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Pre-sessional open-ended Working Group  
on the question of a Convention  
on the Rights of the Child  
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DRAFT REPORT OF THE WORKING GROUP ON A DRAFT CONVENTION  
ON THE RIGHTS OF THE CHILD

Chairman-Rapporteur: Mr. Adam Lopatka (Poland)

GE.83-11207

### Introduction

1. By resolution 1982/39 of 11 March 1982, the Commission on Human Rights decided to continue at its thirty-ninth session, as a matter of high priority, its work on a draft convention on the rights of the child, with a view to completing the elaboration of the convention at that session for transmission to the General Assembly through the Economic and Social Council. By resolution 1982/37 of 7 May 1982, the Economic and Social Council took note of resolution 1982/39 of the Commission on Human Rights, and authorized the meeting of an open-ended working group for a period of one week prior to the thirty-ninth session of the Commission to facilitate the completion of the work on a draft convention on the rights of the child. At its thirty-seventh session, the General Assembly, by resolution 37/190 of 18 December 1982 welcomed Economic and Social Council resolution 1982/37 and requested the Commission on Human Rights to give the highest priority at its thirty-ninth session to the question of completing the draft convention.

2. The Working Group held 11 meetings from 24 to 28 January 1983, and on ..... It adopted article 6, paragraphs 3 and 4, articles 6 bis, 6 ter and article 12, paragraphs 2, 3 and 4. Article 7 bis was considered but not adopted. In this connection, it should be recalled that the open-ended working group established prior to previous sessions of the Commission had adopted a number of articles. The text of the articles adopted so far may be found in annex I of the present report.

3. The proposals submitted at the present session but not ~~considered~~ by the Group may be found in document E/CN.4/1983/WG.1/WP.2, WP.3, WP.4, WP.9, WP.21, WP.26, WP.27, WP.29 and WP.30.

4. The draft Convention submitted by Poland in 1979 (E/CN.4/1349) continued to be used as the basis for the discussions.

5. At its first meeting on 24 January 1983, Mr. Adam Lopatka (Poland) was elected Chairman-Rapporteur of the Working Group.

### Documents

6. The Working Group had before it the following documents:

(a) E/CN.4/1983/32 and Add.1-3 containing the replies received from Governments with regard to Economic and Social Council resolution 1982/39 of 7 May 1982 entitled "Protection of the rights of children and parents in cases of removal and retention of children". In its resolution the Council, inter alia,

invited the Commission on Human Rights, when drafting the convention on the rights of the child, to take into consideration the protection of the rights of the child in cases of unauthorized international removal. It further requested the Secretary-General to consult with Governments on this problem and to report to the Commission on Human Rights at its thirty-ninth session.

(b) E/CN.4/1982/WG.1/WP.1. Question of a convention on the rights of the child; proposals submitted by non-governmental organizations.

(c) E/CN.4/1349. Revised Draft Convention on the Rights of the Child, submitted by Poland.

(d) A/C.3/36/6. Status of a Draft Convention on the Rights of the Child. Document submitted by Poland.

(e) E/1982/12/Add.1. Part C. Report of the Commission on Human Rights on its thirty-eighth session.

(f) E/CN.4/1983/NGO/3. Written statement submitted by the Baha'i International Community, a non-governmental organization in consultative status (Category II).

7. A list of the working papers submitted to the Working Group at the present session may be found in annex 2 to the report.

I. CONSIDERATION AND ADOPTION OF ARTICLE 6 (PARAS. 3-4), ARTICLE 6 BIS AND 6 TER

Main issues discussed

8. It will be recalled that paragraphs 1 and 2 of article 6 relating to the question of the determination of the place of residence of the child were adopted by the Working Group last year.<sup>1/</sup> At the present session, the discussions which led to the adoption of paragraphs 3 and 4 of article 6, article 6 bis and article 6 ter, focused on the proposals and amendments thereto relating to various problems which arise from family separation, such as the right of the child to maintain relations with his parents, the question of family reunification and the illegal abduction of children by one parent. It was also stressed that the national and international aspects of the question should be dealt with separately. All the proposals relating to these problems were considered simultaneously.

9. The right of the child who is separated from one or both parents, to maintain relations with both parents, was generally recognized, but in the view of some speakers, reference should be made to unforeseen circumstances. The exchange of views on that question led to the adoption of paragraph 3 of article 6.

10. It was suggested that the draft Convention should also contain provisions dealing with cases where family separations result from actions initiated by States. It was further stressed, in this connection, that there was a need to ensure that adequate information be provided to the child concerning the whereabouts of the absent parent. Various opinions were voiced as regards the type of State action which could lead to family separations. The question was also raised as to whether it was necessary to draw up a list of those actions. The discussions on these points led to the adoption of paragraph 4 of article 6.

11. With regard to the solutions to be given to the question of family reunification, divergent views were expressed. One representative expressed the opinion that all obstacles to emigration for the purpose of family reunification should be removed everywhere and proposed to include in the draft Convention, as examples, a number of rights which in his opinion needed special protection. They include, in particular unimpeded freedom of movement and a guarantee against punishment for children and parents requesting permission to leave a country. All applications to leave should be dealt with, he said, in a humane and expeditious manner. He further added that the articles of the draft Convention submitted by Poland, placed too much emphasis on economic and social rights.

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<sup>1/</sup> For the text of these paragraphs, see annex I.

12. Other representatives, referring to the International Covenant on Civil and Political Rights, felt that such a list was not necessary. They stressed that, in their view, economic rights were equal or even of greater importance, in some circumstances, for children. It was also noted that the Covenant provided that the rights contained therein could be subject to restrictions in order to protect inter alia, national security and public order. They therefore questioned the need for the adoption of such provisions, and emphasized that there was no need to duplicate the International Covenant on Civil and Political Rights. Otherwise, references should also be made to the International Covenant on Economic, Social and Cultural Rights. One representative further observed that family reunification was broader in scope than the problems being dealt with in the draft convention. With regard to the proposal relating to immunity from punishment for children and parents who request permission to leave a country, some representatives observed that such immunity, if granted, should concern only the fact of making an application. The discussion on these questions led to the adoption of article 6 bis, which in paragraph 2 only refers to the obligations of States parties, as regards applications by a child or his parents to enter or leave a State party for the purpose of family reunification.

13. The illegal abduction of children was considered by many speakers as a very important question. It was observed that when parents of different nationalities are separated and reside in different States, such situations often gave rise to the abduction of children across frontiers. The need for effective remedy was stressed. In the view of some speakers, however, what constituted "illegal abduction by one parent" could not be easily defined, as international private law varied from country to country. Nevertheless, in order to find solutions to this problem, most speakers agreed on the need for the conclusion of bilateral agreements or appropriate additions to existing multilateral agreements. The discussion on this question led to the adoption of article 6 ter.

14. It should be noted that in the course of the discussions, some speakers raised the question of the inclusion in the draft convention of a clause relating to the applicability of other international instruments, in particular, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In the view of some representatives, references to the Covenants could be the object of a final clause.

15. A number of proposals have been made concerning the inclusion in the draft convention of a clause dealing with the question of the applicability of other international human rights instruments. The representative of Poland proposed as article 19 (b) (E/CN.4/1983/WG.1/WP.10), the following text:

"This Convention shall not have the effect of diminishing the rights which the child may enjoy by virtue of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights".

16. The representative of the United States suggested the inclusion of an article which would be formulated along the lines of article 23 of the Convention on the Elimination of All Forms of Discrimination against Women to the effect that "nothing in the present Convention shall affect any provision in any other international convention, treaty or agreement in force for that State".

17. Mention should further be made of the proposal made by the USSR (in relation to paragraph 1 of article 6 bis) (E/CN.4/1983/WG.1/WP.7), which reads as follows:

"The States parties to the present Convention recognize that the child should enjoy all the basic human rights in the spirit of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights".

Consideration of proposals and amendments thereto

18. As indicated above, paragraphs 1 and 2 of article 6 were provisionally adopted at the Group's previous session.<sup>2/</sup> Paragraph 1 relates to parental care. Paragraph 2 refers to cases where the child can be separated from his parents against their will.<sup>3/</sup>

19. Proposals dealing with various aspects of the problems arising from family separations were submitted or reintroduced as follows;

(a) A proposal made by the United States in 1982 (E/1982/12/Add.1/part C, para.118) was reintroduced at the present session. It reads as follows:

"1. The States parties to the present Convention shall ensure that the child and his parents enjoy the right to liberty of movement and freedom to choose a residence within the territory of any State party where they are lawfully present.

"2. The States parties to the present Convention shall accord to the child and his parents the right to leave any State, including their own, and the right to enter their own State".

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<sup>2/</sup> For the text of the paragraphs, see annex I.

<sup>3/</sup> Ibid.

(b) After an exchange of views, the representative of the United States indicated that paragraph 1 of his proposal could be discarded and paragraph 2 could constitute paragraph 1 of article 6 bis (E/1982/12/Add.1 part.C, para.118, para.25). He then orally proposed as article 6 bis the following text:

"1. The States parties to the present Convention shall accord to the child and his parents the right to leave any State, including their own, and the right to enter their own State.

"2. In cases where both parents lawfully reside in one State party and their child lawfully resides in another State party or where the parents of a child lawfully reside in different States parties, the States parties concerned shall deal with applications for family reunification or contacts on the basis of family ties in a positive, humane and expeditious manner. States parties shall make no distinction as to country of origin or destination in dealing with such applications, shall charge only moderate fees in connection with such applications and shall not modify in any way the rights and obligations of the applicant(s) or of other members of the family concerned. States parties shall ensure that applications for the purpose of family reunification of parents with their children which are not granted for any reason may be renewed at the appropriate level and will be considered at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned, and, in such cases, fees will be charged only when applications are granted. Until family reunification in a particular case is accomplished, all States parties involved shall permit frequent and regular family contacts.

"3. The provisions of paragraph 2 shall also apply in cases where a child's only surviving parent lawfully resides in one State party and the child lawfully resides in another State party, as well as in cases where parents who are nationals of different States parties apply to transfer the permanent residence of their children and themselves to a Member State in which either one is normally a resident.

"4. If the parents of a child lawfully reside in different States parties, States parties shall ensure that the child's preference as to which parent he wishes to reside with shall be an important consideration in any determination made by competent authorities concerning the child's place of residence."

(c) The representative of France reintroduced a proposal he submitted last year. As revised, the proposal (E/CN.4/1983/WG.1/WP.6) deals with two questions: (i) the question of personal relations of the child with his parents when the parents are of different nationalities and are separated, and (ii) the question of illegal removal of the child by one parent. It reads as follows:

"1. The child of parents with different nationalities, who are separated, shall, save in exceptional circumstances, be entitled to maintain personal relations with both parents.

"2. The States parties to the present Convention shall take the necessary measures to prevent the unlawful removal abroad and non-return of children.

"The removal and non-return of a child shall be considered unlawful:

(a) When it occurs in violation of custody rights awarded to a person or an institution by the laws of the State in which the child had his usual place of residence immediately prior to his removal or non-return;

(b) When such rights were actually exercised at the time of the removal, or would have been so exercised if such events had not taken place. The measures taken by States may be the conclusion of international agreements or accession to existing agreements."

(iv) The representative of Australia proposed the following text (E/CN.4/1983/WG.1/WP.1 as article 6 ter:

"1. A child who is separated from one or both parents has the right to maintain personal relations and direct contacts with both parents on a regular basis, save in exceptional circumstances and regardless of whether the parents and the child reside in different States.

"2. Where such separation results from judicial or administrative action by a State party, such as detention, imprisonment, exile or deportation of one or both parents or of the child, the State party shall provide the parents and the child with precise information as to the whereabouts of the absent member(s) of the family."

Adoption of paragraph 3 of article 6

20. During the discussions, it was suggested that the text of the first paragraph of the proposal by the representative of Australia relating to the right of the child who is separated from one or both parents to maintain relations with both, could be adopted by the Group as paragraph 3 of article 6, with the deletion of the words "and regardless of whether the parents and the child reside in different States". It was said in this connection that the international aspects of the question should be dealt with in a separate paragraph.

The Group so agreed.

21. Discussion on the proposals relating to action taken by States which result in family separations, led to the adoption of paragraph 4 of article 6.

22. During the discussions it was suggested to add to the list of actions by States which could result in family separations the case of "death in custody". With regard



to the obligation of the States to provide information, several representatives stressed that such information should be provided only if: (a) a formal request is made and (b) if the information would not be detrimental to the interest of the child.

23. The representative of Australia revised paragraph 2 of his proposal (E/CN.4/1983/WG.1/WP.20) as follows:

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

24. During the discussions, it was observed that specific references to judicial or administrative action should be deleted as this text refers to any action taken by States.

25. Several representatives objected to the reference to cases where family separation results from "death in custody", as formulated. In their view, the formulation used seemed to imply the responsibility of the States concerned.

26. Some representatives continued to maintain that a listing of actions initiated by States were unnecessary.

Adoption of paragraph 4 of article 6

27. Paragraph 2 of the Australian proposal, as orally amended during the discussion, was adopted as paragraph 4 of article 6.

28. The oral amendments referred to the deletion of specific references to judicial and administrative action, to the replacement of the words "death in custody" by the words "including death arising from any cause while the person is in the custody of the State".

29. The text of paragraph 4 of article 6, as adopted, may be found in annex I.

30. The discussion on the question of family reunification led to the adoption of paragraphs 2 and 3 of article 6 bis. In this connection reference is made to paragraph 1 of the French proposal referred to above and to paragraphs 2, 3 and 4 of the proposal by the United States of America.

31. The representative of the Ukrainian SSR proposed the following text (E/CN.4/1983/WG.1/WP.11) to be included as a paragraph in article 6 bis, if specific mention of rights already covered by the International Covenant on Civil and Political Rights were not deleted from the proposal made by the representative of the United States of America:

"The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others."

32. During the discussions, it was noted that the wording of this paragraph was identical to a similar text contained in the International Covenant on Civil and Political Rights. It was also argued that the proposals made by the representative of the United States of America constituted a mere repetition of the provisions of the International Covenant on Civil and Political Rights. It was further said that, compared to other paragraphs of the draft convention, the text proposed by the United States was much too long.

33. In the light of the discussions, the representative of the United States of America submitted a shortened version of his proposal. He maintained that, in his view, the guarantees to be given to applicants who request permission to leave a country were a serious problem which should be dealt with in an effective manner. The revised text (E/CN.4/1983/WG.1/WP.8) reads as follows:

"1. The States parties to the present Convention shall accord to the child and his parents the right to leave any State, including their own, and the right to enter their own State.

"2. Applications by a child or his parents to leave a State party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner. States parties shall charge only moderate fees in connection with such applications and shall not discriminate against or punish in any way the applicant(s) or other members of the family concerned. States parties shall ensure that applications for the purpose of reunification of parents with their children which are not granted for any reason may be renewed at the appropriate level and will be considered at reasonably short intervals by the competent authorities, with fees in such cases to be charged only when applications are granted.

"3. States parties shall recognize the right of a child whose parents lawfully reside in different States parties to maintain at all times, save in exceptional circumstances, personal relations and direct contacts on the basis of family ties with both parents through regular meetings. In such cases, States parties shall ensure that the child's preference as to which parent he wishes to reside with shall be an important consideration in any determination made by competent authorities concerning the child's place of residence."

34. Indicating that the revised text submitted by the United States of America still contain references to rights already covered in the International Covenant on Civil and Political Rights, the representative of the USSR submitted a proposal (E/CN.4/1983/WG.1/WP.7) which reads as follows:

"The States parties to the present Convention recognize that the child should enjoy all the basic human rights in the spirit of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights."

35. No agreement was reached as regards paragraph 1 of article 6 bis.

36. The representative of the United States of America proposed orally a new text to constitute paragraph 2 of article 6 bis. The text, which relates to applications by a child or his parents to enter or leave a State party, reads as follows:

"In accordance with the obligation of States parties to ensure that a child is not separated from his parents [against their will] [except in his best interest] [unless in exceptional circumstances] applications by a child or his parents to enter or leave a State party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner. In connection with such applications States parties shall not punish in any way the applicant(s) or other members of the family concerned [Applications which are not granted for any reason may be renewed and may be considered by the competent authorities]."

37. Some speakers strongly objected to the above-mentioned proposals. In their view the proposals were too broad and would in fact grant immunity to applicants against any punishment for any acts they might commit. Amendments were suggested along those lines. It was also suggested that the second part of the proposal made by the United States should be deleted (see para. 36 above).

38. The Working Group adopted as paragraph 2 of article 6 bis the following text:

"In accordance with the obligation of States parties under article 6 (2), applications by a child or his parents to enter or leave a State party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner."<sup>4/</sup>

39. Discussions on the question of the right of the child when parents live in different States to maintain contacts with both parents, led to the adoption of paragraph 3 of article 6 bis. Reference is made to paragraphs 3 and 4 of the original proposal made by the United States of America (see paragraph 19 (b) above).

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<sup>4/</sup> See annex I.

40. Referring to his earlier proposal and to the proposal made by the representative of the United States of America on the question under consideration, the representative of France submitted the following text:

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

Adoption of paragraph 3 of article 6 bis

41. With the deletion of the word "lawfully" as proposed by the representative of the United Kingdom, the Working Group adopted the above-mentioned text as paragraph 3 of article 6 bis.

42. The question of the right of the child to privacy was raised in the course of the discussion. The representative of the United States reintroduced a proposal he made in 1982 according to which the draft convention should contain a provision ensuring the right of the child not to be submitted to unlawful interference with his privacy. The proposal which would become, if adopted, article 6 ter, reads as follows (E/1982/12/Add.1, part C, para. 118):

"The States parties to the present Convention shall ensure that the child and his parents are not subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence."

43. For some speakers, the inclusion of such provision was not necessary. In their opinion, the fulfilment of the child's basic needs was a more urgent matter.

44. No agreement was reached. The proposal was not, therefore, adopted.

45. Discussions on the question of unlawful removal of children across frontiers led to the adoption of article 6 ter. The representative of France referred to paragraph 2 of his earlier proposal (see paragraph 19 above) and said that it could constitute a new article 6 ter.

46. During the discussion on the proposal doubts were expressed concerning the two criteria proposed for considering the removal of children unlawfully. Such criteria, it was stated, varied according to different legal systems. Speakers also emphasized the need for more international co-operation, through bilateral or multilateral agreements and consultations between national authorities as regards the measures to be taken by States against abduction of children.

47. In the light of the discussions the representative of France revised paragraph 2 of his proposal (E/CN.4/1983/WG.1/WP.17) as follows:

"1. The States parties to the present Convention shall take appropriate measures to combat the unlawful abduction of children abroad and their non-return.

"2. To that end, States shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements, and the institution of periodic consultations between the national authorities concerned."

Adoption of paragraphs 1 and 2 of article 6 ter

48. Paragraph 1 of the revised proposal submitted by France was adopted by the Group as paragraph 1 of article 6 ter.

49. With the insertion of the word "parties" after the word "States" in the first line of paragraph 2 of the revised proposal, that paragraph was provisionally adopted by the Group as paragraph 2 of article 6 ter.<sup>5/</sup>

50. The Minority Rights Group, a non-governmental organization, introduced a proposal under which a third paragraph would be added to article 6 ter (E/CN.4/1983/WG.1/WP.18). The text of the proposal reads as follows:

"Children cannot be divorced from their parents. Any arbitrary removal must be seen as contrary to the interest of the child, in accordance with the principles of human rights.

This Convention must comprise a measure expressing condemnation of such acts and the States parties' duty to dissuade their perpetration.

The act of abduction shall not be treated differently for reasons of parents' nationality, sex, race or religion, or the status of the parents' separation proceedings."

51. During the debate on that proposal, it was generally felt that article 6 ter as adopted, dealt adequately with the questions raised.

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<sup>5/</sup> See annex I.

## II. CONSIDERATION OF ARTICLE 7 BIS

### Consideration of proposal by the United States of America

52. The representative of the United States re-introduced, in a revised form, a proposal he had made in 1982. As revised, the text reads as follows:

"1. The States parties to the present Convention shall ensure that the child has the right to freedom of thought, conscience and religion, including the right to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest, in a manner not incompatible with public order and morals, his religion or belief in worship, observance, practice and teaching.

2. The States parties shall ensure that no child is subject to coercion which would impair his freedom to have a religion or belief of his choice and shall ensure that every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes to his parents or legal guardians.

3. The States parties to the present Convention undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

53. Some speakers supported the idea of including in the draft convention a specific provision on the right of the child to freedom of thought, conscience and religion. It was also said that the formulation on the matter which is contained in other international instruments could also be used in the draft convention.

Reference was made to the Declaration on the Elimination of All Forms of Intolerance on Religion or Belief and to paragraph 4 of article 18 of the International Covenant on Civil and Political Rights.

54. Other speakers were of the opinion that a specific provision on religious education and the right to practice religion was not necessary in the draft convention, since the matter was already covered by other proposals. Reference was made in this connection to the proposals contained in the draft convention submitted by Poland (E/CN.4/1349).

55. Doubts were also expressed as to whether it should be the responsibility of the State to ensure that the child has the right to freedom of thought, conscience and religion. In many countries, it was noted, a child follows the religion of his parents and does not generally make a choice of his own. It was also observed that the right to practise religion had to be applied within the limits permitted by public order, safety and morals.

56. No agreement was reached as regards the adoption of the United States proposal as article 7 bis of the draft convention.

III. CONSIDERATION AND ADOPTION OF ARTICLE 12  
(Paras. 2, 3 and 4)

Main issues discussed

57. It will be recalled that paragraph 1 of article 12 was adopted by the Working Group last year. Under that paragraph, States parties would recognize the right of a disabled child to a full and decent life. The discussions, this year, focused on the means to ensure the realization of this right and more specifically on the means of financing the services to be provided to the disabled child. One representative underlined that disabled children should not be regarded simply as a vulnerable category of children. They should rather be considered as a specific category of children which should receive special treatment. He further observed that disabled children should not only have access to the services needed but should be given the opportunity of receiving them effectively, in the same way as normal children.

58. For many representatives, primary and total responsibility for the care of disabled children rested primarily on Governments, and services should be provided free of charge. For others, parents and close relatives of the child should bear primary responsibility for the care of disabled children. When States are called upon to provide services, due account must be taken of other resources available. It was stated in this connection that in some countries, private organizations played a significant role in that field. While agreeing on the need to provide all necessary services to disabled children, others noted that, in their countries, because of limited resources, it would not be possible for Governments to provide all services free of charge. The discussions on those points led to the adoption of paragraph 2 of article 12.

59. In the view of one representative, it would be opportune to insert in the draft convention a clause which would provide specifically that a disabled child should receive religious education. Other representatives felt that such a provision would create problems for many States. It was stated in that connection, that references to "the cultural and spiritual integration" of the child would be more appropriate. No agreement was reached as regards the insertion of such a clause. The discussions on these points led to the adoption of paragraph 3 of article 12.

60. One representative proposed that, in order to improve the treatment of disabled children in developing countries, States should promote a transfer of technology by organizing a wider exchange and dissemination of relevant information. The need for not only access to, but also dissemination of information was underlined by many representatives. Furthermore, while the need for international co-operation was

generally recognized by all speakers, the view was also expressed that a provision dealing with that question should not be limited to developing countries and should concern not only Governments but also private institutions. The discussions on the above-mentioned proposal led to the adoption of paragraph 4 of article 12.

61. The proposal to insert a clause reasserting the principle of non-discrimination against disabled children was supported by a number of speakers.

Consideration of proposals and amendments

62. It will be recalled that paragraph 1 of article 12 was adopted last year.<sup>6/</sup> In that paragraph, the right of a disabled child to a full and decent life is recognized.

63. At the present session, discussions of the right of the child to special care and special services, and on the resources to be allocated for providing those services led to the adoption of paragraphs 2, 3 and 4 of article 12. A view strongly expressed was that the child should not only be guaranteed access to the services but should be placed in a position to receive them effectively.

64. The representative of Poland reintroduced in a revised form a proposal he had submitted last year. The proposal, which underlines that services should be provided free of charge reads as follows:

"The States parties shall extend appropriate assistance to the mentally or physically disabled child and to the family with which he lives. His special educational needs shall be addressed for free of charge; aids and appliances shall be provided to ensure equal opportunity and access to the care services and facilities for which he is eligible."

65. The representative of the United States of America proposed an amendment to the text submitted by Poland as follows:

"The States parties shall extend appropriate assistance to the mentally or physically disabled child and to the family with which he lives. His special educational needs shall be addressed and aids and appliances shall be provided to ensure equal opportunity and access to the care services and facilities for which he is eligible."

He further proposed that the words "in accordance with available resources" be added either to the first or to the second sentence of his amendment.

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<sup>6/</sup> For the text of the paragraph, see annex I.



66. The representative of Canada submitted proposals for paragraphs 2, 3 and 4 of article 12, which also underlined that the services are to be provided free of charge. The proposals (E/CN.4/1983/WG.1/WP.5) read as follows:

"2. States Parties to the present Convention recognize the right of a mentally or physically disabled child to special care, and shall extend assistance, which is appropriate to the child's condition and to the circumstances of the parents, legal guardians, or those caring for the child, to the child and the family.

3. The States Parties to the present Convention shall take appropriate measures to ensure that a disabled child shall have access to recreation opportunities, and receive education, health care services and preparation for employment in conditions designed to achieve the child's fullest possible social integration.

4. The disabled child's special education needs shall be provided free of charge and in the manner most consistent with realizing the child's fullest potential."

67. At the urging of the Chairman, the authors of the above-mentioned proposals together submitted a new text for paragraph 2 of article 12, under which assistance to disabled children by the State would be extended, "subject to available resources". The new proposal (E/1982/12/Add.1/part C) which was submitted by Canada, on behalf of Canada, Poland and the United States reads as follows:

"The States Parties to the present Convention recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child."<sup>7/</sup>

Adoption of paragraph 2 of article 12

68. The text submitted by the representatives of Canada, Poland and the United States was adopted by the Group as paragraph 2 of article 12.

69. With regard to paragraphs 3 and 4 of the proposals made by Canada, the discussion focused on the nature of the services which should be provided to disabled children (paragraph 3 of the proposal) and again on the resources to be made available for the care of the disabled child. It was also suggested that references should be made to the opportunity open to disabled children for employment and vocational training. In the light of the discussions, the representative of Canada revised the proposals (E/CN.4/1983/WG.1/WP.19 and WP.23) as follows:

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<sup>7/</sup> See annex I.

"Article 12 - Paragraph 3

3. Assistance extended in accordance with paragraph 2, shall be designed to ensure that the disabled child has access to recreation opportunities and receives education, training, health care services, rehabilitation services and preparation for employment in conditions most conducive to the child's fullest possible social integration and individual, cultural and spiritual development."

"Paragraph 4

Such assistance shall whenever possible be provided without causing undue financial hardship to the child's parents or to others caring for the child."

70. During the discussions, it was emphasized that the child should not only have "effective access" to the services but should be placed in a position to effectively receive them. Another proposal was to add "recreation opportunities" to the list of services to be granted to the disabled child. It was further proposed that the services referred to should be provided free of charge, whenever possible.

71. In the light of the discussion, the representative of Canada further revised his proposal relating to paragraph 3 (E/CN.4/1983/WG.1/WP.22) as follows:

"Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual, cultural and spiritual development."

72. The representative of Australia submitted an amendment to the proposals made by Canada (E/CN.4/1983/WG.1/WP.15) as follows:

"3. Assistance extended in accordance with paragraph 2 shall be designed to ensure that a disabled child shall have access to recreation opportunities, and receive education and training, health care services, rehabilitation services and preparation for employment in conditions designed to achieve the child's fullest possible social integration.

4. The disabled child's special education needs shall be provided free of charge and in the manner most consistent with realizing the child's fullest potential and individual development."

73. The representative of the United States proposed the following text (E/CN.4/1982/WG.1/WP.16) as paragraph 3 of article 12:

"In accordance with available resources, the States parties to the present Convention should ensure that an eligible disabled child has access to education, health care, rehabilitation services, vocational training and recreational

opportunities, for which application is made, designed to achieve his fullest possible social integration and individual development, which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child."

74. The representative of the United Kingdom proposed to amend paragraph 4 of the Canadian proposal (E/CN.4/1983/WG.1/WP.24) as follows:

"States parties shall provide that where their resources are not sufficient to enable the services to be provided free of charge (alternative: where it is not convenient to provide the services free of charge) due regard shall be had to the financial circumstances of the persons responsible for the care of the child when any charge is made for such services."

75. The Observer from Algeria suggested to add to paragraph 3 a sentence referring to the right of disabled children not to suffer from any type of discrimination.

76. The proposal received wide support, but it was suggested that such a reference should be inserted later in paragraph 1 of the already adopted article 4 of the draft convention.

77. The representative of Norway proposed a new wording for paragraph 4 as follows: (E/CN.4/1983/WG.1/WP.14):

"The disabled child's special education needs shall be provided on a basis that make these services available to the disabled child, regardless of the economic resources of his family."

78. The representative of Canada stated that he did not insist on the inclusion in the draft convention of paragraph 4 of her proposal.

#### Adoption of paragraph 3 of article 12

79. After further exchange of views the Working Group provisionally adopted as paragraph 3 of article 12 (E/1982/12/Add.1/part C) the following text:

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

80. The Observer from Iran proposed an additional paragraph to article 12 under which States parties would guarantee exchange of information on international co-operation with respect to the treatment of disabled children. The text (E/CN.4/1983/WG.1/WP.13) reads as follows:

"States parties shall guarantee exchange of information and international co-operation in the field of medical, psychological and functional treatment of disabled children, as well as free access to medical and social rehabilitation, education and vocational services, with the aim of enabling developing countries to improve their capabilities and skills in this area."

81. All speakers noted the importance of the proposal. Doubts were however expressed about the advisability of imposing on States the obligation to exchange information. It was stated that in view of the large amount of research work undertaken by private non-governmental scientific institutions, the text should be broader. It should simply call for the encouragement or the promotion of such co-operation and exchange.

82. In the light of the discussion the Observer from Iran submitted a revised version of his proposal (E/CN.4/1983/WG.1/WP.25) as follows:

"States parties shall promote exchange of information and international co-operation in the field of medical, psychological and functional treatment of disabled children, and of preventive medicine, as well as access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States parties to improve their capabilities and skills in this area. In such exchanges, particular account shall be taken of the needs of developing countries."

83. The discussions concentrated on the questions of dissemination of information, access to scientific information and the means of international co-operation in that field.

84. On behalf of Algeria, Iran, Netherlands, Morocco, Sweden and the United Kingdom the Observer from Algeria submitted the following text (E/CN.4/1983/WG.1/WP.28) as paragraph 4 of article 12:

"States parties shall promote in the spirit of international co-operation the exchange of information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries."

Adoption of paragraph 4 of article 12

With the addition of the word "appropriate" after the words "exchange of" the above text was provisionally adopted as paragraph 4 of article 12.

ANNEX I

Text of the Draft Convention adopted so far

The States Parties to the Convention

Considering that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

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

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

Convinced that the family, as the basic unit of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that, as indicated in the Declaration on the Rights of the Child adopted in 1959, the child due to the needs of his physical and mental development requires particular care and assistance with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

Recognizing that the child, for the full and harmonious development of his personality, should grow up in family environment, in an atmosphere of happiness, love and understanding,

Bearing in mind that the need for extending particular care to the child has been stated in the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration on the Rights of the Child adopted by the United Nations in 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in the articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in

particular in its article 10) and in the statutes of specialized agencies and international organizations concerned with the welfare of children.

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom and brotherhood,

Have agreed as follows:

Article 1

According to the present Convention a child is every human being to the age of 18 years unless, under the law of his State, he has attained his age of majority earlier.

Article 2

1. The child shall have the right from his birth to a name and to acquire a nationality.
2. The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, or administrative authorities, the best interests of the child shall be a primary consideration.
2. In all judicial or administrative proceedings affecting a child that is capable of forming his own views, an opportunity shall be provided for the views of the child to be heard, either directly or indirectly through a representative, as a party to the proceedings, and those views shall be taken into consideration by the competent authorities, in a manner consistent with the procedures followed in the State Party for the application of its legislation.
3. The States Parties to the present Convention undertake to ensure the child such protection and care as is necessary for his well-being, taking into account the rights and duties of his parents, legal guardians, or other individuals legally responsible for him, and, to this end, shall take all appropriate legislative and administrative measures.
4. The States Parties to the present Convention shall ensure competent supervision of officials and personnel of institutions directly responsible for the care of children.

Article 4

1. The States Parties to the present Convention shall respect and extend all the rights set forth in this Convention to each child in their territories without distinction of any kind, irrespective of the child's or his parents' or legal guardians' race, colour, sex, language, religion, political or other opinion, national or social origin, family status, ethnic origin, cultural beliefs or practices, property, educational attainment, birth, or any other basis whatever.

2. States Parties to the present Convention shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or other family members.

Article 5

The States Parties to the present Convention shall undertake all appropriate administrative and legislative measures, in accordance with their available resources, and, where needed, within the framework of international co-operation, for the implementation of the rights recognized in this Convention.

Article 6

1. The States Parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parent(s), except as provided herein.

2. States Parties shall ensure that a child shall not be separated from his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such a determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.

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

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\*/ Adopted by the Working Group in 1983.

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

Article 6 bis

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

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

Article 6 ter\*

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

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

Article 7

The States Parties to the present Convention shall assure to the child who is capable of forming his own views the right to express his opinion freely in all matters, the wishes of the child being given due weight in accordance with his age and maturity.

Article 8

1. Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child.

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\*/ Ibid.



2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, the States Parties to the present Convention shall render appropriate assistance to parents and guardians in the performance of the child-rearing responsibilities and shall ensure the development of institutions for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.

4. The institutions, services and facilities referred to in paragraphs 2 and 3 of this article shall conform with the standards established by competent authorities particularly in the areas of safety, health, and in the number and suitability of their staff.

#### Article 10

1. A child permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance provided by the State.

2. The States Parties to the present Convention shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his family environment, or who in his best interests cannot be brought up or be allowed to remain in that environment shall be provided with alternative family care which could include, inter alia, adoption, foster placement, or placement in suitable institutions for the care of children.

#### Article 11

1. The States Parties to the present Convention shall undertake measures, where appropriate, to facilitate the process of adoption of the child. Adoption of a child shall be authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if required, the appropriate persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.

2. The States Parties to the present Convention shall take all appropriate measures to secure the best interests of the child who is the subject of intercountry adoption. States Parties shall ensure that placements are made by authorized agencies or appropriate persons under the adequate supervision of competent authorities, providing the same safeguards and standards that are applied in exclusively domestic adoptions. The competent authorities shall make every

possible effort to ensure the legal validity of the adoption in the countries involved. States Parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral or multilateral agreements.

Article 11 bis

The States Parties to the present Convention shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and other international human rights or humanitarian instruments to which the said States are Parties. In view of the important functions performed in refugee protection and assistance matters by the United Nations and other competent intergovernmental and non-governmental organizations, the States Parties to the present Convention shall provide appropriate co-operation in any efforts by these organizations to protect and assist such a child and to trace the parents or other close relatives of an unaccompanied refugee child in order to obtain information necessary for reunification with his family. In cases where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason, as set forth in the present Convention.

Article 12

1. The States Parties to the present Convention recognize that a mentally or physically disabled child should enjoy a full and decent life in conditions which ensure his dignity, promote his self-reliance, and facilitate his active participation in the community.
2. The States Parties to the present Convention recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.\*

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\*/ Ibid.

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

4. States Parties shall promote in the spirit of international co-operation the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.\*/

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\*/ Ibid.



ANNEX II

List of Working Papers submitted to the Working Group at its  
current session

- E/CN.4/1983/WG.1/WP.1 - Continuation of the Work on the Draft Convention on the Rights of the Child to be submitted to the Commission, in accordance with resolution 1982/39 of the Commission and resolution 1982/37 of the Economic and Social Council - Note by the Secretariat
- " /WP.2 - Proposals submitted by the Baha'i International Community, a non-governmental organization in consultative status with the Economic and Social Council (category II), in accordance with Council resolution 1296 (XLIV) (articles 9 and 17)
- " /WP.3 - Amendment submitted by the delegation of the United States of America (article 8 bis)
- " /WP.4 - Amendment submitted by the delegation of the United States of America (article 11)
- " /WP.5 - Proposal submitted by Canada (article 12)
- " /WP.6 - Proposal submitted by France
- " /WP.7 - Proposal by the Union of Soviet Socialist Republics (article 6-bis, para. 1)
- " /WP.8 - Revised version submitted by the United States of America (article 6 bis)
- " /WP.9 - Proposal submitted by Canada (article 8 bis)
- " /WP.10 - Proposal submitted by Poland (article 19 (b))
- " /WP.11 - Proposal submitted by Ukrainian SSR (article 6 bis)
- " /WP.12 - Proposal submitted by Australia (New article 6 ter)
- " /WP.13 - Proposal submitted by Iran (article 12)
- " /WP.14 - Proposal for new wording submitted by Norway (article 12, para. 4)
- " /WP.15 - Proposal submitted by Australia (article 12)
- " /WP.16 - Proposal submitted by the United States of America (article 12)
- " /WP.17 - Proposal submitted by France
- " /WP.18 - Proposal submitted by the Minority Rights Group, a non-governmental organization in consultative status with the Economic and Social Council (Roster), submitted in accordance with Council resolution 1296 (XLIV)

- E/CN.4/1983/WG.1/WP.19 - Revised proposal submitted by Canada (article 12 - para. 3)
- " /WP.20 - Revised proposal by Australia (article 6 (4))
- " /WP.21 - Proposal submitted by Belgium (article 3)
- " /WP.22 - Amended proposal by Canada (article 12)
- " /WP.23 - New amended proposal by Canada (article 12)
- " /WP.24 - New amended proposal by the United Kingdom (article 12)
- " /WP.25 - Revised proposal submitted by Iran (article 12)
- " /WP.26 - New proposals presented by Canada (article 13)
- " /WP.27 - Proposals submitted by Algeria (article 5, para. 2)
- " /WP.28 - Revised proposal submitted by Algeria, Iran, Netherlands, Morocco, Sweden and the United Kingdom (article 12)
- " /WP.29 - Proposal submitted by the United States of America (article 9)
- " /WP.30 - Proposal submitted by the United States of America (6 quater (formerly 6 ter))