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RIGHTS OF THE CHILD

Written statement submitted by the Federación de Asociaciones de
Defensa y Promoción de los Derechos Humanos, a non-governmental
organization in special consultative status

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

[18 March 1998]

Draft optional protocol to the Convention on the Rights of the Child

1. The Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos wishes to express publicly its support for the efforts of the Commission on Human Rights and of the working group concerned to elaborate a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the basic measures needed for their prevention and eradication. This instrument is already being seen by all members of the international community working to ensure better and fuller protection of the dignity and rights of the child as a necessary and urgent addition and complement to the protection afforded by the Convention on the Rights of the Child.

2. The Federation believes that the elaboration and content of the protocol must be guided by the principles which inspire the Convention on the Rights of the Child, namely the principles of universality, non-discrimination, protection of the best interests of the child, consideration of the views of the child and protection of the personal development of the child. It therefore believes that the protocol must ensure the broadest possible protection and be as specific as possible in the definition of its basic concepts and the obligations incumbent upon States. Furthermore, the protocol must be aimed at providing rigorous and effective means for monitoring its implementation.

3. The Federation considers that the resolution of the Commission should specify that the draft protocol covers the following criminal activities, which must be defined with greater precision:

(a) The trading or sale of children for any purpose, particularly for their sexual, economic or criminal exploitation, their illegal adoption or for trafficking and transplantation of their organs;

(b) Child prostitution, which includes the use of children in prostitution and promoting, facilitating and inducing such prostitution;

(c) Child pornography, i.e. the use of children for the production of pornographic performances or pornographic objects or materials, whether visual or auditory;

(d) Child sex tourism, which includes activities promoting tourism for the sale, use in pornography or prostitution of children, as well as actual child prostitution or child pornography during tourist travel.

4. The resolution of the Commission should also specify that, with respect to child prostitution and child pornography, an offence is committed notwithstanding the actual or presumed consent of the child, even assuming that the child has attained the age of sexual consent under national law.

5. It should also establish that States parties must incorporate the corresponding offences into their domestic laws and make them punishable by appropriate penalties which take into account their grave nature. Such penalties would include confiscation of the gains derived from and instruments employed in the crime, whose value will be used for the full compensation and

rehabilitation of the victims. Furthermore, the States parties must pass appropriate laws to prohibit and punish the production of material disseminating, promoting and encouraging any of the crimes specified through any means, in particular through electronic or computer media.

6. The resolution of the Commission should establish provisions on compulsory jurisdiction and extradition equivalent to the most exacting of the provisions contemplated by the multilateral international human rights conventions, particularly those contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, it should establish that the jurisdiction of a State party is compulsory in respect of the offences contemplated whenever the acts have been committed in its territory or under its jurisdiction or control, when the alleged offender is a national of that State and when the victim is a national of that State.

7. The resolution of the Commission should affirm that the working group's terms of reference extend to the elaboration of provisions for a procedure to monitor the implementation of the protocol. Specifically, such provisions should, inter alia, establish the competence of the Committee on the Rights of the Child to receive and examine (i) periodic reports from States parties on the implementation of the protocol; (ii) communications from States parties to the protocol alleging that another State party has violated one of its obligations thereunder; and (iii) similar communications submitted by the alleged victims or their representatives or by any group of persons or non-governmental body having consultative status with the United Nations or legally recognized in one of the States parties. It seems logical for such a monitoring procedure to apply to the implementation of the norms contained in all the provisions of the Convention on the Rights of the Child.
