, nor be incarcerated. In this respect, your attention is drawn to "Beijing Rule" 4. Accordingly, and with due respect to national laws, it should be clearly stated that there should be no criminal responsibility of children until they reach a certain age.

Paragraph 2 should also state clearly that the detention of children is a measure of last resort, to be limited to the minimum necessary period, with full regard to the individual needs and characteristics, in accordance with "Beijing Rule" 19. Therefore, in subparagraph (b), the possibility of life imprisonment for children should be excluded tout court and without exceptions whatsoever. In subparagraph (c), children in conflict with the law seem to be treated like "small adults". On the contrary, children and juveniles should be fully entitled to benefit from all the basic procedural safeguards and rights listed in "Beijing Rules" 7 and 8.

Paragraph 3 could be better placed at the beginning of article 19, followed by the reformulated paragraphs 1 and 2. In its final revision, it should be considered that, in accordance with the prevailing contemporary notion of juvenile justice, the aim of the processing of young offenders should not be penal or reformatory but it should be oriented toward individual development, growth and social integration. In this perspective, paragraph 3 should emphasize more the importance and preferability of the alternative measures to detention.

As regards paragraph 4, subparagraph (b), the need for separation between adults and children within the framework of a juvenile justice system should be expressed more strongly. Subparagraph (c) seems to be too restrictive of the rights of the children in conflict with the law in comparison to the "Standard Minimum Rules for the Treatment of Prisoners", particularly Rules 8(d) and 37, and the "Beijing Rules" 13.4 and 26.3.

The above comments are made taking into account that the main objective of the draft Convention is the protection of children, defined in article 1 as "every human being below the age of 18". Accordingly, article 19 should constitute an improvement of existing standards in order to fully protect the rights of children facing deprivation of liberty.

**B. Comment by UNICEF**

*The following is taken from E/CN.4/1989/WG.1/CRP.1, page 39.*

Paragraph 1

The view has been expressed that the existing formulation may not adequately cover the situation of children who have been arrested, but not charged with any offence. It would seem, however, that such children could be considered to be "accused" (although not formally charged) and thus to be covered by the present wording. An alternative approach would be to refer to "children who are accused, recognized as having infringed the penal law, or are otherwise in police custody".

### Paragraph 2

In order to bring this paragraph more fully into conformity with the relevant provisions of the International Covenant on Civil and Political Rights (article 15, paragraph 1), consideration might be given to adding a new paragraph 2(b) (bis) which would read:

"No child shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed or which would not be a crime if committed by an adult".

Subparagraph (c)(ii) could also be amended in order to ensure that the parents or guardians of the child are also informed of charges brought against the child. The first part of the subparagraph could thus read:

"are, along with their parents or guardians, informed promptly ...".

### **C. Additional comments and clarifications by the Secretariat**

*The following is taken from E/CN.4/1989/WG.1/CRP.1/Add.1, paragraphs 40-41.*

40. In examining article 19, the Working Group may want to refer extensively to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), recommended for adoption by the Seventh United Nations Congress on Prevention of Crime and the Treatment of Offenders held at Milan in 1985 and adopted by the General Assembly in resolution 40/33 of 29 November 1985.

41. In addition, the Working Group may wish to compare the provisions of paragraph 2 with articles 7, 9 and 14 of the International Covenant on Civil and Political Rights, especially concerning certain omissions. Although, it could be argued that the reference to "the relevant provisions of international instruments" at the beginning of paragraph 2 already addresses this question, the Working Group may wish to consider the following items:

- to refer in paragraph 2(a) to the child's right to liberty and security of person;

- to change the wording in paragraph 2(a) to read "... torture and other cruel ..." which corresponds to the title of and usage in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- to add in paragraph 2(c) a reference to equality before courts and tribunals which is the starting point of article 14, paragraph 1, of the International Covenant on Civil and Political Rights;
- to add after the word "promptly" in paragraph 2(c)(ii) the words "and in detail in a language he or she understands of the nature and cause of ..." so that this paragraph corresponds to article 14, paragraph 3(a), of the International Covenant on Civil and Political Rights;
- to change the words "within a reasonable time" to read "without undue delay", again following the example set by article 14, paragraph 3 (c), rather than article 9, paragraph 3, so as to strengthen the time requirement when children are involved, as is the case in article 19, paragraph 4(a), of the draft Convention;
- to delete in paragraph 4(b) the two qualifications, beginning with the word "unless", so as to bring the paragraph in line with article 10, paragraphs 2(b) and 3, of the International Covenant on Civil and Political Rights.

**D. Background note submitted by the Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs**

*By a letter dated 16 November 1988, the Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs, submitted the following background note relating to article 19 of the draft convention. In addition, the following other documents were submitted for the information of the Working Group and were available for consultation in the Secretariat: General Assembly resolution 40/33 and annex containing the text of the Beijing Rules; the report of the Interregional Preparatory Meeting of Experts on topic 4 of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders entitled "Prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions" (A/Conf.144/IPM.3), which contains two new draft instruments in the juvenile justice field which were subsequently considered and adopted by the Eighth Congress in 1990; and the report of the Secretary-General on the implementation of General Assembly resolution 40/33 which was considered by the Committee on Crime Prevention and Control at its tenth session, convened in Vienna, from 22-31 August 1988 (E/AC.57/1988.11). The following briefing note is taken from E/CN.4/1989/WG.1/CRP.1/Add.2.*

## Article 19: Juvenile Justice Administration

The treatment of offenders has been an integral part of the United Nations programme in the field of crime prevention and criminal justice since its establishment in 1948 and has been on the agenda of the United Nations Congresses on the Prevention of Crime and the Treatment of Offenders since 1955. In fact, the First United Nations Congress, in 1955, adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners, approved two years later by the Economic and Social Council (resolution 663 CI(XXIV)) and subsequently followed by a series of resolutions, in subsequent years, calling for their effective implementation and monitoring thereof. The Standard Minimum Rules recognize that young offenders constitute a special category with requirements different from those for adults (e.g., Rule 8(d)).

Juvenile delinquency has also been a question of great concern for Governments, practitioners and specialists, as far back as the First United Nations Congress. It was considered by all successive Congresses, in an attempt on the part of the international community to find approaches and strategies to deal more appropriately and effectively with the phenomenon. Thus, every five years, experts and Government officials at the congresses examined the various problems and prospects of juvenile delinquency and juvenile justice, while consistently recognizing that intervention in respect of young persons in conflict with the law requires constant review and assessment.

In 1960, the Second United Nations Congress introduced a set of recommendations to deal with the prevention and treatment of juvenile delinquency (A/CONF/17/20, Annex I). Noteworthy in that connection was the following recommendation:

"... The meaning of the term juvenile delinquency should be restricted as far as possible to violations of the criminal law ... Specific offences which would penalize small irregularities or maladjusted behaviour of minors, but for which adults would not be prosecuted, should not be created ... Diversified methods of prevention and treatment are required ... Special attention should be devoted to the preparations for release and for social readaptation of minors placed in correctional institutions."

Juvenile delinquency was placed under the wider concept of juvenile justice at the Sixth United Nations Congress in 1980, under the item on "Juvenile justice: before and after the onset of delinquency", resulting in a recommendation to the Seventh Congress to consider the adoption of standard minimum rules for juvenile justice administration.

The Sixth Congress envisaged the rules as an important international instrument and as an ideal model for Member States for the fair and humane treatment and disposition of young persons in conflict with the law and for the protection of their rights in diverse national settings and legal structures. As directed by the Sixth Congress, four basic principles were to be reflected in the elaboration of the new Rules: (a) the responsibility of the community of nations, both individually and



collectively, to ensure opportunities for a meaningful life for the young, as fully participating members of society; (b) the provision of carefully defined legal protections; (c) the use of detention only as a last resort, with special arrangements and procedures for confinement, always taking into account varying needs particular to age; and (d) the use of institutionalization only after adjudication for very serious offences.

The draft rules submitted to the Seventh Congress in 1985 sought to keep a balance between potentially conflicting interests - protecting society from juvenile crime and ensuring that the rights of victims of such crimes are not disregarded, on the one hand, and avoiding harm to young offenders and protecting their rights, on the other - in the fair disposition of juvenile cases, particularly those involving serious violations of law.

One of the major achievements of the Seventh Congress was the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, designated the "Beijing Rules", subsequently adopted by the General Assembly in its resolution 40/33. Thus, the Seventh Congress established a set of universally accepted principles regarding the treatment and handling of juveniles in conflict with the law, based on a separate juvenile justice system with its own distinct procedures, measures and approaches (Rule 2.3).

This international instrument represents the latest stage in the progressive evolution of knowledge, thought and action, under the aegis of the United Nations congresses. The "Beijing Rules" represent minimum conditions which are accepted as suitable by the United Nations for the consideration and handling of young persons in conflict with the law under any system. The Rules contain thirty articles with related commentaries, and are divided into six parts, covering the whole range of juvenile justice processes: (I) General Principles; (II) Investigation and Prosecution; (III) Adjudication and Disposition; (IV) Non-institutional Treatment; (V) Institutional Treatment; and (VI) Research, Planning, Policy Formulation and Evaluation.

The "Beijing Rules" are highly regarded by the international community as an effective technical tool by which to promote and protect children's rights within the context of juvenile justice systems, while at the same time making a significant contribution to the prevention of juvenile delinquency. In fact, many countries are following the philosophical orientation and approach of the Rules, which are inspiring major innovation and reform, as evidenced in the reports provided by Governments and reflected in the recent report of the Secretary-General to the Committee on Crime Prevention and Control at its tenth session (E/AC.57/1988/11).

Unfortunately, neither the United Nations Committee on Crime Prevention and Control nor the Crime Prevention and Criminal Justice Branch, during the previous years, have had the opportunity to contribute directly to the elaboration of the new Draft Convention on the Rights of the Child. Therefore, to attempt to

reflect in article 19 of the draft Convention the whole thrust and spirit of the "Beijing Rules" at this late stage, no doubt, is a very difficult task.

Nevertheless, in response to a request from the Centre for Human Rights, the Crime Prevention and Criminal Justice Branch, in its letter of 27 July 1988, provided some basic technical comments (attached). On the basis of those comments, the Branch was requested by UNICEF (letter dated 1 November 1988) to draft a proposal for the reformulation of article 19. This proposal could read as follows:

#### PROPOSAL (A) - Article 19

1. The essential aim of juvenile justice in dealing with children in conflict with the law shall be assisting them to develop a sense of responsibility and to assume a constructive role in society. A variety of dispositions, including educational and vocational training programmes and alternatives to institutional custody, shall be made available and, in principle, shall be preferred to situations entailing deprivation of liberty to ensure that children are dealt with in a manner appropriate to their well-being and which is proportionate to the circumstances of both the offender and of the offence. (Original paragraph 3.)
2. States Parties recognize the right of children not to be considered criminally responsible before reaching a certain age, according to national law, and not to be incarcerated. The age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts and circumstances of emotional, mental and intellectual maturity and stage of growth. They also recognize the right of children who are accused or recognized as being in conflict with the penal law to be treated in a manner which is consistent with promoting their sense of dignity, worth and personal development, safeguarding their well-being and with respect for individual rights and freedom, taking fully into account their age and other relevant characteristics, the circumstances of the conflict situation, as well as the desirability of furthering a law-abiding life. (Original paragraph 1.)
3. To this end, and having regard to the relevant provisions of international instruments, the States Parties to the present Convention shall, in particular ensure that:
  - (a) The deprivation of a child's liberty shall always be a disposition of last resort and for the minimum necessary period.
  - (b) No child is arbitrarily detained, held in custody, imprisoned or subjected to torture, cruel, inhuman or degrading treatment, punishment or correction;
  - (c) The death penalty or a term of life imprisonment is not imposed for crimes committed by children below 18 years of age;

(d) Children accused of infringing the penal law shall be guaranteed all appropriate legal safeguards at all stages of proceedings. Accordingly, children:

- (i) are presumed innocent until proven guilty according to law;
- (ii) are informed promptly of the charges against them, as of the time of being accused, have legal or other appropriate assistance in the preparation and presentation of their defence;
- (iii) have the right to the presence of a parent/guardian;
- (iv) have the matter determined according to law in a just and fair trial/hearing within a reasonable period of time by an independent and impartial tribunal;
- (v) if found guilty are entitled to have the conviction and sentence reviewed by a higher tribunal according to law; and
- (vi) have their right to privacy respected at all stages. (Original paragraph 2.)

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

- (a) be brought as speedily as possible for adjudication;
- (b) be detained separately from adults in a separate facility or in a separate part of a facility also holding adults;
- (c) have the right to maintain contact with their family through correspondence and visits;
- (d) while in custody, they shall receive care, protection and all necessary individual assistance - social, medical, educational, vocational, psychological and physical - that they may require in view of their age, sex and personality; and
- (e) detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or community service. (Original paragraph 4.)

The above draft represents only a minimalistic approach in that it attempts to touch as little as possible on the existing text, aligning it, even if in a very limited way, with the basic thrust of the provisions contained in the "Beijing Rules".

However, in the current policy perspective, even in the form proposed above, the reformulated article 19 might still fall below existing and emerging standards, and thus will not provide an international yardstick which should be used to promote and protect children's rights in the administration of juvenile justice.

Therefore, a further attempt has been made to reformulate article 19, in order to reflect more adequately and fully the principles embodied in the "Beijing Rules". In this effort, due account has been taken of the impact of the Rules on justice systems achieved world-wide. Due regard has also been given to two emerging and complementary international instruments in the juvenile justice field, namely, the draft Guidelines for the Prevention of Juvenile Delinquency and the draft Standard Minimum Rules for Juveniles Deprived of their Liberty, as unanimously agreed upon by the interregional preparatory meeting on topic 4 of the Eighth United Nations Congress on "Prevention of delinquency, juvenile justice and the protection of the young: policy approaches and directions" (A/CONF.144/IPM3) and as endorsed by the Committee on Crime Prevention and Control at its tenth Session in August 1988.

Accordingly, and with a view toward reflecting a progressive and enlightened approach to current policies and practices in respect of juvenile justice, ranging from social risk intervention and early delinquency prevention to child detention, young offender treatment and after-care, the following new draft might be considered:

#### PROPOSAL (B) - ARTICLE 19

1. It is recognized by the Parties of this Convention that children are highly vulnerable to victimization and involvement in irregular situations which might lead to their coming into conflict with the penal law. The meaning of the terms "delinquency" and "offence" as applied to children should be restricted to violations of criminal law. Specific offences which would penalize irregular behaviour of children for which adults would not be penalized should not be created and should be avoided. Similarly, the parameters, level and scope of official intervention into the lives of children shall be limited. Every effort shall be made so that irregular conduct of children which does not inflict serious harm to them or to others or pose danger to society shall neither be misinterpreted as an offence nor shall there be a disproportionate reaction to that conduct.

2. A wide range and variety of community dispositions shall be made available to avoid submitting children to legal processes and to reduce the detrimental consequences of incarceration. If and when official intervention is warranted, it should take place within the framework of a separate juvenile justice system, the administration, laws, procedures, personnel and services of which shall not only be specialized but also attuned to the specific needs, problems and circumstances of children. Such systems should be geared toward humane and fair treatment and handling of children who come into conflict with the law, bearing mind that special consideration shall be accorded to them because of their age and stage of psycho-social and physical development, while at the same time affording

the full rights, guarantees and benefits equal to those of adults, in the context of a progressive contemporary notion of juvenile justice and delinquency prevention and in accordance with existing international standards and norms in the juvenile justice field.

3. States Parties recognize the right of children who are accused or recognized as being in conflict with the penal law not to be considered criminally responsible before reaching a specific age, according to national law, and not to be incarcerated. The age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts and circumstances of emotional, mental and intellectual maturity and stage of growth.

4. States Parties also recognize the right of children to be treated in a manner which is consistent with promoting personal development, safeguarding their well-being and with respect for individual worth, dignity, rights and freedom, taking fully into account their age and other relevant characteristics, the circumstances of the conflict situation, as well as the desirability of furthering a law-abiding life. Special consideration shall also be given to the situation of children "at social risk" who are not necessarily in conflict with the law but who may be brought before the law by reason of being abused, abandoned, neglected, homeless, objects of sale, traffic and prostitution, and for being in other marginal circumstances.

5. The juvenile justice system (institutions and personnel entrusted with the functions of the administration of juvenile justice) shall ensure that any action related to a child who is alleged or has been found to have committed an offence be always in proportion to the circumstances of both the child and the offence, with emphasis on the rights and well-being of the child. Accordingly, children in conflict with the penal law shall be assisted to develop a sense of responsibility to assume a constructive role in society.

6. Toward this end, and having regard to the provisions of relevant international instruments governing the protection of the child the States Parties to the present Convention shall ensure that:

- (a) No child is arbitrarily detained, held in custody or imprisoned;
- (b) No child is subjected to torture, cruel, inhumane or degrading treatment, punishment or correction at any stage of justice administration;
- (c) The death penalty or a term of life imprisonment is not imposed for offences committed by children below 18 years of age;
- (d) Children accused of infringing the penal law shall be guaranteed all appropriate legal safeguards, at all stages of proceedings. Accordingly, children have the right to:
  - (i) be presumed innocent until proven guilty, according to the law;

- (ii) be informed promptly of the charges against them, as of the time of being accused;
- (iii) have legal and other appropriate assistance in the preparation and presentation of their defence;
- (iv) have the presence of a parent/guardian;
- (v) have the matter determined, according to law, in a just and fair hearing/trial, within a reasonable period of time, and as expeditiously as possible, by an independent and impartial juvenile court authority;
- (vi) when found guilty, be entitled to appeal conviction and sentence to a higher court, according to law; and
- (vii) have their privacy fully respected, at all stages, and no information that may produce negative consequences shall be released or published.

7. States Parties recognize that all forms of deprivation of liberty are detrimental to child growth and development. In principle, children should not be deprived of their liberty. Incarceration should always be a disposition of last resort and for the absolute minimum period necessary, with full protection of their rights and well-being. Moreover, all children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person and, in particular, shall: (a) be brought as speedily as possible for adjudication by a competent authority; (b) be provided with decent accommodation and healthy facilities; (c) be detained separately from adults, in a separate facility or part of a facility; (d) while in custody, receive care, protection and all necessary individual assistance - medical, physical, psychological, social, educational, vocational - that may be required in view of their age, sex and personality; and (e) maintain frequent contacts with their family and the community through correspondence and visits and engage in meaningful activity, including educational and vocational training and constructive use of leisure time.

A range of community-based alternatives to institutional custody, especially pending trial, shall be made available and shall be preferred to deprivation of liberty, e.g. close supervision, placement with a family, community-service.

## V. SECOND READING (1988-1989)

*By a letter addressed to the Secretary-General (see E/CN.4/1988/28, paragraph 248), the Working Group requested that the draft of the convention as adopted at the first reading be circulated to all Member States so that their comments could be taken into account*

*during the second reading of the draft. The Working Group conducted the second reading from 28 November to 9 December 1988 and adopted its report from 21 to 23 February 1989.*

## **A. PROPOSALS SUBMITTED TO THE WORKING GROUP AT THE SECOND READING**

*The following written proposals were submitted for consideration at the second reading.*

### **1. India**

*The following is taken from E/CN.4/1989/WG.1/WP.15.*

#### Article 19 (ii)(b)

In article 19 (ii)(b) the words "persons below 18 years of age" [should] be deleted and replaced by "a child".

The reformulated article 19 (ii)(b) would read as follows:

"Capital punishment of life imprisonment without possibility of release is not imposed for crimes committed by a child."

### **2. Mexico**

*The following is taken from E/CN.4/1989/WG.1/WP.32.*

#### Article 19, paragraph 1:

After paragraph 1 add another paragraph reading: "States Parties recognize that when children are accused or recognized as having infringed the penal law, their cases shall be examined by a Board for the protection of Minors".

#### Article 19, paragraph 2 (c) (i):

Add at the end of this subparagraph the words "except where such a presumption does not exist in national law", so that the whole of the subparagraph reads "are presumed innocent until proven guilty according to the law, except where such a presumption does not exist in national law".

#### Article 19, paragraph 2 (c) (ii):

Add after the words "are informed promptly", the phrase "or their legal guardian are informed promptly when local legislation so stipulates". Add after the phrase "as of the time of being accused" the words "they or their legal guardian".

Accordingly, paragraph 2 (c) (ii) would read: "are informed promptly, or their legal guardians are informed promptly when local legislation so stipulates, of the charges against them and, as of time of being accused, they or their legal guardian have appropriate assistance in the preparation and presentation of their defence".

Article 19, paragraph 2 (c) (iii):

Delete the phrase "by an independent and impartial tribunal".

Article 19, paragraph 2 (c) (iv):

Add at the end: "except where the conviction is pronounced by a body that is not vested with authority in criminal affairs but relates to social re-education or rehabilitation".

The text will thus read: "if found guilty are entitled to have their conviction and sentence reviewed by a higher tribunal according to the law, except where the conviction is pronounced by a body that is not vested with authority in criminal affairs but relates to social re-education or rehabilitation".

Article 19, paragraph 2 (c) (v):

After paragraph 2 (c) (iv) add a new subparagraph (v) stating: "Under the final ruling issued, are entitled to be placed in an open, semi-open or closed institution. Open institutions shall be those which maintain a constant 24-hour system of freedom to enter and leave the institution; semi-open institutions shall be those which close their doors and only allow a minor to go out for a specific purpose, for a limited period with flexible human controls and make it easier for him to go out to visit his relatives; closed institutions shall be those with material and human means of security and do not allow the minor to go out without the authorization of the director or superiors".

Article 19, paragraph 4 (a):

The paragraph should read as follows: "issue a ruling as speedily as possible".

Article 19, paragraph 4, a new subparagraph between (a) and (b):

After subparagraph (a) insert another subparagraph reading: "have the right for a Board for the Protection of Minors to determine in each case, in its judgement, the measures of assistance, protection or treatment necessary for them to be better trained in the future".

Article 19, paragraph 4 (c):

Add a subparagraph (d) reading: "have the right to be granted under a final ruling, when the family environment is made up of hard-working persons with no



vices and no delinquency, to return to their home on full release or under the rules of release with assistance. The assistance shall entail systematic observation of the minors' living conditions and counselling for them and anyone taking care of them, as well as referring the latter to persons or institutions able to help them or guide them in solving their problems".

### 3. Venezuela

*For the text of these proposals, see paragraph 535 in section B below.*

### 4. Latin American Meeting

*By note verbal to the Centre for Human Rights, the Permanent Mission of Argentina requested that the report and recommendations of the Latin American meeting [of NGOs] in support of the United Nations draft Convention on the Rights of the Child be circulated as an official information document at the Working Group. The meeting took place in Buenos Aires from 29 September to 2 October 1988. The following is taken from E/CN.4/1989/WG.1/WP.1.*

In Article 19, paragraph 1: "... which takes into account their context, their age ...".

## B. DISCUSSION AND ADOPTION AT THE SECOND READING

*The substance of articles 37 and 40 was discussed under article 19 during the first reading and initially during the second reading. The Working Group decided later on in second reading to divide article 19 into articles 19 and 19 bis, which became articles 37 and 40 respectively. The following is taken from the report of the Working Group to the Commission on Human Rights, E/CN.4/1989/48, paragraphs 533 to 599.*

533. The Working Group had before it a text of the article as adopted during the first reading (E/CN.4/1989/WG.1/WP.2). The text read as follows:

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

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

- (a) no child is arbitrarily detained or imprisoned or subjected to torture, cruel, inhuman or degrading treatment or punishment;
- (b) capital punishment or life imprisonment without possibility of release is not imposed for crimes committed by persons below 18 years of age;
- (c) children accused of infringing the penal law:
  - (i) are presumed innocent until proven guilty according to law;
  - (ii) are informed promptly of the charges against them and, as of the time of being accused, have legal or other appropriate assistance in the preparation and presentation of their defence;
  - (iii) have the matter determined according to law in a fair hearing within a reasonable period of time by an independent and impartial tribunal; and
  - (iv) if found guilty are entitled to have their conviction and sentence reviewed by a higher tribunal according to law.

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

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

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

534. The Working Group also had before it a text of the article as adopted during the first reading including suggested revisions proposed by the Crime, Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian

Affairs of the United Nations Office at Vienna (E/CN.4/1989/WG.1/WP.2). The text read as follows:

"1. It is recognized by States Parties that children are highly vulnerable to victimization and involvement in irregular situations which might lead to their coming into conflict with the penal law. The meaning of the terms "delinquency" and "offence" as applied to children should be restricted to violations of criminal law. Specific offences which would penalize irregular behaviour of children for which adults would not be penalized should not be created and should be avoided. Similarly, the parameters, level and scope of official intervention into the lives of children shall be limited. Every effort shall be made so that irregular conduct of children which does not inflict serious harm to them or to others or pose danger to society shall neither be misinterpreted as an offence nor shall there be a disproportionate reaction to that conduct.

2. A wide range and variety of community dispositions shall be made available to avoid submitting children to legal processes and to reduce the detrimental consequences of incarceration. If and when official intervention is warranted, it should take place within the framework of a separate juvenile justice system, the administration, laws, procedures, personnel and services of which shall not only be specialized but also attuned to the specific needs, problems and circumstances of children. Such systems should be geared toward humane and fair treatment and handling of children who come into conflict with the law, bearing in mind that special consideration shall be accorded to them because of their age and stage of psycho-social and physical development, while at the same time affording the full rights, guarantees and benefits equal to those of adults, in the context of a progressive contemporary notion of juvenile justice and delinquency prevention and in accordance with existing international standards and norms in the juvenile justice field.

3. States Parties recognize the right of children who are accused or recognized as being in conflict with the penal law not to be considered criminally responsible before reaching a specific age, according to national law, and not to be incarcerated. The age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts and circumstances of emotional, mental and intellectual maturity and stage of growth.

4. States Parties also recognize the right of such children to be treated in a manner which is consistent with promoting personal development, safeguarding their well-being and with respect for individual worth, dignity, rights and freedom, taking fully into account their age and other relevant characteristics, the circumstances of the conflict situation, as well as the desirability of furthering a law-abiding life. In this respect, special consideration shall be given to the situation of children "at social risk" who are not necessarily in conflict with the law but who may be abused,

abandoned, neglected, homeless, objects of sale, traffic and prostitution, and/or being in other marginal circumstances.

5. The juvenile justice system (institutions and personnel entrusted with the functions of the administration of juvenile justice) shall ensure that any action related to a child who is alleged or has been found to have committed an offence in proportion to the circumstances of both the child and the offence act. With emphasis on the rights and well-being of the child. Accordingly, children in conflict with the penal law shall be assisted to develop a sense of responsibility to assume a constructive role in society.

6. Toward this end, and having regard to the provisions of relevant international instruments governing the protection of the child, States Parties shall ensure that:

- (a) No child is arbitrarily detained, held in custody or imprisoned;
- (b) No child is subjected to torture, cruel, inhumane or degrading treatment, punishment or correction at any stage of justice administration;
- (c) The death penalty or a term of life imprisonment is not imposed for offences committed by children below 18 years of age;
- (d) children accused of infringing the penal law shall be guaranteed all [appropriate] legal safeguards, at all stages of proceedings. Accordingly, children have the right to:
  - (i) be presumed innocent until proven guilty, according to the law;
  - (ii) be informed promptly of the charges against them, as of the time of being accused;
  - (iii) have legal and other [appropriate] assistance in the preparation and presentation of their defence;
  - (iv) have the presence of a parent/guardian;
  - (v) have the matter determined, according to law, in a just and fair hearing/trial, within a reasonable period of time, and as expeditiously as possible, by an independent and impartial juvenile court authority;
  - (vi) when found guilty, be entitled to appeal conviction and sentence to a higher court, according to the law; and

(vii) have their privacy fully respected, at all stages, and no information that may produce negative consequences be released or published.

7. States Parties recognize that all forms of deprivation of liberty are detrimental to child growth and development. In principle, children should not be deprived of their liberty. Incarceration should always be a disposition of last resort and for the absolute minimum period necessary, with full protection of their rights and well-being. Moreover, all children deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person and, in particular, shall:

(a) be brought as speedily as possible for adjudication by a competent authority;

(b) be provided with decent accommodation and healthy facilities;

(c) be detained separately from adults, in a separate facility or part of a facility;

(d) while in custody, receive care, protection and all necessary individual assistance - medical, physical, psychological, social, educational, vocational - that may be required in view of their age, sex and personality; and

(e) maintain frequent contacts with their family and the community through correspondence and visits and engage in meaningful activity, including educational and vocational training and constructive use of leisure time. A range of community-based alternatives to institutional custody, especially pending trial, shall be made available and, in principle, shall be preferred to deprivation of liberty, e.g. close supervision, placement with a family, and community service."

535. The Working Group also had before it the proposal of Venezuela contained in document E/CN.4/1988/WG.1/WP.11 which reads as follows:

#### Article 19

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

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

- (a) No child is detained or imprisoned or subjected to torture or cruel, inhuman or degrading treatment or punishment;
- (b) Every child is protected by laws, provisions and special courts;
- (c) He is not considered guilty so that he does not suffer penalties for the breaches of the law he commits, but must in such cases be subjected to re-educational procedures, measures and treatment;
- (d) All the judicial or administrative proceedings or acts or proceedings or acts of any other nature having to do with minors are free of charge;
- (e) He is not deprived of his liberty without the accomplishment of the legal formalities.

3. Offending children who commit any act punishable by criminal law shall be placed at the disposal of the competent authority, which shall take measures that include:

- (a) Investigating the child's situation;
- (b) Ensuring that the measures are carried out within the family environment or within the community of which the child is a member;
- (c) Placing the child under the care of its parents, tutors, guardians or responsible relatives; probation and aid in institutions for reform and care."

It also had before it the proposals of Venezuela contained in document E/CN.4/1988/WG.1/WP.49 which read as follows:

Article 19 bis

"The States Parties shall ensure appropriate monitoring of children who have been subjected to a measure restricting their liberty such as supervised freedom, family placement, committal to open or closed institutions or other, until they are duly reintegrated in their family and community."

Article 19 ter

"The States Parties to the present Convention shall ensure that it is prohibited to publish, by press, radio, television or any other medium, names, photographs and other means of identifying persons under 18 years of age who are in the circumstances described in articles 10 and 18."

536. After a general debate in which it became obvious that there was a total lack of consensus, the Chairman appointed an open-ended drafting group composed of the following countries, (Argentina, Canada, China, Cuba, India, Mexico, Portugal, the United States of America and the Union of Soviet Socialist Republics) to co-ordinate with Venezuela. After an initial meeting of this drafting group in which most of the participants in the Working Group took part, Venezuela requested that the representative of Portugal should join her in the co-ordination exercise and elected a group of friends of the co-ordinator, consisting of Canada, Spain, Portugal, Senegal, Venezuela, a representative of the non-governmental organizations and other interested delegations that wished to participate. The co-ordinators of the Group were able to submit the proposal contained in document E/CN.4/1989/WG.1/WP.67/Rev.1 which reads as follows:

1. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment [without possibility of release] shall be imposed for offences committed by persons below 18 years of age.

2. No child shall be deprived of his or her liberty unlawfully or arbitrarily. Deprivation of liberty shall be used only as a measure of last resort and for the shortest possible period of time.

3. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his/her family through correspondence and visits.

4. All children deprived of their liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of their liberty before a court (or other competent, independent and impartial authority) and to a prompt decision on any such action."

537. In introducing the proposal contained in working paper E/CN.4/1989/WG.1/WP.67/Rev.1, the representative of Portugal indicated that the drafting group had endeavoured to draw up a text consistent with the instruments adopted in this field by the United Nations, dividing the various independent situations which required protection into two articles. The new article 19 therefore covered situations such as the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the death penalty or life imprisonment. It also studied the deprivation of liberty, viewed so as to reflect the comments

formulated by the Human Rights Committee and to show the respect due to human dignity, recognition of the needs of children and the concern to assure them legal or other assistance. Aware of the initiatives taken in the United Nations in the area of juvenile justice, the drafting group had incorporated some of these ideas in article 19 bis, using non-imperative language, however, so as to enable States to achieve a balance between the desirability and the advisability of introducing these measures into their legal systems. With the intention that the child should grow up in an atmosphere of love and understanding, the solutions proposed were sometimes less formal than those provided in other instruments, while taking account of the respect due to human rights and legal guarantees, a concern reflected in the provision concerning attendance, at a hearing, of the parents or the legal representatives of the child. The co-ordinators of the Working Group requested the delegation of Canada to introduce the paragraphs of this proposal to the Working Group.

#### Article 19 (37)

##### Introductory phrase

538. The representative of Argentina suggested that, as contained in document E/CN.4/1989/WG.1/WP.67/Rev.1, the text for article 19 would need some form of introductory phrase. He suggested that the words "States Parties shall ensure:" should be considered by the Working Group as a chapeau for the article. In view of the lack of opposition to this phrase, a consensus was formed to adopt the proposal by the representative of Argentina.

539. The text of the chapeau adopted for article 19 during the second reading reads as follows:

"States Parties shall ensure that:"

##### Paragraph 1

540. The representative of the German Democratic Republic proposed that the two sentences constituting paragraph 1 (E/CN.4/1989/WG.1/WP.67/Rev.1) should be divided into two separate paragraphs. She was supported by the representatives of Italy and the Union of Soviet Socialist Republics in saying that, as it stood, paragraph 1 lacked homogeneity because it dealt both with manifest illegalities, torture, etc., as well as with punishment pursuant to due process of law. However, the representative of the Federal Republic of Germany was of the view that the imposition of capital punishment on children was "inhuman ... treatment or punishment" and therefore that the paragraph was sufficiently homogeneous to be left as it stood. The representatives of Canada and Senegal supported the representative of the Federal Republic of Germany in calling for the paragraph to be left undivided. In a spirit of compromise and in order to allow the Working Group to arrive at a consensus the representative of the German Democratic Republic did not insist on her proposal. A consensus was therefore formed to



keep the structure of the paragraph as it was originally proposed in document E/CN.4/1989/WG.1/WP.67/Rev.1.

541. The representatives of Austria, the Federal Republic of Germany, Senegal and Venezuela suggested that the words "without possibility of release" be deleted. Conversely, the representatives of China, India, Japan, Norway, the Union of Soviet Socialist Republics and the United States of America argued for the retention of the words. In particular, the representatives of India and Norway indicated that they could not join a consensus to delete the words because such a move would have the effect of profoundly changing the text as adopted at first reading, a text which both their respective Governments approved.

542. In order to achieve a consensus, the representatives of China, the Federal Republic of Germany, the Netherlands and Venezuela suggested that the whole reference to life imprisonment and the question of release could be omitted from the paragraph. However, the representative of Senegal was of the view that it was important to retain the reference because if it was not included in the text judges would be at liberty to use life imprisonment as a substitute for capital punishment.

543. In a spirit of compromise and in order not to block a consensus, the delegations which had argued for the deletion of the words "without possibility of release" did not insist on their proposal. A consensus was therefore formed to retain the words.

544. In joining the consensus the representative of the United States of America reserved the right of his country to enter reservations on this article if ever the United States of America decided to ratify the Convention.

545. The text of paragraph 1 of article 19 as adopted during the second reading reads as follows:

"1. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age."

## Paragraph 2

546. In introducing the paragraph, the observer for Canada indicated that it largely reflected both the International Covenant on Civil and Political Rights and the Beijing Rules. The representatives of the Netherlands and the United Kingdom of Great Britain and Northern Ireland indicated that they could support a consensus in favour of the text of the paragraph as contained in document E/CN.4/1989/WG.1/WP.67/Rev.1 but that in doing so they reserved the right of their respective Governments to enter reservations on the article if ever they decided to ratify the Convention.

547. The representative of Italy indicated that, as the paragraph stood, there was no link between the first and the second sentence. In order to remedy this, she suggested the addition of the words "except on such grounds and in accordance with such procedure as are established by law" to the end of the first sentence. Although this proposal was supported by the representative of Senegal, the representative of Italy did not insist on her proposal.

548. In view of the lack of opposition, a consensus was formed in the Working Group to adopt the first sentence of the paragraph as contained in document E/CN.4/1989/WG.1/WP.67/Rev.1. The text of the first sentence of paragraph 2 of article 19 as adopted during the second reading reads as follows:

"No child shall be deprived of his or her liberty unlawfully or arbitrarily."

549. With regard to the second sentence of the paragraph as contained in document E/CN.4/1989/WG.1/WP.67/Rev.1, the representatives of Kuwait and the Union of Soviet Socialist Republics expressed their concerns that the Working Group would be deciding on detailed measures of juvenile punishment without the necessary expertise to do so. In particular, the representative of the Union of Soviet Socialist Republics questioned whether it was the consensus view of experts on juvenile punishment that deprivation of liberty should be only "for the shortest possible period of time". The representative of the Federal Republic of Germany indicated that he could not join a consensus in support of a sentence containing this phrase because the legislation of the Federal Republic of Germany did not insist that custodial sentences for juveniles should be only "for the shortest possible period of time". The representative of Italy also indicated that she could not join a consensus in support of the second sentence as contained in E/CN.4/1989/WG.1/WP.67/Rev.1.

550. As a possible compromise, the representative of Italy suggested the deletion of the second sentence with the paragraph remaining only with the first, already adopted, sentence. The representative of Senegal took the view that the second sentence was important in order to encourage judges to consider the use of other educational or correctional measures than deprivation of liberty and to ensure that, if at all, custodial measures would only be used as a measure of last resort. In a spirit of compromise the representative of Italy did not insist on her proposal.

551. As an alternative proposal to achieve a compromise, the representative of Norway suggested the deletion of the words "and for the shortest possible period of time". The representative of Mexico supported this proposal. The representative of the Union of Soviet Socialist Republics also supported this proposal and further suggested that the broad notion of "deprivation of liberty" be replaced by the more precise words "imprisonment, arrest and detention" and that the text should indicate that the measures should be "in conformity with the law". The representative of Libya supported the proposal by Norway as amended by the representative of the Union of Soviet Socialist Republics. The representative of the United Kingdom of Great Britain and Northern Ireland suggested that, taking

into account the foregoing attempts to arrive at a compromise text, the text of the second sentence of paragraph 2 could read as follows:

"Imprisonment, arrest and detention shall be used only in conformity with law and shall be used as a measure of last resort."

552. With regard to that text the representative of the United Kingdom of Great Britain and Northern Ireland indicated that he had reservations about the Working Group joining together in one sentence the concept of arrest, a static event occurring at a particular moment, with the concepts of imprisonment and detention, events which were on-going in time. However, in a spirit of compromise, the representative of the United Kingdom of Great Britain and Northern Ireland indicated that he would be willing to join a consensus in favour of the adoption of the text he had read out.

553. Also with regard to the text of the United Kingdom of Great Britain and Northern Ireland, and in connection with the proposal made by the representative of the Union of Soviet Socialist Republics, the representative of France questioned why the phrase "in conformity with the law" should be included in the second sentence. He was of the view that the word "unlawfully" which was contained in the first sentence adequately met any concerns which the phrase was intended to cover. The representative of Mexico expressed general reservations about the need to formulate a second sentence for paragraph 2 since the question of imprisonment would be more thoroughly covered in article 19 bis.

554. In light of the discussion regarding paragraphs 1 and 2 of the draft, the delegate of the Federal Republic of Germany declared that, given the totally new versions of articles 19 and 19 bis tabled before the Working Group, it seemed necessary that these articles be examined by criminal justice specialists in the respective capitals of the participating countries. He added that, consequently, he could only join a formal consensus for the time being, withholding his consensus on the substance. He also asked for a clarification on the text to be used as a basis for deliberations, citing article 19 as adopted at first reading, article 19 including suggested revisions contained in document E/CN.4/1989/WG.1/WP.2, and article 19 as proposed in document E/CN.4/1989/WG.1/WP.67/Rev.1.

555. Many delegations agreed on the use of the proposal tabled in document E/CN.4/1989/WG.1/WP.67/Rev.1, and some of them pointed out that, since the Beijing Rules had been taken as a model, the version could not necessarily be considered as totally new.

556. With regard to paragraph 2, the discussion focused on the second sentence and some delegations including the Union of Soviet Socialist Republics, Senegal, the United States of America and the German Democratic Republic expressed their preference for a more specific language instead of a general reference such as "deprivation of liberty", since this term could also cover educational and other types of deprivation of liberty applied to minors besides detention, arrest, or imprisonment.

557. The observer for Canada proposed the following sentence:

"The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort."

558. The delegation of Senegal proposed the following text:

"The imprisonment, arrest or detention of a child should only be a measure of last resort. States shall endeavour to apply the shortest possible penalty."

559. Some delegations objected to the concept of "shortest possible penalty", taking into consideration the rehabilitation process that could should last for some period. However, given the general consensus, they did not object to its inclusion.

560. The observer for Canada then read out the following version of the second sentence: "The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;". The Working Group adopted this version.

### Paragraph 3

561. With regard to paragraph 3 the observer for Canada explained that there was virtually no new language included, except for the words "... in a manner which takes into account the needs of persons of their age.", based on article 14, paragraph 4, of the International Covenant on Civil and Political Rights. He pointed out that the rest of the paragraph stemmed from previous paragraph 4 of article 19.

562. The observer for the Netherlands suggested that the words "save in exceptional circumstances" be added at the end of paragraph 3 which was then adopted by the Working Group to read as follows:

"3. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances."

### Paragraph 4

563. With regard to paragraph 4 it was generally agreed that the words "every child" should be used at the beginning and that the brackets around the words "or other competent independent and impartial authority" be removed to correspond with relevant provisions of the International Covenant on Civil and Political

Rights. The paragraph was then adopted by the Working Group to read as follows:

"4. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action."

Article 40 (Article 19 bis)

564. The Working Group had before it a text for a new article 19 bis submitted by the same drafting group which had been set up to consider article 19. The text of the proposal (E/CN.4/1989/WG.1/WP.67/Rev.1) read as follows:

"1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of the child's assuming a constructive role in society.

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

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed.

(b) Every child has, in every case, at least the following guarantees:

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

(ii) to be informed promptly of the charges against him/her, directly and if appropriate through his/her parents or legal guardian, and to have legal and other appropriate assistance in the preparation and presentation of his/her defence;

(iii) to have the matter determined without delay by a judicial body in a fair hearing according to law, in the presence of legal counsel and his or her parents or legal guardians, unless it is considered not to be in the best interest of the

child, in particular taking into account his/her age or situation;

(iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher judicial body according to law;

(vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) to have his/her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, including care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

565. In introducing the proposed article, the representative of Portugal indicated that, taking into account reservations felt by some participants in the Working Group, certain provisions had deliberately not been drafted in the imperative. She explained that this was done in order to give States Parties the option of whether to adopt the measures contained therein or not.

#### Paragraph 1

566. With regard to paragraph 1, the observer for Canada, who again acted on behalf of the drafting group to introduce the specific provisions of article 19 bis,

stated that the present wording was the same as the previous version adopted in first reading, except for two sentences that had been added as follows:

- (a) "...or recognized as having infringed the penal law."
- (b) "...and the desirability of the child's assuming a constructive role in society".

567. The delegation of the German Democratic Republic expressed doubts about the last phrase of the paragraph, stating that the formulation was a repetition of article 14 of the International Covenant on Civil and Political Rights and that the concept of "rehabilitation" was not properly covered by it.

568. Some delegations, including those of Venezuela, Norway, Senegal, Italy and the United Kingdom of Great Britain and Northern Ireland pointed out that given various legislations, the word "rehabilitation" might cause certain problems. The representative of Italy proposed that instead of the word "rehabilitation" the Working Group should consider using the word "re-integration" or the words "social re-integration".

569. Upon these remarks, the word "re-integration" was retained and the Working Group adopted paragraph 1 to read as follows:

- "1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's re-integration and the child's assuming a constructive role in society."

#### Paragraph 2

570. With regard to paragraph 2, the chapeau and subparagraph (a) were adopted without discussion to read as follows:

- "2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
  - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed."

571. Following a readjustment to the chapeau of subparagraph (b) requested by the delegation of the Union of Soviet Socialist Republics on the use of the words "in every case" which they judged inappropriate given the possible variety of cases, the chapeau was adopted to read as follows:

"(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:"

572. Point (i) of subparagraph (b) was also adopted without discussion to read as follows:

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

573. As far as point (ii) was concerned, the discussion clustered around two issues; namely the child being directly informed of the charges brought against him or her, and the type of legal assistance he or she would be provided with.

574. The first point was raised by the delegate of the Union of Soviet Socialist Republics who declared that accusations could not be brought against the child through representatives and that it would pose serious problems. The delegation of the German Democratic Republic expressed the same concern.

575. The representative of the United States of America pointed out that with the use of the word "and", it was already implied that direct information of the child was the first priority and that indirect information came in addition.

576. The delegations of Senegal, Mexico, Italy, Venezuela and Honduras stressed the fact that parents and/or legal guardians should be informed of the charges brought against the child.

577. As to legal assistance, some delegations including those of the Federal Republic of Germany and the Netherlands pointed out that, given their respective legal systems, the use of the broad term "legal assistance" could raise a problem since, in cases of minor infringement of law, the defence of the child could be assured by non-lawyers. Japan also pointed out that, under its juvenile procedures, the presence of legal counsel is not necessarily required. In this regard, the delegate of the Federal Republic of Germany suggested the replacement of the word "and" by the word "or" following the word "legal". He otherwise wanted the report to reflect his insistence on underlining the possibility of non-legal assistance.

578. The observer for the Netherlands suggested that the paragraph be completed with the words "...if the interests of justice so require." Some delegations expressed their concern over this proposal which could, according to them, limit the guarantees and the best interest of the child. Upon these remarks, the delegation of the Netherlands proposed that the paragraph be split into two parts and the issue of legal assistance be split into two parts, and the issue of legal assistance be dealt with separately from the first part. The delegation of the Federal Republic of Germany declared it could go along with this proposal, suggesting some slight changes.

579. Finally the observer for Canada read a proposed compromise text:



"(ii) to be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;"

580. The Working Group adopted this version.

581. The delegation of Mexico declared for the record that it considered legal assistance as granted to the parents or legal guardians of the child, since, according to Mexican law, a child did not have the right to testify before a court.

582. As to point (iii), the observer for Canada declared that it was based on the former version of article 19, paragraph 2, subparagraph (c) and that the only addition consisted in the words "without delay" stemming from former paragraph 4.

583. Some delegations identified two problems concerning this paragraph namely the term "legal counsel" and the term "judicial body".

584. The delegates of the Federal Republic of Germany, the German Democratic Republic, Italy and Bulgaria agreed that given their respective legal systems, the term "judicial body" was too broad in its significance and that more specific language was needed.

585. The delegate of Japan pointed out that in his country all hearings were not public - such as those held in family courts - and that consequently, the term "fair hearing" raised a problem in case it meant public trial. As to the presence of legal counsel, the same delegation expressed the same concern he raised in relation to poverty. Besides these reservations, he also declared that the principle of public hearing seemed incompatible with the concept of privacy formulated under point (vii).

586. Finally, the same delegations declared that they would understand "legal counsel" in a broader sense so that it should also cover non-legal assistance, as mentioned before.

587. Upon these remarks, the observer for Canada read the following compromise text:

"(iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance, and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians."

588. The Working Group adopted this version of point (iii).

589. Point (iv), which, according to the Canadian delegation, duplicated article 14, paragraph 3, subparagraphs (g) and (e) of the International Covenant on Civil and Political Rights, was adopted by the Working Group, without any discussion to read as follows:

"(iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;"

590. Point (v) which, according to the same delegation, was a repetition of former article 19, paragraph 2 (c), clause 4, with the addition for consistency with point (iii) of the following:

"...by a higher competent, independent and impartial or judicial body."

591. The text of point (v) was adopted to read as follows:

"(v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;"

592. Point (vi), which the observer for Canada stated was a duplication of article 14, paragraph 2 (f) of the International Covenant on Civil and Political Rights was adopted to read as follows:

"(vi) to have the free assistance of an interpreter if the child can not understand or speak the language used;"

593. The delegations of Japan, the Federal Republic of Germany, the Netherlands and the United Kingdom of Great Britain and Northern Ireland made reservations on the concept of "free assistance" to the accused, since their respective legal systems had a different approach to the question.

594. Point (vii) was adopted to read as follows:

"(vii) to have his or her privacy fully respected at all stages of the proceedings."

595. The representatives of the United States of America, the Federal Republic of Germany and Japan made reservations on this point, given their differing national legislations with regard to the concept of privacy.

#### Paragraphs 3 and 4

596. Paragraphs 3 and 4 of the proposal submitted by the drafting group were introduced by the observer for Canada.

597. The observer for the Netherlands proposed to replace the word "including" in paragraph 4 by the words "such as". The Working Group accepted this proposal.

598. After having made some editorial changes as suggested by the representative of the United Kingdom of Great Britain and Northern Ireland, the Working Group adopted paragraphs 3 and 4 of article 19 bis reading as follows:

"3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular:

(a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

599. Upon the adoption of articles 19 and 19 bis the representative of India stated that his delegation reserved the right to the further scrutiny and examination of the articles by the Indian Government.

## **C. STATEMENT MADE DURING THE ADOPTION OF THE REPORT**

### **1. Japan**

*The following is taken from the report of the Working Group to the Commission on Human Rights, E/CN.4/1989/48, paragraphs 723-724.*

723. As to article 37, subparagraph (c), the representative of Japan said that, according to article 81 of the Japanese Criminal Procedure Law, the court is allowed to restrict the contact of the child deprived of his or her liberty with his or her family, in case the court shall have reason to believe that the child may escape, or destroy evidence. The Japanese delegation understood that situations such as the possibility of escape or the possibility of the destruction of evidence fell within the "exceptional circumstances" in the end of that subparagraph. Concerning the "right to prompt access to legal and other appropriate assistance"

of subparagraph (d), the delegation accepts that subparagraph on the understanding that it confirmed the right to assistance of defence counsel for the child placed under physical restraint and that it did not oblige the State to assign a defence counsel on behalf of the child when the child is unable to secure it.

724. As to article 40, the Japanese delegation understood that "every child alleged as or accused of having infringed the penal law" in 2 (b) (ii) means such child who is deprived of his or her liberty in the criminal procedure. Concerning 2 (b) (iv) of the same article, his delegation understood that in Japan that provision of 2 (b) (iv) is applicable only to the criminal procedure at the criminal court and not to the procedure at the family court which has for [that] purpose protective measures for the wholesome rearing of juveniles. Concerning 2 (b) (vi), his delegation understood that this provision was intended to guarantee that the defendant who could not understand the language used in the court exercise sufficient defensive activities in the court, and therefore it is not prohibited that the whole or part of the costs be charged to the accused when he is found guilty.

## **VI. CONSIDERATION BY THE COMMISSION ON HUMAN RIGHTS, THE ECONOMIC AND SOCIAL COUNCIL AND THE GENERAL ASSEMBLY**

*The text of articles 37 and 40 as adopted by the Working Group at the second reading was adopted along with the other articles of the Convention by the Commission on Human Rights by its resolution 1989/57 of 8 March 1989, by the Economic and Social Council by its resolution 1989/79 of 24 May 1989 and by the General Assembly by its resolution 44/25 of 20 November 1989.*

## **VII. RELATED REFERENCES**

*For further research, see the legislative history of article 39. See also annex 2, "Related articles of the Convention".*

\* \* \* \* \*

## *Annex 1*

### **ORGANIZATIONS PARTICIPATING IN THE NGO AD HOC GROUP**

The organizations listed below participated consistently in the NGO Ad Hoc Group on the drafting of the Convention on the Rights of the Child, which was active in the drafting process from 1983 to 1989. The individual participating organizations did not necessarily subscribe to every provision contained in the various proposals submitted by the NGO Ad Hoc Group.

#### *Participating organizations*

Amnesty International  
Anti-Slavery Society for the Protection of Human Rights (Anti-Slavery International)  
Associated Country Women of the World  
Baha'i International Community  
Defence for Children International (Secretariat for the NGO Ad Hoc Group)  
Friends World Committee for Consultation  
Human Rights Internet  
International Abolitionist Federation  
International Association of Democratic Lawyers  
International Association of Juvenile and Family Court Magistrates  
International Association of Penal Law  
International Catholic Child Bureau  
International Commission of Jurists  
International Council of Jewish Women  
International Council on Social Welfare  
International Federation of Business and Professional Women  
International Federation of Social Workers  
International Federation of Women Lawyers  
International Federation of Women in Legal Careers  
International Movement of ATD Fourth World  
International Social Service  
Rädda Barnen International  
Rädda Barnen Sweden  
Save the Children Alliance  
World Association for the School as an Instrument of Peace  
World Association of Girl Guides and Girl Scouts  
World Organization for Early Childhood Education  
Zonta International.

## *Annex 2*

### **RELATED ARTICLES OF THE CONVENTION**

The following grouping of related substantive articles is based on the guidelines adopted by the Committee on the Rights of the Child for the preparation of State party reports (CRC/C/5):

#### ***GENERAL MEASURES OF IMPLEMENTATION***

- Implementation of rights (article 4)
- Promotion of rights and dissemination of information (article 42)
- Respect for higher standards (article 41)

#### ***DEFINITION OF A CHILD***

- Definition of a child (article 1)

#### ***GENERAL PRINCIPLES***

- Non-discrimination (article 2)
- Best interests of the child (article 3)
- Right to life, survival and development (article 6)
- Respect for the views of the child (article 12)

#### ***CIVIL RIGHTS AND FREEDOMS***

- Name and nationality (article 7)
- Preservation of identity (article 8)
- Freedom of expression (article 13)
- Access to appropriate information (article 17)
- Freedom of thought, conscience and religion (article 14)
- Freedom of association and peaceful assembly (article 15)
- Protection of privacy (article 16)
- Prohibition of torture and the death penalty (article 37(a))

#### ***FAMILY ENVIRONMENT AND ALTERNATIVE CARE***

- Parental guidance and the child's evolving capacities (article 5)
- Parental responsibilities (articles 18(1) and (2))
- Separation from parents (article 9)
- Family reunification (article 10)
- Recovery of maintenance for the child (article 27(4))
- Children deprived of a family environment (article 20)
- Adoption (article 21)

- Illicit transfer and non-return (article 11)
- Prevention of abuse and neglect (articles 19 and 39)
- Periodic review of placement (article 25)

### ***BASIC HEALTH AND WELFARE***

- Disabled children (article 23)
- Health and health services (article 24)
- Social security and child care services and facilities (articles 26 and 18(3))
- Standard of living (article 27)

### ***EDUCATION***

- Education, including vocational training and guidance (article 28)
- Aims of education (article 29)
- Leisure, recreation and cultural activities (article 31)

### ***SPECIAL PROTECTION MEASURES***

#### ***Children in situations of emergency***

- Refugee children (article 22)
- Children in armed conflicts (article 38)

#### ***Children in conflict with the law***

- Administration of juvenile justice (article 40)
- Children deprived of their liberty (article 37(b), (c) and (d))
- Sentencing of juveniles (article 37(a))
- Physical and psychological recovery and social reintegration (article 39)

#### ***Children in situations of exploitation, including physical and psychological recovery and social reintegration***

- Economic exploitation, including child labour (article 32)
- Drug abuse (article 33)
- Sexual exploitation and sexual abuse (article 34)
- Sale, trafficking and abduction (article 35)
- Other forms of exploitation (article 36)
- Children belonging to a minority or indigenous group (article 30)