E/CN.4/1989/WG.1/L.4
20 December 1988

Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Forty-fifth session
Pre-sessional open-ended Working Group
on the Question of a Convention on
the Rights of the Child

28 November - 9 December 1988

DRAFT

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

Chairman-Rapporteur: Mr. Adam Lopatka (Poland)

CONTENTS

* Parenthetical references to the subject of each article are for ease of reference only; such references are not part of the text as adopted.

** The reference between parentheses indicates the article number subsequent to the re-ordering of the articles of the Convention.

I. INTRODUCTION

1. The Commission on Human Rights, at its forty-fourth session, decided in resolution 1988/75, to continue its work on the elaboration of the draft convention on the rights of the child as a matter of the highest priority, and requested the Economic and Social Council to authorize, within existing resources, the convening of an open-ended working group for a period of up to two weeks in November - December 1988, with a view to completing the second reading of the draft convention prior to the forty-fifth session of the Commission. The Council authorized that meeting in its resolution 1988/40 of 27 May 1988.

2. The working group held 12 meetings from 28 November to 9 December 1988. Two fully serviced meetings of the Working Group were held on Saturday 3 December 1988 thanks to the financial support of UNICEF. During the sessions, 16 informal drafting groups were established with regard to different articles of the draft Convention; these drafting groups met prior to and after the plenary meeting of the Working Group.

3. The text of the draft convention as adopted by the working group at the second reading is contained in document E/CN.4/1989/29.

a) Elections

4. At the first meeting of the working group on 28 November 1988, Mr. Adam Lopatka (Poland) was elected Chairman-Rapporteur by acclamation and Mr. Anders Röhnquist (Sweden) was elected acting chairman for the three meetings during which the Chairman was absent.

b) Participation

5. The meetings of the working group, which were open to all members of the Commission on Human Rights, were attended by representatives of the following States: Algeria, Argentina, Bangladesh, Belgium, Brazil, Bulgaria, China, Colombia, Cyprus, Ethiopia, France, German Democratic Republic, Germany, Federal Republic of, India, Iraq, Ireland, Italy,

Japan, Mexico, Mozambique, Nicaragua, Norway, Pakistan, Philippines, Portugal, Senegal, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America, Union of Soviet Socialist Republics, Venezuela, Yugoslavia.

6. The following States, non-members of the Commission on Human Rights, were represented by observers at the meetings of the working group: Angola, Australia, Austria, Bahrain, Bhutan, Canada, Cuba, Czechoslovakia, Denmark, Egypt, Finland, Holy See, Honduras, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Malta, Morocco, Nepal, Netherlands, New Zealand, Oman, Panama, Poland, Romania, Sweden, Tunisia, Turkey, Ukrainian Soviet Socialist Republics, Yemen.

7. The International Labour Organisation, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the United Nations Children's Fund, the United Nations High Commissioner for Refugees, the Centre for Social Development and Humanitarian Affairs (Vienna), the League of Arab States and the Inter-American Children's Institute of the Organization of American States were represented at the working group by observers.

8. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings of the Working Group: Amnesty International, Associated Country Women of the World, Baha'i International Community, Coordinating Board of Jewish Organizations, Defence for Children International Movement, Foster Parents Plan International, Grand Council of the Crees of Quebec, Human Rights Internet, Indian Council of South America, International Association of Juvenile and Family Court Magistrates, International Association of Penal Law, International Catholic Child Bureau, International Committee of the Red Cross, International Council of Jewish Women, International Council on Jewish Social and Welfare Organizations, International Council of Women, International Federation of Women in Legal Careers, International Movement ATD Fourth World, Inter-Parliamentary Union, International Right to Life Federation, International Social Service, Rädda Barnen International, Save the Children Fund - UK, World Association of Girl Guides and Girl Scouts, World Association for the School as an Instrument of Peace, World Council of Indigenous Peoples, World Jewish Congress, Zonta International.

c) Documents

9. The Working Group had before it the text of the technical review of the draft Convention as requested by the Working Group at its tenth session (E/CN.4/1989/WG.1/CRP.1 and Corrs. 1 and 2, and Adds. 1 and 2) and a working paper submitted by the Chairman containing the text of the draft Convention as adopted at first reading in which was incorporated the revisions suggested in the technical review (E/CN.4/1989/WG.1/WP.2). It also had before it revisions to the Arabic, Chinese, French, Russian and Spanish language versions of the Convention contained respectively in documents E/CN.4/1989/WG.1/CRPs. 2 through 6. In addition, an information document was submitted by the Government of Argentina containing the report of the Latin American meeting in support of the United Nations draft Convention on the Rights of the Child (E/CN.4/1989/WG.1/WP.1). Finally, a further 67 working papers were submitted by delegations dealing with specific aspects or articles of the draft convention and they are referred to as appropriate in the body of the report.

10. In this report, and in connexion with proposed changes in the text of the Convention, the following symbols have been used:

Addition and/or replacement:	_____
Deletion:	( )
Alternative text:	[ ]

d) General Debate

11. The session was opened by the Under-Secretary-General for Human Rights who underlined the importance of the task assigned to the Working Group and reaffirmed his and the Secretariat's full support for those efforts. The Chairman in his opening statement made, inter alia, a general reference to the substance of the documents at the disposal of the Working Group for its consideration during the session.

12. In the general debate, the representative of Senegal stated that, during the second reading of the draft convention which was about to begin, account should be taken of the concerns of the developing countries to ensure that the draft convention reflected the desired universality. The concerns and needs - including cultural needs - of all countries, but particularly of the developing countries, to express their aspirations and to make their contributions to the draft convention should be taken into account. Noting that the same concerns had been expressed at previous sessions of the working group, he expressed the hope that the current session would see reflected in the draft convention the cultural diversity of the various nations and that universality which was so much desired.

13. The representative of Senegal also drew the attention of the working group to the results of the West African seminar on the draft convention, held in Senegal in November 1988. The seminar, which had been a success, had adopted the "Declaration of Dakar", which stressed the need to take account of the cultural values of Africa and expressed the support of the participants for the drafting of the convention on the rights of the child. The text of the "Declaration of Dakar" was brought to the attention of the working group.

14. The observer for Australia said that the technical review exercise had demonstrated its value although he added that did not mean that there were no problems concerning the draft convention apart from those that had come up in the technical review. On the other hand, the priority for his Government was to complete the second reading of the draft convention at the current session without in any way compromising the quality of the instrument in preparation.

15. The representative of Argentina mentioned the Latin American meeting in support of the draft convention on the rights of the child which had taken place at Buenos Aires in September - October 1988, with particular reference to the suggested amendments to the text of the draft convention which were put forward by that Latin American meeting (contained in document E/CN.4/1989/WG.1/WP.1) and asked the working group to take them into consideration in the course of its debates. He also drew the attention of the working group to the first draft elaborated by the above-mentioned meeting of a Latin American Charter on the Rights of the Child.

16. The observer for Egypt referred to the seminar on the rights of the child that had been held at Cairo in November 1988, stating that its main recommendations were: (a) that the United Nations Working Group on the Question of a Convention on the Rights of the Child should bear in mind during the second reading the fact that articles 7 bis and 11 were incompatible with the legal systems of several countries and should take the concern of those countries into account; (b) that the working group should give closer attention in the draft convention to encouraging the mental and spiritual education of the child; (c) that the Egyptian Ministry of Justice should be requested to revise the country's laws - if and where necessary - to bring them into line with the future convention on the rights of the child.

17. The representative of Portugal stated that in September 1988, the Portuguese-speaking countries had met at Lisbon under the auspices of UNICEF to study the draft convention on the rights of the child. At that meeting, there had been an exchange of experience and the solutions adopted by the various countries represented were described. Giving a general account of the conclusions reached, she emphasized that the child should be considered from a dual perspective: as an object of protection and as a possessor of rights. The need to ensure the active participation of the State, of society, of parents and other persons legally responsible for the child was recognized and stress was laid on the fundamental role that the national community could play in ensuring the realization of the rights of the child. Special attention was paid to the situation of children that suffer the painful consequences of armed conflicts. The participants also decided that they should hold regular meetings in view of the fact that, as they were well aware, the need for the protection of children would not disappear once the convention was adopted.

18. The representative of Radda Barnen International informed the working group of a seminar on the convention on the rights of the child which had taken place in Stockholm in October 1988, organized by the Swedish National Committee of UNICEF and Radda Barnen. Among the issues considered at the aforementioned seminar were article 20 of the draft

convention concerning children in armed conflicts, UNICEF-sponsored regional seminars and their recommendations, a comparison between Swedish legislation and the draft convention, implementation of the future and its dissemination.

e) Statements after the adoption of the Convention

19. Following the adoption of the draft convention some delegations made statements of a general character.

20. The representative of the United Kingdom of Great Britain and Northern Ireland stated that nothing in this Convention may be interpreted as affecting in any way the operation of the United Kingdom immigration or nationality legislation in so far as it relates to the entry of aliens and the terms and conditions of their stay in the United Kingdom, and to the acquisition and possession of citizenship.

21. The representative of Japan expressed the reservation of his Government with regard to the legal nature of the declaration that the Chairman of the Working Group should make on article 6 bis to the effect that this article was not intended to affect the immigration laws of States parties. Doubts were also expressed as to the consequences for the national immigration laws of some other provisions of the Convention, namely of article 6, paragraphs 2 and 4, and of article 11 bis. The representative of Japan further stated that a number of other newly adopted proposals and articles of the draft Convention would be ad referendum to his Government which will express its formal view on them at an appropriate opportunity.

22. The observer for New Zealand stated that the text of the draft Convention, with particular reference to its preamble, is ad referendum to his Government which may have further views to express and positions to adopt on the text at a later stage.

23. Statements to this effect were also made by the representatives of India and Venezuela.

II. PROVISIONS ADOPTED BY THE WORKING GROUP

1. Title of the Convention

24. The representative of Senegal expressed the doubt whether the present title which read "A draft convention on the rights of the child" faithfully reflected all those concerns which the delegations had when elaborating this draft. He consequently proposed the following new title: "A draft convention on the protection of the child".

25. Several representatives (Netherlands, Norway and Argentina) indicated their preference for retaining the title as it stood since the proposed new wording for the title was, in their view, too restrictive.

26. The representative of Senegal did not insist on his proposal, and the working group, after having deleted the word "draft", agreed to adopt the title reading:

"Convention on the rights of the child".

2. Preamble

27. The first line of the preamble as adopted at first reading and which read "The States Parties to the Convention" was adopted with the addition of the word "present" before the word "Convention", as proposed by the Legal Counsel and UNESCO.

Preambular paragraphs 1, 2, 3 and 4 (paragraphs 1, 2 3 and 4)**

28. Paragraphs 1, 2, 3 and 4 of the preamble as adopted at first reading were approved by the Working Group without any changes. Paragraphs 1, 2, 3 and 4 of the preamble, therefore, reads as follows:

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

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

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

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

** The reference between parentheses indicates the article number subsequent to the re-ordering of the articles of the Convention.

Preambular paragraph 5 (paragraph 5)**

29. After a brief discussion, the Working Group agreed to adopt paragraph 5 of the preamble with a small change proposed by the Chairman. The words "as the basic unit of society" were thus replaced by the words "as the fundamental group of society".

30. The fifth preambular paragraph, as adopted, reads as follows:

> "Convinced that the family, as the fundamental group 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,"

Preambular paragraph 6 (paragraph 9)**

31. With regard to paragraph 6 of the preamble, two proposed amendments to the text already adopted at first reading were submitted by the Federal Republic of Germany (E/CN.4/1989/WG.1/WP.6) and by the Holy See, Ireland, Malta and the Philippines (E/CN.4/1989/WG.1/WP.8).

32. In introducing his proposal (E/CN.4/1989/WG.1/WP.6), the representative of the Federal Republic of Germany explained that his amendment sought to replace a part of preambular paragraph 6 by a literal quotation of the Declaration on the Rights of the Child of 1959. It was suggested to reformulate paragraph 6 as follows:

> "Recognizing that, as indicated in the Declaration of the Rights of the Child adopted in 1959, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth", ...".

33. The other proposal (E/CN.4/1989/WG.1/WP.8) was introduced by the representative of the Philippines and sought to add the words "before as well as after the birth" at the end of preambular paragraph 6. At a later stage, the representative of the Philippines stated that the co-sponsors of this amendment would have no difficulty if the Working Group prefer the text submitted by the Federal Republic of Germany.

34. In a prolonged discussion that followed, a number of delegations, including Italy, Venezuela, Senegal, Kuwait, Argentina, Colombia, Egypt and one non-governmental organization supported the idea of retaining the concept of the 1959 Declaration on the Rights of the Child in the text of the draft convention, as proposed in both amendments. The importance of protection of the child even before it is born was repeatedly stressed in this connexion. It was further stated that in all national legal systems protection was provided to the unborn child and the draft convention should not ignore this fact.

35. Other delegations, including Norway, the Netherlands, India, China, the Union of Soviet Socialist Republics, Denmark, Australia, Sweden, the German Democratic Republic and Canada, however, opposed what in their view amounted to reopening the debate on this controversial matter which, as they indicated, had been extensively discussed at earlier sessions of the working group with no consensus achieved. It was also pointed out that an unborn child is not literally a person whose rights could already be protected, and that the main thrust of the convention was deemed to promulgate the rights and freedoms of every human being after his birth and to the age of 18 years. The view was also expressed that the Declaration of 1959, being a document of almost 30 years, is to be superseded by the present new draft and, therefore, there was no need to stick to all of its provisions.

36. The representative of Poland stated that the present formulation of preambular paragraph 6 was a delicate balance which the Working Group had reached in the course of continued discussions. In his view, the present compromise wording of this paragraph did not exclude the protection of the child before birth, nor did it contradict a wider interpretation of the text or the application of other more comprehensive provisions, as laid down in article 21 of the draft convention. In the course of the debate, a reference was also made to article 1 bis of the draft which provided for measures to ensure the survival and development of the child.

37. On the other hand, the authors of the amendments as well as some other delegations insisted on their view that the future convention could not ignore an important issue of the rights of the unborn child. In the circumstances, proposals were made to put the amendments of the Federal Republic of Germany in square brackets or even to include them in a new section in the text entitled "Proposals on which no consensus was reached". Another opinion was that it would be preferable not to use the square brackets at this stage of work on the draft convention.

38. In the course of a procedural debate that followed, the representative of the Federal Republic of Germany indicated that he would formally request a vote in the Working Group if his proposal was not duly reflected in the text of preambular paragraph 6.

39. It was stated by some delegations that the Working Group should avoid taking a vote and that the holding of informal consultations could help to find a way out of this situation. At the suggestion of the Chairman, an informal drafting group was set up to undertake such consultations.

40. Another amendment to preambular paragraph 6 was put forward by the representative of Egypt. He proposed orally that the word "psychological" be added after the word "moral".

41. The drafting group on preambular paragraph 6 submitted a proposal (E/CN.4/1989/WG.1/WP.19) which read as follows:

> "The drafting group composed of the Federal Republic of Germany, Ireland, Italy, Netherlands, Poland, Sweden and the United States of America in a spirit of collaboration has adopted unanimously the following proposal:

Bearing in mind that, as indicated in the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1959, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,"

The same drafting group, in agreeing to this text, urges that the following statement be placed in the travaux preparatoires by the Chairman on behalf of the entire Working Group.

"In adopting this preambular paragraph, the Working Group does not intend to prejudice the interpretation of article 1 or any other provision of the Convention by States Parties."

42. The text of preambular paragraph 6 as proposed by the drafting group was adopted and the Chairman read into the record the requested statement as set out above.

43. In connexion with that statement, the representative of the United Kingdom requested confirmation from the Legal Counsel that that statement would be taken into account if, in the future, doubts were raised as to the method of interpreting article 1. The response by the Legal Counsel to that request is annexed to the present report.

Preambular paragraph 7 (paragraph 6)**

44. With regard to paragraph 7 of the preamble, the representative of the United States of America stated that he would prefer the original language of this paragraph without adding the word "equality" before the words "and understanding", as proposed by UNESCO. The Working Group then approved the text of paragraph 7 of the preamble as adopted at first reading, with a small change orally proposed by Australia to insert the words "or her" before the word "personality".

45. The text thus approved reads as follows:

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

Paragraph 8 (paragraph 11)**

46. Paragraph 8 of the preamble as adopted at first reading was approved by the Working Group without any changes. It reads as follows:

"Recognizing that in all countries in the world there are children living in exceptionally difficult conditions, and that such children need special consideration."

Additional Paragraph 9 (paragraph 10)**

47. A new paragraph 9 of the preamble proposed by the Social Development Division (E/CN.4/1989/WG.1/CRP.1 and E/CN.4/1989/WG.1/CRP.1/Add.1) was adopted by the Working Group without changes.

48. Paragraph 9, as adopted, reads as follows:

"Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly resolution 41/85 of 3 December 1986); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (General Assembly resolution 40/33 of 29 November 1985); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (General Assembly resolution 3318 (XXIX) of 14 December 1975),"

49. The representative of Argentina expressed the view that a better location in the preamble could be found for this new paragraph.

Second Additional Paragraph 9 (paragraph 12)**

50. Senegal submitted a proposal (E/CN.4/1989/WG.1/WP.17), paragraphs 1, 2 and 3 which contained amendments relating to the preamble of the draft convention.

51. The second amendment of Senegal, which was considered first by the Working Group, sought to insert after preambular paragraph 8 a new paragraph reading as follows:

> "Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child."

52. The Working Group adopted this proposal.

Paragraph 10 (paragraph 8)**

53. Paragraph 10 of the preamble as adopted at first reading was approved by the Working Group with an addition of the words "and relevant instruments" before the words "of specialized agencies", as proposed by the Legal Counsel.

54. The tenth preambular paragraph, as adopted, reads as follows:

> "Bearing in mind that the need for extending particular care to the child has been stated in the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the United Nations in 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in its article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,".

55. With regard to preambular paragraph 10 and at the meeting subsequent to its adoption, the representative of Senegal called attention to his delegation's proposed amendment (E/CN.4/1989/WG.1/WP.17) which sought to add the words "and collective/community" in preambular paragraph 10 as adopted at first reading. The Chairman ruled that, since paragraph 10 had already been adopted without objection by the Working Group at its previous meeting, the proposal could not be considered.

56. The representative of Senegal made a declaration in this connexion, stating that with deep regret the delegation of Senegal felt compelled to enter a reservation to that paragraph of the preamble.

Paragraph 11 (paragraph 11)**

57. In connexion with preambular paragraph 11, the representative of the United States of America stated that he would prefer the text of this paragraph without the words "equality and solidarity", the addition of which at the end of the paragraph was proposed by UNESCO. He could still go along with the word "equality"; the word "solidarity" should be better replaced by the word "friendship".

58. After a brief discussion in which the words "fraternity" and "brotherhood" were proposed as possible alternatives to the word "solidarity", the Working Group decided to approve the text of paragraph 11 as adopted at first reading with the addition of the words "equality and solidarity" after the word "freedom".

59. Paragraph 11 thus adopted reads as follows:

> "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, equality and solidarity,"

New Preambular Paragraph 11 (paragraph 13)**

60. The Working Group then considered amendment 1 of E/CN.4/1989/WG.1/WP.17 submitted by Senegal. The proposal was to insert, after preambular paragraph 9, a new paragraph reading as follows:

> "Recognizing the importance of international co-operation and assistance for the developing countries in order to improve the living conditions of children in those countries confronted with serious economic and social difficulties."

61. The representative of Venezuela orally proposed a sub-amendment to this amendment of Senegal, by which the word "particularly" was to be added before the words "serious economic and social difficulties". The sub-amendment was accepted by the representative of Senegal.

62. Several participants expressed their support for the proposal of Senegal as sub-amended. It was pointed out that the draft convention should take due account of the special needs of the developing countries.

63. Some other delegations, while not opposing in principle the inclusion of this new paragraph, indicated that the purposes of this amendment had already been covered in the body of the draft convention, namely in article 12 bis, paragraph 4, and article 24 which relate to questions of international co-operation.

64. The representative of the United States of America indicated that it was primarily an obligation of each government to render assistance to its citizens in improving their living conditions. He also pointed out that international co-operation in other spheres was no less important. Consequently, he orally proposed an alternative text for this paragraph reading as follows:

> "Recognizing the importance of international co-operation for improving the living conditions of children in every country,"

65. After a brief discussion, it was decided to set up a small drafting group composed of Senegal, the United States of America, Morocco, Canada, Norway and the Philippines to formulate a compromise wording of this paragraph.

66. After some consultations, the representative of the United States of America read out a compromise text of amendment 1 of the proposal of Senegal.

67. This compromise text was then adopted by the Working Group as a new preambular paragraph 11, which reads as follows:

> "Recognizing the importance of international co-operation in improving the living conditions of children in every country, in particular in the developing countries,"

Reordering of the Preambular Paragraphs

68. The representative of Argentina introduced his delegation's proposals to re-arrange the order of the 13 preambular paragraphs (contained in document E/CN.4/1989/WG.1/WP.24) in order to take into account chronological sequence and groups of subject matter. It was emphasized by him that this in no way affected the substance of the paragraphs but merely sought to introduce some logic in their order.

69. The representative of the United States of America supported the proposal by the representative of Argentina.

70. The Working Group adopted the order of the preambular paragraphs as proposed by the representative of Argentina (E/CN.4/1989/WG.1/WP.24).

3. Article 1 (Article 1)**

71. The Working Group had before it a text of the article as adopted at first reading into which was incorporated suggested revisions by the Legal Counsel, UNESCO and UNICEF contained in document E/CN.4/1989/WG.1/WP.2 which read as follows:

> "For the purpose of the present Convention, a child means every human being to the age of 18 years unless, under the law of (his) the child's State, the age of majority is attained earlier.

72. The Working Group also had before it a proposal by Malta contained in document E/CN.4/1989/WG.1/WP.4 which read as follows:

> "In article 1, after the words "human being", add the words "from conception"."

a proposal by Finland contained in document E/CN.4/1989/WG.1/WP.12 which read as follows:

> "For the purpose of the present Convention a child means every human being who is a minor and has not attained the age of 18 years.",

a proposal by Senegal (contained in document E/CN.4/1989/WG.1/WP.17) which read as follows:

> "According to the present Convention a child is every human being, from his conception until at least, the age of 18 years unless, under the law of his State, he has attained the age of majority earlier."

and a proposal by India (contained in document E/CN.4/1989/WG.1/WP.14) which read as follows:

"According to the present Convention a child is every human being up to the age 18 years unless, under the law of his State, he has ceased to be a child earlier or different age limits for different purposes are recognised.

73. The representatives of Malta and Senegal stated that, in light of the text of preambular paragraph 6 as adopted, they would not insist on the adoption of the ideas contained in their respective proposals and therefore withdrew them. They both however indicated that they wished the report of the Working Group to show that their respective governments took the view that the protection of the child should begin with conception and not just from birth. The observer for the Holy See made a statement indicating that had these proposals not been withdrawn his delegation would have supported them.

74. The representative of Finland and the United States of America stated, with reference to the revised text contained in document E/CN.4/1989/WG.1/WP.2, that the phrase "under the law of (his) the child's State" did not clarify exactly which law would be applicable and therefore wished to see the words omitted from the final text. It was suggested that the words "under the law applicable to the child" be used.

75. The representatives of Finland and India, supported by the representative of the United States of America, took the view that as the concept of majority differed from context to context, and from one legislation to another, it should not be included in a final text of the article.

76. The representative of the Netherlands expressed general support for the proposal by the representative of Finland. He further indicated with reference to the revised text contained in document E/CN.4/1989/WG.1/WP.2 that the words "the age of" be deleted since majority may be attained by satisfying criteria other than age. It was suggested that the words "majority is attained earlier" be used.

77. The representative of Kuwait did not wish the specific age limit of 18 to be included in a final text.

78. The representative of Nepal took the view that an upper age limit of 16 years be set for the definition of a child so as to take into account the concerns of poorer States who may not be able to shoulder the burdens imposed by this Convention for children up to 18 years of age. He took the view that this would leave more wealthy States with the option to expand their definition as they deem fit.

79. The representatives of Argentina, Ireland and Morocco expressed support for the revised text contained in document E/CN.4/1989/WG.1/WP.2 and expressed hesitation about the Finnish proposal as it sought to introduce the concept of a "minor" into a text of the article.

80. The representative of Japan indicated that an upper age limit be expressed as "below the age of 18" rather than "to the age of 18".

81. The text of article 1, as adopted on second reading, reads as follows:

> "For the purposes of the present Convention a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier."

4. Article 1 bis (article 6)**

82. The Working Group had before it article 1 bis as adopted in first reading which reads as follows (E/CN.4/1989/WG.1/WP.2):

> "1. The States Parties to the present Convention recognize that every child has the inherent right to life.
>
> 2. States Parties shall ensure to the maximum extent possible the survival and development of the child."

83. The representative of Venezuela proposed in document E/CN.4/1989/WG.1/WP.10 that articles 1 and 1 bis be merged and that in paragraph 2 of article 1 bis, the word "survival" be replaced by "healthy growth". She stated that the proposal for merging the two would be raised after the text of the Convention had been adopted and in connection with the re-ordering of the articles.

84. The observer for the World Health Organization expressed reservation with regard to the replacement of the word "survival" and explained that the term "survival" had a special meaning within the United Nations context, especially for his organization and UNICEF. "Survival" included growth monitoring, oral rehydration and disease control, breastfeeding, immunization, child spacing, food and female literacy; the term "growth" represented only a part of the concept of "survival" and the change would be a step backwards from standards already accepted.

85. Delegates from Australia, Norway, Italy, Sweden and India stated their preference for the retention of the word "survival", reminding the Working Group of the spirit of collaboration under which this particular article was drafted 10 months ago.

86. The representative of Venezuela withdrew the amendment and stated that the problem would be one for interpretation by local authorities.

87. The article was adopted and reads as follows:

> "1. The States Parties to the present Convention recognize that every child has the inherent right to life.
>
> 2. States Parties shall ensure to the maximum extent possible the survival and development of the child."

5. Article 2 (Article 7)**

88. In connection with this article, the Working Group had before it the text of article 2 as adopted at first reading together with suggestions for revision, contained in E/CN.4/1989/WG.1/WP.2:

"1. The child shall have the right from his or her birth to a name and registration and to acquire a nationality.

2. The child shall have the right from birth to respect for his or her human, racial, national and cultural identity and dignity, as well as have the duty to respect the human, racial, national and cultural identity and dignity of others.

3. (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 or she has been born if, at the time of the child's birth, he or she is not granted nationality by any other State in accordance with its laws."

89. On behalf of Algeria, Egypt, Iraq, Jordan, Kuwait, Libyan Arab Jamahiriya, Morocco, Oman, Pakistan and Tunisia, the delegation of Egypt proposed the following amendments contained in E/CN.4/1989/WG.1/WP.4:

"1. Paragraph 1 should be amended to read as follows:

"The child shall have the right from his birth to know and belong to his parents, as well as the right to a name and to acquire a nationality".

2. Paragraph 2 should be amended to read as follows:

"The States Parties to the present Convention shall diligently endeavour to grant their nationality, in accordance with their laws, to a child born in their territory if, at the time of the child's birth, he is not granted nationality by any other State".

90. According to the delegate of Egypt, the purpose of the first amendment was that of ensuring the psychological stability of the child, and the purpose of the second was to allow a country to apply freely either one of the two legal systems prevailing, that is, jus sanguinis or jus sole, regarding nationality.

91. Iraq urged the Working Group to consider this proposal contained in E/CN.4/1989/WG.1/WP.4 since the preference for jus sole was not in conformity with many legal systems.

92. With regard to paragraph 1 of the proposal, the German Democratic Republic, the Union of Soviet Socialist Republics and the United States of America referred to the exceptions in their legislation concerning the right of "secret adoption", that is, when the adopted child did not have the right to know his natural parents, and pointed out that "the right to know one's parents" could not be applied everywhere. They also drew the Working Group's attention on the use of the word "belonging" as an implication of the idea of property. They also underlined that the concepts of jus sanguinis and jus sole were of equal importance.

93. The delegate of Egypt reiterated the objective of the first amendment and stated he would seek new compromise language.

94. The representative of the Federal Republic of Germany submitted a proposal for amendment (E/CN.4/1989/WG.1/WP.7) which read as follows:

> "Reformulate paragraph 2 of article 2 as follows (amendments underlined):
>
> "2. The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child upon application or without any further action 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".

95. The delegate of the Netherlands drew attention to the concept of permanent residency contained in his own proposal (E/CN.4/1989/WG.1/WP.23 (revised)) which read as follows:

"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 or she has been born and has habitually resided for such period as may be fixed by the States Parties, not exceeding five years immediately preceding the lodging of the application, nor ten years in all, if he or she would otherwise be stateless."

96. He then explained that the words "time of the child's birth" were to be deleted from the West German proposal in order to avoid statelessness and added that he judged unnecessary the use of the words "upon application" contained in that same proposal.

97. The representative of the Federal Republic of Germany explained that with the use of the words "upon application", the draft convention was being brought closer to the general principle of the Convention on the Reduction of Statelessness of 1961.

98. The delegate of the Union of Soviet Socialist Republics stated that the proposal of the Federa Republic of Germany referred to the above-mentioned Convention word for word, but that many countries that had not ratified this Convention would have problems in adopting this paragraph. He declared that the Dutch proposal in WP.23 overlapped with other views such as the one expressed by UNESCO and proposed the forming of a small drafting group and the use of more flexible wording as in E/CN.4/1989/WG.1/WP.25, which he proposed:

"To replace paragraph 2 of article 2 by the following text:

"2. The States Parties shall ensure the realization of this right in accordance with their national legislation and their international legal obligations in this field."

99. The Chairman decided to establish a drafting group composed of Algeria, Australia, Federal Republic of Germany, German Democratic Republic, Kuwait, Netherlands, and the Union of Soviet Socialist Republics, with the United States of America as its Coordinator.

100. The representative of the United States of America introduced the proposals submitted by the drafting group on article 2, composed of the United States of America, Algeria, Australia, the Federal Republic of Germany, the German Democratic Republic, Kuwait, the Netherlands and the Union of Soviet Socialist Republics,(E/CN.4/1989/WG.1/WP.26). The proposed text for article 2 read as follows:

> "1. The child shall have the right from birth to a name and registration and to acquire a nationality, and, as far as possible, to know and be cared for by his or her parents.
>
> 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

101. The representative of the Union of Soviet Socialist Republics stated that, since the proposal of his delegation relating to paragraph 2 of article 2 (E/CN.4/1989/WG.1/WP.25) was taken into account in the text submitted by the drafting group, he would not insist on consideration of his proposals by the working group.

102. The participants favoured in general the proposals submitted by the drafting group. The discussion focussed mainly on the question of registration of the child. It was pointed out that the proposed text of article 2 differed substantially from the provision of article 24, paragraph 2, of the International Covenant on Civil and Political Rights which stated that "Every child shall be registered immediately after birth..."

103. Some doubts were also expressed with regard to the words "as far as possible" contained in paragraph 2 of article 2. This expression was viewed by some participants as giving rise to an arbitrary interpretation of this article of the convention.

104. The observer for New Zealand proposed orally that the words "as far as possible" be replaced by "subject to the provisions of this Convention". Another alternative formulation was put forward by the representative of the United States of America who suggested the wording "in the best interests of the child". The observer for Sweden proposed to make a combination of two proposals reading "as far as possible and subject to the provisions of the convention".

105. The observer for the Netherlands indicated that the right of the child to acquire a nationality is not directly linked to the fact of birth. He therefore suggested that certain modifications should be made in this connexion in the text proposed by the drafting group.

106. The observer for Egypt orally proposed that the words "and/or" be added before the words "their obligations" in the second paragraph of article 2.

107. The representative of Italy proposed to introduce in the text of article 2 a phrase stating that "No child can be arbitrarily deprived of his or her family". Some other delegations pointed out that such provision had been already included in the body of the draft convention and therefore there was no need to repeat it in article 2.

108. After some more discussion, the representative of the United States of America on behalf of the drafting group proposed a compromise text of the first paragraph of article 2 which read as follows:

> "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."

109. It was proposed that the second paragraph of article 2 should stay unchanged as submitted originally by the drafting group.

110. This proposal was accepted by the working group and it thus adopted article 2 which reads as follows:

"1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

111. The representative of Sweden stated that his delegation was able to join in the consensus on article 2 on the understanding that the provisions of this article should be interpreted in the best interests of the child.

112. The observer for Canada pointed out that certain provisions of article 2 as adopted had been already included in some of the other articles of the draft convention, in particular in article 6. He urged the working group to avoid such duplication in future.

6. Article 3 (Article 3)**

Paragraph 1

113. The Working Group had before it a text (contained in document E/CN.4/1989/WG.1/WP.2) of the paragraph as adopted during the first reading incorporating suggested revisions by UNICEF and the technical review carried out by the Secretariat. The text read as follows:

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the (a) primary consideration.

114. The observer for Kuwait and Australia expressed support for the

revised text as contained in document E/CN.4/1989/WG.1/WP.2. The latter did so because the revised text reflected existing international standards, for instance as contained in article 5 of the Convention on the Elimination of All Forms of Discrimination against Women.

115. The observer for the Netherlands expressed general satisfaction with the revised text but suggested that the word "primary" be replaced by the word "paramount".

116. The representative of Venezuela suggested that, although her delegation was not opposed to the phrase "best interests of the child" being included in the final text, she however felt it preferable to fully state the meaning of the phrase, rather than simply using the phrase. In the ensuing debate a number of delegations expressed satisfaction with the phrase and the representative of Venezuela therefore withdrew her suggestion.

117. With regard to the revised text as contained in document E/CN.4/1989/WG.1/WP.2, a number of delegations questioned whether the best interests of the child should be the primary consideration in all actions. It was generally noted that there were situations in which the competing interests, inter alia, of justice and of the society at large should be of at least equal, if not, greater importance than the interests of the child.

118. In an effort to allay such concerns the observer for Canada suggested that, as adopted during the first reading, the paragraph should make the interests of the child "a" primary consideration. The observer for Canada otherwise expressed support for the revised text. A similar position was taken by the representatives of the United States of America, Japan and Argentina.

119. The observer for Finland suggested that the interests of the child should be "the" primary consideration only in actions involving his or her "welfare". Although the proposal was supported by the observer for the Netherlands, it was opposed by the delegations of Portugal, Australia, Canada and Senegal because it sought to narrow the scope of protection the paragraph afforded to children.

120. The representative of the United Kingdom suggested that either the word "all" should be deleted or the interests of the child should only be "of" primary consideration. The latter proposal was also made by the representative of Norway. The observer for Australia questioned whether the meaning of the latter proposal differed from "a" primary consideration, as adopted during the first reading.

121. In view of the strength of reservations voiced about making the interests of the child "the" primary consideration in all situations and taking into account the fact that the delegations which felt that it should be did not insist on this revision, consensus was reached to make the interests of the child only "a" primary consideration in all actions, as it had been in the text adopted during the first reading.

122. The Working Group then proceeded to adopt the text of paragraph 1 of article 3 as follows:

> "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Paragraph 2

123. The Working Group had before it a text (contained in document E/CN.4/1989/WG.1/WP.2) of the paragraph as adopted during the first reading incorporating a suggested revision as to gender-neutral language. The text read as follows:

> "2. In all judicial or administrative proceedings affecting a child that is capable of forming his or her 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".

124. The observer for Finland suggested that the scope of this paragraph overlapped with the scope of article 7 and therefore proposed that discussion be postponed until the consideration of that article.

125. Consideration of the paragraph was suspended pending the outcome of the deliberations of a drafting group set up to resolve the issue. As indicated below, upon the proposal of the drafting group, paragraph 2 was deleted from draft article 3 in order to discuss it under article 7.

Paragraph 3

126. The Working Group had before it a text (contained in document E/CN.4/1989/WG.1/WP.2) of the paragraph as adopted during the first reading incorporating suggested revisions on gender-neutral language and a reference to States parties. The text read as follows:

> "3. (The) States Parties (to the present Convention) undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all (appropriate) legislative and administrative measures."

127. Paragraph 3 was adopted taking into account the suggested revisions and removing the brackets around the word "appropriate". The text as adopted reads as follows:

> "3. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures".

Paragraph 4

128. The Working Group had before it a text (contained in document E/CN.4/1989/WG.1/WP.2) of the paragraph as adopted during the first reading including suggested revisions by the International Labour Organisation and regarding a reference to States parties. The text read as follows:

> "4. (The) States Parties (to the present Convention) shall ensure (appropriate) training, qualifications and competent supervision of officials and personnel of institutions directly responsible for the care of children."

129. The observer for Canada, supported by the observer for New Zealand, suggested there was a growing tendency in many countries to move away from institutionalized care of children and therefore proposed the inclusion of such words as "programmes" or "organizations" in addition to, or with the deletion of, "institutions".

130. The representative of Venezuela proposed that the idea of monitoring children in institutions until they rejoin their families be incorporated in the paragraph. After a discussion, the representative of Venezuela withdrew the proposal.

131. The representative of India expressed a preference for the text of the paragraph as adopted during the first reading, without revisions. He did so because he felt that it was enough to supervise institutions run by volunteer organizations without subjecting them to undue bureaucratic pressures. The observer for Kuwait agreed with the representative of India as to his concerns and suggested that the new idea from the ILO in the revised text was already covered in article 8, paragraph 4.

132. In the ensuing debate the observer for Canada, Norway and Australia proposed that since the idea contained in article 3 (4) was covered in article 8 (4) then it should be deleted from article 3 and left only in article 8. The observer for New Zealand indicated that he had no strong views on the placement of the substance contained in the paragraph as long as it was left in either article. The representative of India

proposed that the paragraphs in articles 3 and 8 were different in scope because the latter covered only children with parents or guardians whereas the former concerned children generally, and would therefore include such children as destitutes who would otherwise be excluded from the protection afforded by article 8. The observer for the ILO indicated that in submitting its suggested revisions the ILO took the view that the paragraphs in articles 3 and 8 were different in scope. The observer for the ILO did not however insist on the adoption of its suggested revisions and withdrew its proposal.

133. The representative of Senegal suggested that the idea of supervising child-care institutes and monitoring the children in them be separated from article 3 and be incorporated in an article 3 bis.

134. It was then suggested by the Chairman that discussion of paragraph 4 should be suspended and that the same drafting group considering paragraph 2 should also discuss and try to resolve any possible overlap between article 3 (4) and article 8 (4).

135. On behalf of the special drafting group composed of Canada, Finland, Morocco and the Union of Soviet Socialist Republics, the delegate of Finland stated that their proposal was to delete paragraphs 2 and 4 from article 3 and incorporate them in, respectively, articles 7 and 8.

136. The Working Group decided to delete paragraph 2 from article 3 in order to discuss it under article 7. Former paragraph 3 thus became new paragraph 2.

137. The delegate of Portugal reserved her position on paragraph 2 for discussion in connection with article 7.

138. With regard to the proposed deletion of paragraph 4, the delegate of India expressed his concern since that paragraph was the logical continuation of the preceding paragraph (new 2, former 3). He consequently objected to its removal to article 8 and proposed it be maintained under article 3, since the two articles did not deal with the same type of institution. Canada agreed with India, drawing the Working Group's attention to another article dealing with institutions, namely

article 10. The representative of the ILO stated her understanding that different institutions were dealt with under articles 3 and 8.

139. The delegation of Finland proposed to postpone the discussion on paragraph 4, so that the drafting group could decide on its placement; article 8, article 10, or a new article were mentioned as possibilities for placing this paragraph. Upon the request made by Finland and then by the Federal Republic of Germany, the Chairman adjourned the discussion on paragraph 4 and decided that India should join the drafting group.

140. The observer for Finland introduced a proposal submitted by the drafting group with regard to a new paragraph 3 of article 3. The proposal read as follows:

> "3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision."

141. In introducing this proposal, the observer for Finland pointed out that this text repeated to some extent the provisions of article 8, paragraph 4 of the draft convention as adopted at first reading. He suggested that the working group would decide what to do with this paragraph later on when it comes to article 8. He also mentioned that the amendments proposed by the ILO (E/CN.4/1989/WG.1/WP.2, p. 15) were not included in the text. In the view of the drafting group the purpose of these amendments which related to appropriate training and qualification of officials and personnel of child care institutions was adequately covered by the inclusion of the words "suitability of their staff".

142. The Working Group then adopted paragraph 3 of article 3 as proposed by the drafting group which reads as follows:

"3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision."

7. Article 4 (Article 2)**

143. The Working Group had before it a text (contained in document E/CN.4/1989/WG.1/WP.3) of the paragraph as adopted during the first reading incorporating suggested revisions by UNICEF, UNESCO and the technical review conducted by the Secretariat. The text read as follows:

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

144. With regard to the revised text the representatives of the United Kingdom of Great Britain and Northern Ireland, United States of America, Union of Soviet Socialist Republics, Argentina and the Inter-American Organization questioned why the revised text was inconsistent with the language of earlier instruments in talking of children in their territories "or" subject to their jurisdiction. The representative of the Union of Soviet Socialist Republics indicated that although he had no strong feelings as regards the suggested revision, he however felt that the introduction of this new idea may lead to some misunderstanding. The observer for Australia indicated that it was the intention of the suggested revision to take the text futher than existing instruments.

145. The representative of Portugal indicated general support for the revised text in document E/CN.4/1989/WG.1/WP.2 and proposed that the words "basis whatever" be substituted by the word "status" in order to make the text consistent with previous international human rights instruments, including the International Covenant on Civil and Political Rights. The representatives of Italy, Sweden, Australia, the Netherlands and the Federal Republic of Germany expressed similar positions.

146. In view of the Working Group's inability to arrive at a consensus, the Chairman suspended the discussion and appointed a small drafting group to discuss suitable wording for the paragragh.

147. The Working Group had before it a text (contained in document E/CN.4/1989/WG.1/WP.2) of paragragh 2 as adopted during first reading including a suggested revision as to the reference to States parties. The text read as follows:

> "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."

148. The Working Group also had before it a proposal by the observer for Mexico (E/CN.4/1989/WG.1/WP.27). The proposal read as follows:

> "Delete the words "expressed opinions, or beliefs".

149. The observer for Mexico indicated that the intention of the proposal was to allow countries to use the education of children as a tool in their drive against ignorance, prejudice and superstition.

150. A number of States indicated their difficulty in accepting the proposal because it would imply the acceptance of discrimination against, and punishment of children on the basis of the opinions and beliefs of their parents. The observer for Mexico therefore withdrew his proposal and indicated that the Mexican government would interpret the existing text in accordance with its domestic legislation.

151. Concerns were raised by the representatives of Venezuela and Colombia about the translation of "legal guardian" into Spanish . The representative of Portugal raised similar concerns about the French text, the representative of the Union of Soviet Socialist Republics about the Russian text and the representative of China about the Chinese text.

152. In view of the Working Group's inability to arrive at a consensus, the Chairman suspended the discussion of the paragraph and requested the drafting group appointed to consider paragragh 1 to also consider paragragh 2.

153. The delegation of Australia gave a reading of the compromise text prepared by the drafting group composed of China, Italy, Kuwait, Portugal, Senegal and the Union of Soviet Socialist Republics under the supervision of Australia. The text contained in document E/CN.4/1989/WG.1/WP.34 read as follows:

> "1. States Parties shall respect and ensure the rights set forth in this Convention to each child in their territories and subject to their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
>
> 2. States Parties 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, the child's parents, legal guardians, or family members."

154. The delegate then gave some explanations on the deliberations of the drafting group.

155. Several delegations drew attention to the need to ensure that the translation into Arabic, Chinese, French and Spanish of the English term "legal guardians" reflected the meaning of the English text exactly; it was suggested to use "représentant légal" in French and "representantes legales" in Spanish.

156. Poland drew attention to the second line of the first paragraph and asked what would be the status of children "within a territory but not subject to the jurisdiction of the country" (such as diplomats' children). The delegate proposed that "or subject to their jurisdiction" be preferred to "and subject to their jurisdiction".

157. The observer for Australia recognized the problem but said that they had used the Covenants as models and that in the case of the diplomat's children, these latter would be governed by their own laws.

158. The observer for Finland, while supporting the proposal, recognized that an important issue had been raised and proposed, in order to cover every possible situation, the deletion of the reference to territories and keep only the reference to jurisdiction, such as in the European Convention.

159. Australia agreed with this proposal made by Finland.

160. The delegates of the United States of America and the Netherlands referred to the deletion of the words "cultural beliefs and practices" from paragraph 1 and expressed their preference for their retention.

161. The observer for Australia said that he would have trouble accepting the re-insertion of these words since some delegations had problems with them.

162. With regard to the deletion of the words "family status", the delegate of Sweden stated his understanding that the problems referred to under that term, including that of children born out of wedlock, were covered by the words "other status".

163. The delegate of Senegal said that the use of the words "or other status" would cover every possible status.

164. The delegate of India declared that the compromise text was good but that he reserved his position on the use of "ensure" instead of "extend".

165. The text as amended was adopted to read:

"1. States Parties shall respect and ensure the rights set forth in this Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties 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, the child's parent's, legal guardians, or family members."

8. Article 5 (Article 4)**

166. The Working Group had before it article 5 as adopted at first reading, together with suggested revisions contained in E/CN.4/1989/WG.1/WP.2:

"(The) States Parties (to the present Convention) shall undertake all (appropriate) legislative, administrative, and other 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."

167. The delegate of the United States of America suggested that the words "appropriate" as well as "and other" be retained. The delegate of Kuwait agreed upon the inclusion of the words "and other" while stating her delegation's wish that article 5 be drafted to cover all rights.

168. The delegate of the United States of America then proposed the deletion of the words "in accordance with their available resources", along with the delegations of Canada, Sweden, New Zealand, Argentina and

the United Kingdom. They stated that the civil and political rights guaranteed in the International Covenant on Civil and Political Rights were not subjected to the availability of resources and that the Covenant's standards should not be weakened in the child's Convention. With regard to economic, social and cultural rights, they recognized that certain of these rights could be implemented only if sufficient resources were available or was provided for in the International Covenant on Economic, Social and Cultural Rights.

169. But the delegations of India, Venezuela, Libya and Algeria pronounced themselves against the deletion of the words "in accordance with their available resources", given their preoccupation with the economic difficulties faced by the developing countries. The delegate of Venezuela proposed the inclusion of the word "maximum" before the word "available".

170. Several proposals were made for compromise wording, such as the one submitted by the United Kingdom in order to save civil and political rights without endangering economic, social and cultural rights:

> "... in accordance with their available resources with respect to economic, social and cultural rights...".

171. Poland proposed that, along with the deletion of the phrase, the word "appropriate" be included in the report and that it be understood in the light of economic, social and cultural rights. The delegation of Senegal declared itself in favour of the Polish proposal.

172. The Chairman established a drafting group composed of the United States of America, Senegal, India and Sweden in order to come up with a unified proposal.

173. The representative of the United States of America on behalf of the drafting group on article 5 introduced the text of this article as agreed in the drafting group, which was subsequently adopted by the Working Group. The text reads as follow:

"States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in this Convention. In regard to economic, social and cultural rights States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

9. Article 5 bis (Article 5)**

174. The Working Group had before it the following text of article 5 bis as adopted at first reading:

"The States Parties to the present Convention shall respect the responsibilities, rights, and duties of parents or, where applicable, legal guardians or other individuals legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."

175. The revisions suggested to this article in the course of the technical review (E/CN.4/1989/WG.1/WP.2, p.21) included the deletion of "The" before, and of the words "to the present Convention" after, the words "States Parties", and the insertion of the words "the extended family or community as provided for by local custom" after the words "where applicable". It was also proposed to consider whether the word "appropriate" before the words "direction and guidance" should be maintained in the text of the article.

176. Several delegations voiced their support for the idea of giving recognition in the convention to the notion of extended family or community responsibility for the child. While there was no strong opposition to its inclusion in article 5 bis, it was nevertheless argued that the introduction of this concept would change essentially the traditional triangular responsibility for the child. One participant expressed his preference for the text of this article as adopted at first reading.

177. The representative of the United States of America proposed to insert the words "members of" before the words "extended family or community".

178. The representative of the United Kingdom of Great Britain and Northern Ireland suggested that the word "individuals" be deleted from the text and the word "other" which preceded be made plural.

179. The representative of the Union of Soviet Socialist Republics proposed to replace the word "individuals" by the word "persons" which, in his view, could be interpreted as including also the personnel of State children's institutions.

180. The observer for Sweden said he would prefer that the word "appropriate" be maintained in the text of the article.

181. The Working Group then adopted article 5 bis reading as follows:

> "States Parties shall respect the responsibilities, rights, and duties of parents, or, where applicable, the members of extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."

10. Article 6 (Article 9)**

182. The Working Group had before it the following text of article 6 as adopted at first reading:

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

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

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

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in custody of the State) of one or both parents or for 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."

183. Three revisions relating to gender neutrality were suggested in the course of the technical review by UNESCO with regard to paragraphs 1 and 2 of the article (E/CN.4/1989/WG.1/CRP.1, p. 20). It was also proposed to consider changing the beginning of paragraph 1 to read: "States Parties recognize that ...".

184. The representative from Venezuela introduced a proposal (E/CN.4/1989/WG.1/WP.36) which sought to replace paragraph 1 of article 6 by the following text:

"1. The States Parties to the present Convention recognize that the child has a right to enjoy parental care and protection, and should have his place of residence chosen by either of his parents, except as provided herein."

185. The representative of Venezuela then orally proposed some more amendments relating to paragraphs 2 and 4 of article 6 which were subsequently issued as document E/CN.4/1989/WG.1/WP.43. The amendments read as follows:

"Paragraph 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, as in the case of articles [10, 18 et seq. and 19] or where the parents are living separately and have to make a decision as to the child's place of residence.

Paragraph 4

In the Spanish version, replace the words "cuando se le pida" with "cuando así sea solicitado." [does not affect the other language versions.]

186. The representative of the German Democratic Republic introduced a proposal (E/CN.4/1989/WG.1/WP.13) to reformulate paragragh 3 of article 6 to read as follows:

"The States Parties to the present Convention shall respect and promote the right of the child who is separated from one or both parents on a regular basis, save in exceptional circumstances."

187. The representative of the Federal Republic of Germany introduced a proposal (E/CN.4/1989/WG.1/WP.20) sponsored also by Japan by which a new paragragh 5 was to be added to article 6 reading as follows:

"5. Nothing in this Convention shall affect in any way the legal provisions of States Parties concerning the immigration and the residence of foreign nationals."

188. The observer for Canada introduced a proposal (E/CN.4/1989/WG.1/WP.37) to revise article 6 to read as follows:

"1. States Parties shall ensure that the separation of a child from his or her parents, or other persons who have undertaken responsibility for the child's care, against their wishes shall be authorized only where the competent authorities determine, in accordance with applicable law and procedure that such persons have failed to fulfill their responsibilities in circumstances which indicate that the child's welfare is harmed or threatened. Any care provided for a child who is separated from his or her parents by public authorities shall be in accordance with the best interests of the child.

2. States Parties recognize that when the parents of a child are living separate and apart from each other and an application is made to the competent authorities for a determination as to which of them shall have custody of the child, the interests of the child shall be the paramount consideration of such authorities in determining who shall be awarded the custody.

3. In any proceedings pursuant to paragraphs 2 and 3, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

4. 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, except if it is contrary to the child's best interests.

5. Where such a 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."

189. The representative of Iraq orally proposed to delete the word "regular" from paragragh 3 of article 6.

190. After some discussion, the Working Group decided upon the suggestion of the Chairman, to establish a small drafting group composed of Canada, the Federal Republic of Germany, the German Democratic Republic, Japan, the Netherlands, the Philippines, the United Kingdom of Great Britain and Northern Ireland and Venezuela to elaborate a unified text of article 6.

191. On behalf of the drafting group, the representative of the Federal Republic of Germany introduced the proposals made by the drafting group (E/CN.4/1989/WG.1/WP.55). In doing so, he stated that the group proposed the deletion of paragraph 1 as adopted during the first reading because its contents were covered elsewhere in the Convention. He also indicated that old paragraph 2 was to be split up with the bulk of it forming a new paragraph 1 and for the last two sentences of the old paragraph to be more elegantly restyled into a new paragraph 2. He stated that the new paragraph 3 was more consistent with the tone of article 6 in that it imposed State obligations rather than directly creating rights for individuals. He further stated that paragraph 4 remained unchanged from the first reading and that in agreeing to the text in E/CN.4/1989/WG.1/WP.55 the drafting group urged the Chairman to make a statement for the report as to the meaning and intention of the whole article.

192. The representative of the United States of America suggested that the proposed text for article 6 contained in E/CN.4/1989/WG.1/WP.55 be adopted without any modifications.

193. The delegations of Finland, Brazil, India and Venezuela expressed their preference for the text of article 6 as adopted during the first reading. In particular, the observer for Finland did so because he took the view that the proposed text in E/CN.4/1989/WG.1/WP.55 added nothing substantial to the old text. However, all four representatives indicated that they would not insist on the adoption of the old text.

194. The representative of Venezuela proposed with reference to E/CN.4/1989/WG.1/WP.55 that the words "such as the cases in articles 10, 18 and following and 19 or" be inserted after the word "child" in line 5 of paragraph 1 with the deletion of the second sentence of that paragraph from the words "such determination" until "or one", on line 7, inclusive. However, in view of the lack of support for this proposal, the representative of Venezuela withdrew her proposal.

195. With reference to paragraph 2 of article 6 as contained in E/CN.4/1989/WG.1/WP.55, the representative of India questioned why, since it embodied the latter part of old paragraph 2, the last sentence of old paragraph 2 had been omitted. He strongly urged its inclusion in the text contained in E/CN.4/1989/WG.1/WP.55, because he felt that, in being more forceful, it strengthened the obligation on States parties. The representatives of the Federal Republic of Germany and Canada indicated that that sentence was not necessary as its meaning was clearly implied by the paragraph as restyled in E/CN.4/1989/WG.1/WP.55. The observer for Finland indicated that it was unnecessary to include that sentence because the idea contained therein was covered in article 7. The representative of India agreed to join the consensus to leave the sentence out on the understanding that its intent would be covered by article 7.

196. In the foregoing debate, general agreement was expressed as to the desirability of a statement by the Chairman for the report, as contained in E/CN.4/1989/WG.1/WP.55, regarding articles 6 and 6 bis.

197. The Working Group then proceeded to adopt article 6 as contained in E/CN.4/1989/WG.1/WP.55 which reads as follows:

"1. States Parties shall ensure that a child shall not be separated from his or her 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 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.

2. In any proceedings pursuant to paragraph 1, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. The States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

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 of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the 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."

198. After the adoption of the article, the Chairman made a statement for the report. The declaration reads as follows:

"It is the understanding of the Working Group that article 6 of this Convention is intended to apply to separations that arise in domestic situations, whereas article 6 bis is intended to apply to separations involving different countries and relating to cases of family reunification. Article 6 bis is not intended to affect the general right of States to establish and regulate their respective immigration laws in accordance with their international obligations."

199. The representative of Portugal then made a statement for the report. It reads as follows:

"La délégation Portugaise aimerait souligner à ce propos que par obligations internationales s'entend non seulement les traités célébrés ou ratifiés par un Etat mais aussi les principes reconnus par la communauté internationale notamment les instruments juridiques approuvés au sein des Nations Unies, pour la promotion et protection des droits de l'homme."

200. The observer for Sweden stated that his delegation fully agreed with the interpretation of the Chairman's declaration made by the representative of Portugal. He further stated that the notion "international obligations" in the Chairman's declaration should include the provisions of this convention and especially article 6 bis.

201. The representative of Italy indicated her support for, and wished to join in, the expression of the sentiments contained in the statements made by the representative of Portugal.

202. The representative of the Federal Republic of Germany reserved the right to declare that silence in the face of the Chairman's declaration did not mean agreement with it.

Article 6 bis (Article 10)**

203. The Working Group had before it a text (E/CN.4/1989/WG.1/WP.2) for article 6 bis as adopted during the first reading into which was incorporated suggested revisions proposed by the technical review of the Secretariat. The text read as follows:

"1. The child and his or her parents shall be free to leave any country, including their own. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention. The child and his or her parents shall not be arbitrarily deprived of the right to enter their own country.

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

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. Towards that end and in accordance with the obligation of States Parties under article 6, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. (The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public) public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention."

Paragraph 1

204. The Working Group also had before it proposals contained in E/CN.4/1989/WG.1/WP.13 by the representative of the German Democratic Republic reading as follows:

> "Change in paragraph 1 "or" by "and" so that it reads as follows:
>
> "...applications by a child and his parents...".

205. The representatives of Argentina, India, Portugal, the Union of Soviet Socialist Republics and the United States of America expressed support for the inclusion of the new paragraph 1 as contained in E/CN.4/1989/WG.1/WP.2 because it reflected rights already enshrined in article 12 of the International Covenant on Civil and Political Rights. The representatives however indicated that they did not insist on its inclusion in the article. The representative of the United Kingdom reserved the right to make a statement concerning his delegation's interpretation of the reference in this article to the right of children and their parents "to enter their own country".

206. The observer for Australia proposed that since the only new idea raised in the new paragraph 1 was contained in the last sentence, he suggested that that last sentence could be incorporated in the text of article 6 bis as it was adopted during the first reading. The representative of India supported this and suggested that if the new paragraph was not included in the article then that last sentence should be incorporated into the article.

207. The representatives of Australia, Finland, the Netherlands and Poland expressed a preference for the text of this article as adopted during the first reading. In particular, the representatives of Australia and Poland did so because they wished to maintain the article's emphasis on the issue of family reunification.

208. The observer for Finland suggested that the scope of the article should be widened and therefore proposed that the words "and family meetings" be included after the words "family reunification". The representatives of Kuwait and the United States of America indicated that the meaning of the words proposed were not clear and therefore they felt that the words should be left out of the text.

209. The representatives of Australia, Portugal and the United States of America took the view that article 6 bis was intended to cover situations in which children were separated from their parents and that they were therefore unable to support the proposal by the representative of the German Democratic Republic to change the word "or" in line 2 of old paragraph 1 to the word "and".

210. The representative of the United Kingdom raised concerns about the interpretation of the word "positive" in line 4 of old paragraph 1. He suggested that as the word could be misinterpreted he would prefer the word "objective" to be used in its place. The representative of France indicated that the translation of the word "positive" into the French text seemed to contain an element of prejudgment and for that reason he would like to see the word "positive" omitted from the text.

211. The delegations of Sweden and Finland suggested that the word "positive" be retained in the text for article 6 bis as the word had an established usage, at least within the European context. The observer for Finland suggested as an alternative that the use of the word "favourable" might allay the concerns of the United Kingdom delegation. The representative of the United States of America indicated that the word "positive" should be retained in the text of the article because it only obliged States to act positively and in no way prejudged the outcome of their deliberations on questions of family reunification. He further stated that the word "favourable" should not be used as that word seemed to contain an element of prejudgment. As a result of the foregoing debate, the representative of the United Kingdom indicated that his concerns had been allayed and that "positive" should be retained.

212. The text of article 6 bis, paragraph 1, as adopted during the second reading reads as follows:

"In accordance with the obligations of States Parties under article 6, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for members of their family."

Paragraph 2

213. The representative of the German Democratic Republic drew attention to her proposal of amendment contained in E/CN.4/1989/WG.1/WP.13 which read as follows:

"Delete in paragraph 2 the first sentence and start the second sentence with: In accordance with the obligation of the States Parties under article 6, paragraphs 2 and 3."

214. The observer for Finland stated that he would not propose any specific amendments but pointed out some interpretation problems as to the amendment proposed by the German Democratic Republic. According to the Finnish delegate, the first sentence had to be kept because even in cases where both parents lived abroad and in the same country, the child should have contacts with both parents and therefore the first sentence should apply.

215. The representatives of the Federal Republic of Germany and Morocco joined Finland in opposing the amendment.

216. Given these objections, the German Democratic Republic delegation declared that, despite some legal problems it had with the wording of this paragraph, it would not insist on the amendment. However, the delegate stressed again the difficulties they were having with it and reserved her right to raise the issue at the Commission on Human Rights.

217. The Working Group then adopted article 6 bis, paragraph 2, without changes except the addition of "or her".

218. The final version of article 6 bis, paragraph 2, reads as follows:

"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. Towards that end and in accordance with the obligation of States Parties under article 6, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention."

12. Article 6 ter (Article 11)**

219. The Working Group had before it article 6 ter as adopted at first reading:

"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."

220. The observer for Finland suggested the deletion of the end of paragraph 2: "... the introduction of periodic consultations between the competent national authorities", since those mechanisms were already provided by international conventions and that here it appeared

superfluous, given that within this Working Group, there would be a committee supervising the matter. The delegate then appealed to the French delegation, which had sponsored this clause to re-consider it.

221. The delegation of the Netherlands joined Finland in this suggestion and also proposed the deletion of the word "appropriate" under paragraph 1.

222. The representative of France agreed to the deletion as suggested by Finland.

223. The observer for Mexico, while expressing his regrets over the deletion, declared he had neither objections nor amendments to suggest. The delegate asked, however, for more specific measures against the sale of children and said that the measures proposed in article 6 ter were too general.

224. The observer for Canada stated that article 18 already dealt with the sale of children so there was no necessity to broaden article 6 ter further, and that he had no objection to the deletion of the end of paragraph 2 as proposed by Finland. Finally, he said that paragraph 1 was a French translation of a clause coming from the Hague Convention on International Child Abduction, and that the original English version should be used instead of a literal translation from French where the words "illicit" and "non-return" belonged. The delegate then read the English version: "...the wrongful removal and retention of children...".

225. The observer for Finland pointed out that under the Hague Convention the French text used the expression "déplacement illicite" and that the 1980 European Convention of Luxembourg used the word "unlawful". He suggested, in order to cover all those nuances and possibilities that the word "illicit" be kept.

226. The delegation of Italy proposed the use of "abduction" instead of "illicit transfer and non-return".

227. As far as article 18 quater was concerned, the representative of the Federal Republic of Germany suggested the deletion of article 6 ter in order to keep only article 18 quater whereas Senegal proposed the addition of article 18 quater under article 6 ter as the third paragraph.

228. After a short discussion, the Working Group adopted article 6 ter which reads as follows:

> "1. States Parties shall take 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."

13. Article 7 (Article 12)**

229. The Working Group had before it article 7 as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

> "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."

230. The Working Group also had before it a proposal submitted by Finland on behalf of a drafting group (E/CN.4/1989/WG.1/WP.35) which read as follows:

> "1. The States Parties to the present Convention shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with (his) the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, through a representative or an appropriate body, in accordance with the procedural rules of national law."

231. The observer for Finland stated that the basic idea contained in this proposal had already been introduced in relation to article 3, paragraph 2, and that the purpose was the addition of article 3, paragraph 2 (which had been deleted) under article 7 as paragraph 2, with some changes (underlined in E/CN.4/1989/WG.1/WP.35).

232. The observer for the Netherlands declared that it could warmly support the proposal if only the meaning of "in accordance with the procedural rules of national law" was clearer. It then suggested the use of "in a manner consistent with the procedural...".

233. The Finnish delegate answered that the purpose was not to change the text in a substantive manner and that in case the hearing of the child's opinion required some international legal assistance, the requesting State's procedure should also be taken into account. He otherwise agreed with the use of "in a manner consistent with".

234. The delegation of Venezuela pronounced itself in favour of the proposal of the Netherlands or suggested the use of "applicable rules of national law".

235. The delegate of Norway expressed its satisfaction with the proposal.

236. The representative of the Union of Soviet Socialist Republics asked for clarification of the meaning of "... in all matters affecting the child" under paragraph 1.

237. The representative of Japan stated that he supported the proposal with the understanding that "affecting the child" meant "affecting the rights of the child".

238. The observer for Finland repeated its earlier wish of not undertaking substantive changes and since it was based on article 3, paragraph 2, the text should remain this way and could also be interpreted the way Japan suggested.

239. The delegate of Italy, while in agreement with Finland, proposed to introduce the expression "regarding the rights of the child" as a technical suggestion.

240. The observer for Kuwait expressed her support for the proposal as in E/CN.4/1989/WG.1/WP.35.

241. The delegation of the Union of Soviet Socialist Republics, while declaring that the article did not pose any problem as a whole, drew attention to the difficulty of interpretation especially in relation with article 7a, paragraph 1, since both referred to the same rights, but through a different wording. The delegate asked for more specificity under paragraph 1 and pronounced himself in favour of the Japanese proposal, namely the use of "... affecting the rights of the child...".

242. The representative of Portugal expressed her concern over the neglect of the word "directly" under paragraph 2 of the proposal and drew attention to the danger it represented as a restriction of the child's own freedom of expression.

243. The observer for Canada stated that the concern expressed by Portugal was not founded since the actual wording in English already provided for the alternatives but that the word "or" could be added for more clarity. He observed, however, that if the Japanese proposal was accepted, the matters dealt with in the Convention not covering the rights (and still affecting the children) could be endangered.

244. The observer for Finland proposed that paragraph 1 remain as in E/CN.4/1989/WG.1/WP.35 with the deletion of the word "his" already in brackets, and that under paragraph 2, "in accordance with" be replaced by "in a manner consistent with".

245. The Chairman proposed the addition of the word "or" after the word "directly" under paragraph 2, in order to satisfy Portugal's concern.

246. The representative of Japan agreed with the last Finnish proposal.

247. Reservations were expressed by the delegations of China, Japan and the Union of Soviet Socialist Republics.

248. The Working Group then adopted paragraph 1.

249. Following the adoption of paragraph 1, the observer for Finland gave a reading of paragraph 2 as it appears in E/CN.4/1989/WG.1/WP.35 with the addition of the word "or" after the word "directly".

250. The delegate of Venezuela repeated her wish for the deletion of "the procedural laws" in favour of the "applicable rules of national law".

251. The observer for Finland objected to this change and judged essential that the "procedural laws" be referred to.

252. The delegation of Japan agreed with the view expressed by the observer for Finland.

253. The delegate of Venezuela withdrew her proposal.

254. The representative of Senegal declared that since national law already contained procedural rules, the inclusion of the latter was unnecesssary.

255. The delegate of the Federal Republic of Germany expressed its agreement with the Senegalese position.

256. The delegate from India proposed the replacement of "procedural rules" by "in accordance with procedure established by law".

257. The delegation of Italy suggested "in a manner consistent with national law".

258. The observers for Canada and Finland spoke in favour of the text as originally proposed.

259. The Working Group adopted paragraph 2 of article 7 reading as follows:

> "1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in accordance with the procedural rules of national law."

260. The delegation of India made a declaration to the effect that in its understanding the expression "procedural rules of national law" in article 7a, paragraph 2, adopted at second reading had the same meaning as the expression "procedures followed in the State Party for the application of its legislation" contained in article 3, paragraph 2, of the draft convention as adopted at first reading.

261. The delegation of Senegal also made the following declaration in this regard:

> Tout en s'associant au consensus pour l'adoption de l'article 7, le Sénégal voudrait préciser que par l'expression anglaise "with the procedural rules of national law" il fallait entendre le terme générique et plus précis, en francais, "de législation nationale applicable".

262. The observer for Finland voiced his support for the declaration made by the delegation of India.

14. Article 7a (Article 13)**

263. The Working Group had before it article 7a as adopted at first reading (E/CN.4.1989/WG.1/WP.2):

"1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) for respect of the rights and reputations of others; or

(b) for the protection of national security or of public order (ordre public), or of public health or morals."

264. The Chairman declared that since article 7 had been kept the suggestions made by UNICEF and the Secretariat (E/CN.4/1989/WG.1/WP.2) for its deletion and its addition under article 7a as paragraph 2 (c), were not retained and that the only proposal of amendment came from the German Democratic Republic in E/CN.4/1989/WG.1/WP.39, reading as follows:

"Add the following phrase to paragraph 2b (amendments underlined)

"(b) for the protection of national security or of public order (ordre public), or of public health or morals, or the spiritual and moral well-being of the child; or"

265. The delegation of the German Democratic Republic took the floor in order to point out that article 7a stemmed from article 19 of the International Covenant on Civil and Political Rights and that this amendment was in view of the addition of article 20 of the Covenant. He added that the purpose was to cover certain dangers of violent information disseminated by the mass media.

266. The representative of China declared her support for the amendment.

267. The delegate of the United States of America reminded the Working Group that this article had been adopted the previous year and that he could not agree with the amendment since such extra restrictions of freedom of expression were to be avoided; and that this restriction did not appear anywhere in the International Covenant on Civil and Political Rights and it would thus be unfair to impose it on children alone. Further, this article also covered the right of children to expression and such a restriction could be used as an excuse to curtail this right. He added that the paternalistic flavour of the amendment was against the spirit of the Convention.

268. The delegate of Portugal declared that the amendment was superfluous since article 5 bis on the parents' rights and duties already covered the issue of the guidance of children, not to mention the Preamble as well as article 16.

269. The observer for Australia objected to the amendment on the same grounds and drew attention to national legislation that already protects children (by, for example, film classification). The Australian delegate declared that if the amendment was accepted then the following should be added: "... or, in the case of received information."

270. The delegation of Poland declared that the proposal of the German Democratic Republic deserved attention.

271. The representative of Sweden objected to the proposal and warned against the undermining of the existing standards.

272. The delegations of Canada and Argentina stated that the matter was already dealt with under article 9, and the latter proposed the creation of a special drafting group.

273. The delegate of the German Democratic Republic declared it would not insist on the amendment.

274. The Working Group adopted article 7a in its original form which reads:

"1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) for respect of the rights and reputations of others; or

(b) for the protection of national security or of public order (ordre public), or of public health or morals."

15. Article 7 bis (Article 14)**

275. The Working Group had before it a proposal (E/CN.4/1989/WG.1/WP.68) submitted by the drafting group on article 7 bis which was composed of Bangladesh, China, the Holy See, Italy, Mexico, Morocco, the Netherlands and Poland. The proposal read as follows:

"[The States Parties to the present Convention shall respect the right of the Child to freedom of thought, conscience and religion].

1. The States shall respect the right and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercice of his right in a manner consistent with the evolving capacities of the child.

2. The States Parties shall equally respect the liberty of the parents and when applicable legal guardians, to ensure the religious and moral education of the child in conformity with their own conviction. [of their choice]

[3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.]

[4. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with [national] laws and legislation and which are necessary to protect public safety, public order, health and morals. [and the fundamental rights and freedom of others]"

276. In introducing this proposal the observer for Morocco, acting as a co-ordinator of the drafting group, indicated that, despite all the efforts undertaken the drafting group had been unable to reconcile the various views and positions of delegations.

277. The Chairman drew the attention of the Working Group to the fact that paragraph 2 of article 7 bis as proposed by the drafting group (E/CN.4/1989/WG.1/WP.68) was identical to paragraph 3 of article 7 bis as adopted at first reading.

278. Having made some editorial and gender neutrality revisions, the Working Group then adopted paragraph 2 of article 7 bis reading as follows:

2. "States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."

279. The observer for Finland stated that when adopting paragraph 2 of article 7 bis it was the understanding of his delegation that article 7 as already adopted was also applicable in religious matters.

280. With regard to other paragraphs of article 7 bis the opinions of the delegations were divided. On the one hand it was argued that the text of article 7 bis had been already agreed upon during the first reading and therefore it should be used as a basis for consideration of all other issues involved. It was stressed by some participants that the Working Group should not engage in establishing standards lower than those already set, nor should it detract from the International Covenants and other basic human rights instruments. The view was expressed that the formulations proposed in document E/CN.4/1989/WG.1/WP.68 undercut certain rights and freedoms established in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

281. According to another approach, it was only on the basis of the text in document E/CN.4/1989/WG.1/WP.68 that any discussion could be productive. It was indicated in this connection that the drafting group had proposed alternative formulations which better reflected the position of those who could not accept any provision giving the child a freedom to choose and change his or her religion or belief.

282. In the discussion that followed some delegations proposed to merge paragraphs 1 and 5 of the text contained in document E/CN.4/1989/WG.1/WP.68. Another idea was to delete article 7 bis altogether. It was emphasized by some speakers that in the final analysis article 7 bis should reflect all legal systems and all models of social development. One participant urged that all attempts to impose one's position upon other delegations should be abandoned as contrary to the principal task of the Working Group which was to elaborate a universally acceptable legal document.

283. Observing that a consensus on the various proposals was not possible, the Chairman suggested that only paragraphs 1 and 4 of document E/CN.4/1989/WG.1/WP.68 which did not contain any new or controversial provisions, be retained in article 7 bis, in addition to its paragraph 2 as adopted earlier. The Working Group agreed with this proposal and adopted article 7 bis reading as follows:

> "1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

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

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

284. Following the adoption of article 7 bis the observer for Sweden stated that his delegation had joined in the consensus on the understanding that the right to freedom of thought, conscience and religion, as laid down in article 18 of the International Covenant on Civil and Political Rights, should include freedom to have or to adopt a religion or belief of one's choice, and freedom to manifest one's religion or belief in worship, observance, practice and teaching.

285. The observer for the Holy See stated with regard to article 7 bis after its adoption that "le droit, pour les parents, de donner une éducation réligieuse et morale à leur enfant conformement à leurs convictions personnelles est compris dans le droit de manifester sa religion et que ce droit d'éducation réligieuse et morale doit être respecté par les Etats".

286. The representative of Italy stated that her delegation associated herself with the declaration made by the observer for the Holy See.

16. Article 7 ter (Article 15)**

287. The Working Group had before it article 7 ter as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

"1. The States Parties to the present Convention recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

288. The Chairman drew attention to the amendment proposed by the International Labour Organisation as it appears in E/CN.4/1989/WG.1/WP.2, p. 35. The representative of the ILO pointed out that it was the Legal Counsel and not the ILO which sponsored the amendment but that the ILO would support it. She then stated that paragraph 2 of article 7 ter stemmed from article 22 of the International Covenant on Civil and Political Rights but unlike the 1987 ILO Convention it did not include a safeguard clause. She added that since article 7 ter covered also other subjects and not only trade union freedom, this safeguard clause should concern article 21 of the Convention (leaving out the age limit to trade union freedom) and that article 7 ter should remain unchanged except for the Legal Counsel's amendment.

289. The representative of Venezuela expressed her support for this safeguard clause.

290. The Chairman declared that the safegurad clause would be discussed under article 21 and the Working Group proceeded to adopt article 7 ter as follows:

"1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedom of others."

17. Article 7 quater (Article 16)**

291. The Working Group had before it article 7 quater as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

> "1. The States Parties to the present Convention recognize the right of the child not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
>
> 2. The child has the right to the protection of the law against such interference or attacks."

292. The Chairman stated that no major amendments were proposed except for the small change suggested by the Secretariat in E/CN.4/1989/WG.1/WP.2, and according to which the first paragraph would start as follows:

> "1. The child shall not be subjected to arbitrary...etc."

293. The observer for Australia agreed with the change.

294. The delegation of the Federal Republic of Germany suggested that "No child shall be..." would be closer to the Covenant.

295. The Chairman agreed and article 7 quater was adopted by the Working Group to read as follows:

> "1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
>
> 2. The child has the right to the protection of the law against such interference or attacks."

296. Following the adoption of article 7 quater, the delegate of Venezuela stated that articles 7, 7 bis, 7 ter, 7 quater needed a safeguard clause concerning the exercise of those rights as subject to national legislation, since this latter would best protect the interests of children.

297. The representatives of the United States of America, Sweden and Portugal expressed their opposition to such a clause.

298. The delegation of Morocco endorsed the Venezuelan position and reserved its right to discuss the issue under article 21.

18. Article 8 (Article 18)**

299. The drafting group composed of Algeria, Finland, Libya and Norway submitted a proposal with regard to article 8 (E/CN.4/1989/WG.1/WP.56) which read as follows:

> "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 responsibilities for the upbringing and development of the child.
>
> 2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render appropriate assistance to parents and guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services 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."

300. In introducing this proposal, the observer for Finland pointed out that its text was close to that of article 8 as adopted at first reading. In paragraph 1, the word "similar" was deleted since, in the view of the group, it was rather ambiguous. In paragraph 2, the term "institutions" which the group considered too narrow, was complemented by the words "facilities and services". The drafting group also decided to delete paragraph 4 as adopted at first reading since, in the opinion of the group, the substance of it had been already covered by paragraph 3 of article 3 as already approved.

301. In the course of the discussion that followed, the participants supported in general the approach of the drafting group and agreed with most of its proposals.

302. The representative of Norway, being one of the authors of the text in E/CN.4/1989/WG.1/WP.56, orally proposed to revise it further by adding the words "and emotional, intellectual and social stimulation" after the words "institutions for the care" in paragraph 2 of the proposed text.

303. While some support was voiced for the proposal of Norway, the prevailing view still was that this idea had been already covered by the words "care of children" in this same paragraph as well as by the provisions of article 16 of the draft convention, and that details of this kind were therefore unnecessary. The representative of Norway then withdrew his proposal.

304. The Working Group agreed with the proposal of the Netherlands to add the word "legal" before the words "guardians" in paragraphs 1 and 2 of article 8.

305. Another oral amendment put forward by the Netherlands seeking to delete paragraph 3 of E/CN.4/1989/WG.1/WP.56 was opposed by some delegations, and the amendment was subsequently withdrawn.

306. The representative of the United States of America expressed the view that the way in which paragraph 1 had been formulated was rather strange for a legal document, and therefore its structure or wording should be changed.

307. The representative of the United Kingdom suggested in this connection that the last phrase of paragraph 1 should be transferred to the very beginning of that paragraph. The Working Group agreed with this suggestion.

308. The representative of the Union of Soviet Socialist Republics orally proposed that the words "and others responsible for the child" be inserted after the word "guardians" in paragraph 2 of article 8. The observer for Australia sub-amended the proposal of the Union of Soviet Socialist Republics to read: "as well as others responsible for the child".

309. After some discussion, the representative of the Union of Soviet Socialist Republics withdrew his amendment, and the Working Group adopted article 8 reading as follows:

> "1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
>
> 2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services 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."

19. Article 8 bis (Article 19)**

310. The Working Group had before it article 8 bis as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

> "1. The States Parties to the present Convention shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
>
> 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

311. The Chairman declared there was no major amendment proposed except for UNESCO's suggestion in E/CN.4/1989/WG./CRP.1 for the inclusion of the word "violence" before the word "injury" under paragraph 1; and the proposal made by the Branch for Advancement of Women in the same document for the inclusion of "including when necessary removing a child into protective custody" after the word "procedures" under paragraph 2.

312. The observer for Finland proposed the deletion of "while in the care of parent(s)... etc." from paragraph 1.

313. The delegations of Australia and the Netherlands declared they supported the initial text.

314. The Working Group adopted article 8 bis which reads as follows:

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

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

20. Article 9 (Article 17)**

315. The representative of the United States of America, acting as co-ordinator of a drafting group composed also of Turkey, Venezuela and Yugoslavia, informed the participants of the results of the work of this group in connection with various proposals made in regard to article 9, including those contained in E/CN.4/1989/WG.1/WP.2, E/CN.4/1989/WG.1/WP.40 and E/CN.4/1989/WG.1/WP.42.

316. In summarizing the outcome of the consultations held so far, the representative of the United States of America indicated that there were four basic proposals which should be now concentrated upon by the Working Group. One of the proposals, which the drafting group deemed unacceptable, sought to delete sub-paragraphs (a) to (e) of article 9 altogether. Another approach was that the original text of article 9 as adopted at first reading should be retained. One more suggestion was made to the effect that a new sub-paragraph (f) should be added to article 9 in which the idea of a strict confidentiality of any matter involving children was to be fixed. Finally, a proposal was also made to amend sub-paragraph (d) of article 9 by replacing the expression "indigenous population" by some alternative wording such as "indigenous people", "indigenous child" or "who is indigenous".

317. In the discussion that followed most of the participants expressed their desire not to depart from the language and basic provisions of article 9 as approved in the first reading, and no support was given to the proposal to delete all sub-paragraphs of the article.

318. With regard to the proposed changes of language of sub-paragraph (d), some speakers said they could not agree with the expression "indigenous people" but would be eventually ready to accept some other formulations. The proposal to replace the words "an indigenous population" by the words "who is indigenous" seemed to receive the greatest support.

319. With respect to the proposed addition of a new sub-paragraph on confidentiality (E/CN.4/1989/WG.1/WP.40), several participants expressed the view that this matter did not belong to article 9 and it was therefore not appropriate to discuss it in connection with this article, the whole thrust of which was aimed rather at the spread of information than at its limitation. It was said in this connection that this proposal might be very well received somewhere else in the Convention, especially in its article 19.

320. The representative of Venezuela said she was under the instructions from her Government to seek the inclusion of the proposed amendment on confidentiality to the draft convention. She would nevertheless agree not to insist on its inclusion into article 9 if she could be absolutely certain that this matter of confidentiality would be dealt with under articles 10, 11, 18 and 19 and be accordingly reflected therein.

321. The representative of the German Democratic Republic proposed to delete the words "including those" in the introductory part of article 9. While most speakers did not oppose this amendment, one participant said that he would be reluctant to agree with this deletion since it would then change the whole meaning of the article and would give it a more restrictive character. The Working Group consequently accepted a compromise suggestion of the representative of the Netherlands who proposed to replace the word "including" by the word "especially".

322. With regard to the amendment of UNESCO (E/CN.4/1989/WG.1/CRP.1) seeking to add the words "in particular promoting the ideals of the United Nations Charter" at the end of sub-paragraph (c), two delegations voiced their support for this proposal. However, more delegations opposed this amendment stating that this concern had been already covered in article 16 as well as in the introductory part of this same article which contained a reference to "international sources" of information.

323. The observer for Turkey stated that, since the introductory part of article 9 dealt adequately with the right of children to receive information through mass media, there was no need for the sub-paragraphs in article 9, and that it should not be the role of this Convention to give detailed guidance as to what the States parties should do in implementing the article. He then drew the attention of the Working Group to sub-paragraph (d) which mentioned "minority group" and "indigenous population". Since a consensus definition of these concepts had not been reached despite the efforts being deployed in international fora, he said the sub-paragraph would be non-applicable. He said it would be practical to delete all sub-paragraphs and leave article 9 only with its introductory part. If this was not acceptable, sub-paragraph (d) which was, in his view, not only useless but non-applicable as well, should be deleted.

324. The representative of Venezuela orally proposed three amendments to sub-paragraphs (a), (c) and (e) which were subsequently recognized by the Working Group as having a purely linguistic character and relating to the Spanish version only.

325. The Working Group then adopted article 9, as revised and amended, reading as follows:

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

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

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

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being bearing in mind the provisions of articles 7a and 8."

326. The observer for Turkey, upon the adoption of article 9, further stated that the article was adopted with sub-paragraph (d) making reference to terms upon which there were no agreed definitions. Reiterating his delegation's view, he said there would be no alternative by States parties but to interpret, under the circumstances, these terms according to their national law. Therefore, such a reservation might be felt necessary if and when the draft convention would be open to signature.

21. Article 9 bis (Article 8)**

327. The Working Group had before it article 9 bis as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

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

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

328. The Chairman declared that no major amendment was proposed except for the small changes suggested by the Secretariat in E/CN.4/1989/WG.2/CRP.1/Add.1, namely the suppression of brackets and addition of the word "including" before "nationality" under paragraph 1 and the deletion of the word "illegally" under paragraph 2.

329. The representatives of Argentina, Norway and the Netherlands accepted the suppression of brackets under paragraph 1 but insisted upon keeping the word "illegally" under paragraph 2. The observer for Australia agreed basically but pointed out that the word "illegally" would be meaningless with regard to its national legislation.

330. The observer for Mexico stated that the wording should be more explicit as to the commitments made by the States under paragraph 1 and that the biological elements of the identity should also be included.

331. The Working Group adopted article 9 bis keeping the changes under paragraph 1 and leaving paragraph 2 unchanged.

332. The final version of article 9 bis reads as follows:

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

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

22. Article 10 (Article 20)**

333. The observer for Egypt introduced the proposals with regard to article 10 submitted by the drafting group on adoption and family issues, composed of Argentina, Australia, Brazil, China, France, Italy, Netherlands, Pakistan, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and Venezuela (E/CN.4/1989/WG.1/WP.63). The proposals read as follows:

> "1. A child permanently or temporarily deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment shall be entitled to special protection and assistance provided by the State.
>
> 2. The States Parties to the present Convention shall in accordance with their national laws ensure alternative care for such child.
>
> 3. Such care could include inter alia "Kafala", foster placement, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

334. In introducing this proposal, the observer for Egypt mentioned that the drafting group, which worked as an open-ended body, had tried to incorporate into the proposed text the principal features of all legal systems, including the concept of "Kafala" from Islamic law. It was indicated that the second part of the original version had been divided into two paragraphs and simplified. The expression "alternative family care" was changed to "alternative care".

335. Many speakers expressed their appreciation for the work done by the drafting group. The representative of Iraq drew the attention of the Working Group to the El Dham system of care for children which existed in his country and which was different from all those mentioned in paragraph 3 of the article.

336. The representative of the United States of America proposed some editorial changes to the article, including the deletion of "The" before and of the words "to the present Convention" after the words "States Parties" in paragraph 2. The changes were accepted by the Working Group.

337. The representative of the Netherlands suggested that a reordering of the examples of child care should be made in paragraph 3, so that the term "Kafala" is placed after "foster placement". The Working Group accepted this proposal.

338. The representative of Norway proposed to use in paragraph 3 the expression "Kafala of Islamic Law" which is contained in the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally of 1986. The Working Group agreed with this proposal.

339. The representative of Venezuela proposed to exchange the order of words "permanently" and "temporarily" in the first paragraph. The proposal was accepted by the Working Group.

340. The observer for the Inter-American Children's Institute, in this connexion, suggested a separate consideration by the Working Group of children temporarily or permanently deprived of their environment.

341. A suggestion of Venezuela which sought to put "placement in suitable institutions" as the first example of measures of alternative care for children was not accepted by the Working Group. The representative of Venezuela indicated in this connection that all other forms of care for children applied in cases when any ties of the child with his or her parents were broken. Adoption therefore should not be envisaged unless proved that the child had been permanently abandoned.

342. The Working Group then adopted article 10 as proposed by the drafting group and as revised in the course of discussion. It reads as follows:

"1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include inter alia foster placement, Kafala of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

23. Article 11 (Article 21)**

343. A drafting group on adoption and family issues, composed of Argentina, Australia, Brazil, China, Egypt, France, Italy, Netherlands, Pakistan, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and Venezuela, was established for this article. The observer for Egypt, as co-ordinator of the group, introduced the proposal of that group relating to article 11 (E/CN.4/1989/WG.1/WP.62). The proposal read as follows:

"States which recognize and permit the system of adoption shall for the best interest of the child:

a) ensure that the adoption of a child is 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 legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

b) recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

c) ensure that, in intercountry adoption, placements, to the maximum extent possible, are made through competent authorities or agencies with application of safeguards and standards equivalent to those existing in respect of national adoption;

d) take all appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;

e) promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements."

344. In introducing this proposal the observer for Egypt drew the attention of the Working Group to the important changes made in the introductory part of the article which now refer explicitly only to those States parties in which the system of adoption is recognized and permitted. The provision in the original text with an obligation "to facilitate the process of adoption" had been deleted. Sub-paragraphs (b), (c) and (d) specifically related to the subject of intercountry adoption. It was also pointed out that, in view of the forthcoming international conference on adoption, the idea of promoting multilateral arrangements or agreements had been included in the article. The

observer for Egypt orally revised the beginning of the introductory part of the proposed article 11 to read: "States in which the system of adoption is recognized and permitted shall...".

345. The representative of the Netherlands orally proposed to delete the words "for the best interest of the child" from the introductory part of the article and to include into the article a new sub-paragraph (d) reading as follows: "ensure that in all cases of adoption the best interests of the child shall be their paramount consideration".

346. The representative of the Union of Soviet Socialist Republics proposed to insert the word "international" before the word "bilateral" in sub-paragraph (e).

347. The representative of Japan proposed to replace the word "only" by the words "in respect of the national law" and to replace the word "permissible" by the word "valid" in sub-paragraph (a).

348. The representative of France proposed to delete the word "arrangements" in sub-paragaraph (e) of the article.

349. The observer for Canada suggested that the word "Parties" should be inserted after the word "States" in the introductory part of the article.

350. The representative of Venezuela expressed the view that intercountry adoption should be treated as an extreme and exceptional measure and not as an "alternative means of child care", as it was put down in sub-paragraph (b). She also disagreed with some other provisions contained in sub-paragraphs (c) and (d). In her opinion, the provision relating to "improper financial gain" in sub-paragraph (d) implied that a "proper" financial gain resulting from intercountry adoption was permissible. The representative of Venezuela felt that the present text of this article opened the door to trafficking in children and suggested that further consultations should be held with regard to this proposal. She further stated that her delegation was unable to join in the consensus on article 11 and formally requested the adjournment of the debate on it. This request was supported by Honduras, Brazil and Mexico.

351. The representative of the Federal Republic of Germany proposed to replace the words "an alternative means" in sub-paragraph (b) by the words "an exceptional means".

352. Some other delegations opposed the postponement of the consideration of article 11 and indicated that the concerns of the delegation of Venezuela had been duly taken into account by the drafting group. It was also pointed out that the questions of trafficking in children had been adequately covered in article 18 quater of this draft convention.

Introductory Phrase

353. The observer for Egypt read out a text for the introductory phrase intended to meet the concerns of certain delegations. The text read as follows:

> "States in which the system of adoption is recognised and permitted shall for the (best) interests of the child:"

354. The representatives of France, Norway, the United States of America and Venezuela took the view that the word "best" should be retained in the text. The representatives of France and the United States of America also took the view that the text should read "States Parties" and not just "States". The representatives of Australia and the Netherlands suggested that the word "and" should be changed to "or" because it had not been the intention of the drafting group to make permission and recognition a double requirement for the application of the article; they were of the view that it was enough for States parties to either recognise or permit adoption. In view of the lack of opposition to the foregoing amendments and taking into account the sub-amendment of the observer for Egypt that the text should read "and/or", a consensus was reached in the Working Group to retain "best", to include "Parties" after "States" and that "/or" be inserted after the word "and".

355. The representatives of the Netherlands and Venezuela expressed the desire for the text to more clearly indicate that "best interests" should refer to the child and not to his or her parents. To meet this concern the representative of the United Kingdom of Great Britain and Northern Ireland proposed the following text for adoption:

> "States Parties which recognise and/or permit the system of adoption, and in the situation where adoption is seen as in the best interests of the child, shall:"

356. The observer for Finland indicated that it was not certain that the proposal of the representative of the United Kingdom of Great Britain and Northern Ireland would meet the concerns of the representatives of the Netherlands and Venezuela. The observer for Finland therefore suggested the adoption of the following text:

> "States Parties which recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:"

357. The observer for Finland indicated that the more simple construction of his proposal was clearer than the proposal of the United Kingdom of Great Britain and Northern Ireland and that making the best interests of the child "the" paramount consideration reflected international standards regarding child adoption. In view of the lack of opposition to this text, a consensus was formed to adopt it.

358. The text of the introductory phrase to article 11 as adopted during the second reading reads as follows:

> "States Parties which recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:"

Paragraph (a)

359. The representative of Japan indicated that for the reasons he had earlier explained to the Working Group he would have to reserve his government's right to make reservations on the paragraph if it was to be adopted as contained in document E/CN.4/1989/WG.1/WP.62.

360. Without any other comments, the paragraph was adopted as contained in E/CN.4/1989/WG.1/WP.62. The text of paragraph (a) of article 11 as adopted reads as follows:

> "a) ensure that the adoption of a child is 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 legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;"

Paragraph (b)

361. The text of paragraph (b) as contained in document E/CN.4/1989/WG.1/WP.62 was adopted without comment to read as follows:

> "b) recognize that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;"

362. Subsequent to the adoption of the paragraph the observer for Canada made a statement for the report concerning his delegation's interpretation of the obligations raised by the paragraph. The statement reads as follows:

"It is the view of the Canadian delegation that the phrase in article 10 (2), that in any consideration of alternative family care, due regard should be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background, should be applied equally to all instances of adoption as provided for in article 11."

363. The representative of Brazil indicated that her delegation was in agreement with the views expressed by the observer for Canada in the foregoing declaration.

Paragraph (c)

364. The observer for Egypt read out a text for paragraph (c) intended to meet the concerns of certain delegations. The text read as follows:

"c) ensure that, in intercountry adoption, the adopted child benefits from the safeguards and standards equivalent to those existing in respect of national adoption;"

365. The representative of Norway indicated that he would have preferred the retention of the words "to the maximum extent possible" as contained in document E/CN.4/1989/WG.1/WP.62. He explained that the retention of the words were important because in reality it was not certain that States could absolutely "ensure" equivalent safeguards and standards. However, in the interest of achieving a consensus he did not insist on his suggestion.

366. The text of paragraph (c) of article 11 as adopted reads as follows:

"c) ensure that the child concerned by adoption in another country enjoys safeguards and standards equivalent to those existing in the case of national adoption;"

Paragraph (d)

367. The text of paragraph (d) as contained in document E/CN.4/1989/WG.1/WP.62 was adopted without comment to read as follows:

> "(d) take all the appropriate measures to ensure that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it;"

Paragraph (e)

368. The observer for Egypt read out a text for paragraph (e) intended to meet the concerns of certain delegations. The text read as follows:

> "e) promote, where appropriate, the objectives of this article by concluding bilateral, multilateral or international arrangements or agreements and endeavour within this framework to ensure that the placement of a child in another country be carried out by competent authorities or organs."

369. The representative of Italy took the view that the word "international" was not necessary because it was "States Parties" that were being asked to act and that any arrangements or agreements they made would, by definition, be international. The representative of the Union of Soviet Socialist Republics took the view that without "international" it would not be clear that the arrangements or agreements were supposed to be international. The Acting-Chairman explained that, since the paragraph was contained in a convention, the obligation to make arrangements or agreements was directed only at States parties and that any such actions they took would, by their very nature, be international. Given the Acting-Chairman's interpretation of the obligations established by the paragraph and in order to allow a consensus to be achieved, the representative of the Union of Soviet Socialist Republics did not insist on the inclusion of the word "international".

370. The text of paragraph (e) of article 11 as adopted during the second reading reads as follows:

> "e) promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs."

24. Article 11 bis (Article 22)**

371. The Working Group had before it the following text of article 11 bis as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

> "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."

372. The suggestions made in the course of the technical review included three gender-neutrality amendments and the deletion of the words "to the present Convention" in the first and second sentences of the article. It was also suggested that the Working Group should consider whether the word "appropriate" was to be maintained in three instances before the words "measures", "protection" and co-operation" in the first and second sentences.

373. The observer for UNESCO proposed orally an amendment which sought to insert, after the words "humanitarian assistance" in the first sentence, the words "and has effective access to and receives education training".

374. Several delegations opposed this amendment on procedural grounds stating that this substantive proposal had not been tabled in due time and therefore it should not be considered by the Working Group. Some other delegations, however, argued that, in view of the importance of the matter, this amendment merits further consideration.

375. The representative of Brazil suggested that the proposal of UNESCO should be considered by the drafting group on articles 15 and 16 dealing with questions of education.

376. The observer for UNESCO indicated that he would be ready to withdraw his amendment if it causes too great difficulties for the Working Group.

377. At the proposal of the Chairman, a drafting group composed of the Federal Republic of Germany, Senegal, the United States of America, the Union of Soviet Socialist Republics and Venezuela was established to elaborate proposals with regard to article 11 bis.

378. The representative of the Federal Republic of Germany introduced a proposal by the drafting group (E/CN.4/1989/WG.1/WP.58/Rev.1) which contained the text of article 11 bis reading as follows:

"1. States Parties 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 or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or, with the consent of the State Party concerned, non-governmental organizations to protect and assist such a child and to trace the parents or other members of the family of an unaccompanied refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention."

379. In introducing this proposal the representative of the Federal Republic of Germany explained that the original text of this article as adopted at first reading had been split into two paragraphs. It was also indicated that the expression "close relatives" which caused difficulties to some delegations, had been replaced by the words "any other person" and "other members of the family". In the second part of the article which became paragraph 2, the introductory part had been deleted. It was pointed out that the drafting group had introduced another substantive amendment to the text of article 11 bis by which the obligation to co-operate with non-governmental organizations was made dependent upon the consent of the State party.

Paragraph 1

380. The Working Group then adopted paragraph 1 of article 11 bis as proposed by the drafting group to read as follows:

> "1. States Parties 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 or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and in other international human rights or humanitarian instruments to which the said States are Parties."

Paragraph 2

381. The representative of Italy proposed to add at the end of the first sentence in paragraph 2 the following: "or to help an accompanied child for the same aim".

382. Several participants, including the representatives of Sweden, Canada, Portugal, United States of America and the observer for the United Nations High Commissioner for refugees opposed the new provision of paragraph 2 which provided for the consent of the State party. It was pointed out that the expression "as appropriate" in this paragraph was more than adequate for this purpose.

383. The representative of India proposed to add the word "by" before the words "non-governmental organizations" in paragraph 2.

384. The representatives of China, Senegal and Turkey took the view that the reference to the consent of States parties for co-operation with non-governmental organizations was of fundamental importance. They further indicated that they would not be able to join a consensus in

support of the paragraph if that reference were to be deleted. Conversely, the representatives of Canada, Portugal and Sweden argued for the deletion of the reference to consent. As a possible solution, the observer for Sweden, supported by the representatives of Argentina, Canada and Portugal suggested the deletion of both the reference to consent and the reference to non-governmental organizations, as this would eliminate the issue from the paragraph altogether and leave it up to States parties to act as they choose. The representatives of China and Senegal, however, were unable to agree to this solution and the representative of Sweden, in a spirit of compromise, did not insist on his suggestion.

385. The representative of the Federal Republic of Germany indicated that he did not share the views expressed by the observer for Canada regarding the question of States parties consenting to co-operate with non-governmental organizations. He stated that as sovereign States, States Parties should be in a position to give consent to co-operating with non-governmental organizations only if they saw it fit to do so. The representative of the Federal Republic of Germany indicated that he agreed with the concern raised by the representative of Italy about the question of family reunification, and to meet that concern he suggested the deletion of the word "unaccompanied" in order that the paragraph may cover all refugee children.

386. In an effort to break the deadlock, the representative of the United Kingdom suggested that the reference to consent be deleted and that the words "they consider" be inserted between "as" and "appropriate" on line 1 of the paragraph. He indicated that by clarifying who decided whether co-operation was appropriate it would not be necessary to mention consent expressly while at the same time meeting the concerns of States who felt that their consent was essential. The representative of the Union of Soviet Socialist Republics supported this solution for the reasons expressed by the representative of the United Kingdom. In view of the lack of opposition to the proposal made by the representative of the United Kingdom, a consensus was formed in the Working Group to insert the words "they consider" between the words "as" and "appropriate".

387. The representative of Venezuela agreed with the representative of Senegal in proposing that the paragraph should be limited in scope to cover only non-governmental organizations in consultative status with the Economic and Social Council of the United Nations. She suggested that in so doing States parties would be assured of co-operating with non-governmental organizations on a consistent standard. The representative of the Union of Soviet Socialist Republics also supported this proposal and further pointed out that there were some non-governmental organizations, such as terrorist organizations, with which States parties should not be allowed to co-operate. Consensus was reached to limit the scope of the reference to non-governmental organizations in view of the strong feelings of delegations in favour of such a limitation and in spite of the fact that it was pointed out that some non-governmental organizations deliberately chose not to be associated with the United Nations system.

388. Further to the comments of the representative of the Federal Republic of Germany regarding the reference to refugee children, the representative of Italy suggested that the word "any" should replace the word "unaccompanied" in order to give the reference to refugee children as broad a scope as possible. The proposal was supported by the observer for Canada. Although the representative of China had reservations about this proposal, in a spirit of compromise, he did not insist and a consensus was reached in the Working Group in favour of adopting the proposal of the representative of Italy.

389. The text of paragraph 2 of article 11 bis was adopted to read as follows:

> "2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or

other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention."

25. Article 12 (Article 23)**

390. The Working Group had before it a text of the article as adopted during the first reading incorporating suggested revisions by UNICEF and the technical review carried out by the Secretariat (E/CN.4/1989/WG.1/WP.2). The text read as follows:

1. (The) States Parties (to the present Convention) recognize that a mentally or physically disabled child should enjoy (a full and decent life) a decent life as normal and full as possible, in conditions which ensure (his) dignity, promote (his) self-reliance, and facilitate (his) the child's active participation in the community. He or she shall enjoy, to the maximum degree of feasibility, all of the rights set forth in this Convention.

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 or her care, of assistance (for which application is made and) and which is [appropriate] to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services,

rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her 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."

391. The representatives of Italy, the Netherlands and Kuwait expressed support for the adoption of the revised text as contained in document E/CN.4/1989/WG.1/WP.2. In particular, the representative of Italy did so because she took the view that the article, as revised, would reflect existing international standards regarding disabled children.

Paragraph 1

392. The representative of Norway expressed a preference for the text of paragraph 1 as adopted during the first reading and indicated that the sentence proposed by UNICEF for addition to the paragraph would make it repetitive. The observer for New Zealand also expressed a preference for the text as adopted during the first reading, but his main concern was that the proposed new sentence implied a limitation on the obligations of States parties contained in the paragraph. The representative of India supported both of the foregoing opinions.

393. The observer for Sweden also agreed with the positions expressed by the representatives of Norway and New Zealand and further stated that he did not support the inclusion of the words "a decent life as normal and full as possible" in the paragraph. The observer for Canada agreed with the observer for Sweden, in particular, because he took the view that the inclusion of the word "normal" in this context would be inappropriate since it would imply that disabled children were basically abnormal. He further stated that UNICEF's intent in proposing the addition of the final sentence was already covered by article 4.

394. In view of the fact that the delegations in support of the revised text contained in document E/CN.4/1989/WG.1/WP.2 did not insist, consensus was reached on a text for the paragraph taking into account concerns raised in the foregoing debate.

395. The Working Group then proceeded to adopt paragraph 1 of article 12 which reads as follows:

> "1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community."

Paragraph 2

396. The representative of the United States of America proposed the retention of the words "for which application is made and" because he felt that otherwise States parties would be obliged to extend care to children who did not want it. The representatives of Australia and Norway argued that the words should not be retained.

397. The observer for Sweden agreed with the representatives of Australia and Norway and indicated that the retention of the word "appropriate" should meet the concerns of the representative of the United States of America. The representative of the Federal Republic of Germany also suggested that "appropriate" be retained. The representative of the United Kingdom suggested that the word "appropriate" be replaced by the word "available" and that the words "for which application is made and" should be deleted.

398. The representative of the United States of America took the view that the word "application" did not impose a great burden on applicants because by his understanding of the word in this context it meant a simple request. He also indicated that if the words referring to application had to be deleted then, although it changed the sense of the paragraph, he would be willing to support the suggestion by the representative of the United Kingdom. The representative of the United States of America further stated that his preference remained for the text as adopted during the first reading. The representative of India also expressed his preference for the old text and agreed that the suggestion by the representative of the United Kingdom would change the sense of the paragraph.

399. The representative of Ireland proposed that the words "and ensure" and "for which application is made and" be deleted and that the words "as necessary, facilitate" be inserted between "encourage" and "the extension". The representative of the United States of America and Australia supported this proposal.

400. The observer for Canada observed that in the old text the right of disabled children to care was only limited by resources but that in the proposal by the representative of Ireland the right itself was qualified. As a result of this, the observer for Canada stated that he was unable to support the proposal and that he therefore supported the old text. The observers for the Netherlands and Norway expressed similar opinions. The representative of Norway did so on the understanding that the word "application" did not imply complicated bureaucratic procedures but meant a simple request.

401. In view of the fact that the delegations in support of the revised text contained in document E/CN.4/1989/WG.1/WP.2 did not insist, consensus was reached on a text for the paragraph taking into account concerns raised in the foregoing debate.

402. The Working Group then proceeded to adopt paragraph 2 of article 12 which reads as follows:

"2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension to the eligible child and those responsible for his or her 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."

Paragraphs 3 and 4

403. Paragraphs 3 and 4 were adopted without debate. The text of paragraphs 3 and 4 of article 12 as adopted during the second reading reads as follows:

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

26. Article 12 bis (Article 24)**

404. The drafting group composed of Australia, Mexico, the Philippines and Venezuela submitted a proposal (E/CN.4/1989/WG.1/WP.64) which read as follows:

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

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

(a) To diminish infant and child mortality,

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

(c) To combat disease and malnutrition including within the framework of primary health care, through inter alia the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution,

(d) To ensure appropriate health care for expectant mothers,

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use, of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents,

(f) To develop preventive health care, guidance for parents, and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties shall ensure that a child shall not be subject to any medical or scientific experimentation or treatment unless it is with the free and informed consent of the child or where appropriate that of the child's parents. In any case, such experimentation or treatment shall not be adverse to the child and shall be in the furtherance of child health.

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

405. In introducing this proposal the observer for Australia orally revised the text of paragraph 1 by deleting the words "medical and rehabilitation" and by inserting the words "for the treatment of illness and rehabilitation of health" at the very end of the first sentence, as was proposed by the delegation of Venezuela. It was also mentioned that a reference to environmental pollution in sub-paragraph (c) of paragraph 2 was made at the proposal of the delegation of Austria. The proposal submitted by Mexico (E/CN.4/1989/WG.1/WP.30) was included in sub-paragraph (f) of paragraph 2. A new paragraph 4 was included in article 12 bis at the suggestion of the Philippines (E/CN.4/1989/WG.1/WP.46). It was also indicated that the word "progressively" in paragraph 4 of the article as adopted at first reading (which now becomes paragraph 5) was deleted by the drafting group.

406. In answer to the question by the representative of the United States of America about the reasons for which the words "for financial reasons" had been omitted in paragraph 1, the observer for Australia said that a provision to this effect had already been included in article 5 as adopted at second reading.

407. The observer for of Sweden orally amended sub-paragraph (d) of paragraph 2 to read: "To ensure appropriate health care before and after delivery". This amendment was then sub-amended by the representative of the United Kingdom to read: "To ensure appropriate pre- and post-natal health care for mothers and their children". Both proposals were subsequently withdrawn.

408. The Working Group then adopted paragraphs 1 to 3 of article 12 bis as proposed in E/CN.4/1989/WG.1/WP.64 and as revised.

409. With regard to paragraph 4 several oral amendments were put forward.

410. The representative of the United States of America proposed to replace the word "adverse" in the second sentence by the word "harmful" or "injurious". Subsequently, this part of the sentence was reworded to read: "...shall not have harmful consequences for the child...".

411. The observer for the Netherlands suggested the deletion of the words "or treatment" in the first sentence and of the words "shall be in the furtherance of child health" at the end of the paragraph.

412. Instead of deleting the word "treatment" it was later proposed by Sweden to add after it the words "of an experimental nature".

413. Another suggestion relating to the end of the paragraph was to replace the words "child health" by "public health". The representative of the United Kingdom sub-amended this proposal by replacing the words "public health" by "medical knowledge". Finally, the observer for Australia proposed to revise the end of paragraph 4 to read: "...and shall be in the furtherance of the health of children and in accordance with any relevant ethical guidelines and rules".

414. It was suggested by the delegation of Portugal and subsequently seconded by several more speakers that the words "or legal guardians" should be inserted after the words "child's parents".

415. The representative of the Union of Soviet Socialist Republics expressed the view that there should be no alternative as to whose consent was needed for the child to be subject to medical or scientific experimentation. He proposed to replace "or" by "and" so that the consent of both the child and his or her parents was to be sought.

416. The observer for Canada pointed out the need for some reversal in the first sentence of the paragraph so that the consent of the child's parents is sought first and only then, where appropriate, that of the child. He also drew the attention of the Working Group to the fact that in emergency cases the consent cannot be obtained immediately and described the instances when the consent of parents may not be obtained for religious or similar reasons.

417. The representative of Venezuela stated that her delegation would not be able to join in the consensus on this paragraph since the adoption of it in its present form might, in her view, open a door to abuse. She suggested that consultations on this matter should be continued with the participation of experts from the World Health Organization and that for the time being article 12 bis should be adopted without paragraph 4.

418. This view was shared by the delegation of Poland which also expressed doubts as to whether the Working Group was competent enough to express a judgement on this matter.

419. The representative of France stated that in the absence of instructions from his Government his delegation was unable to take a definite decision and, therefore, proposed to dissociate paragraph 4 from article 12 bis.

420. The representative of Ireland stated that his delegation favoured the inclusion of paragraph 4 into article 12 bis and would, therefore, support the proposal to hold further consultations.

421. The Chairman ruled that paragraph 4 was deleted from article 12 bis.

422. The representatives of Venezuela, the Philippines and the United States of America expressed their regret that consideration of paragraph 4 had been discontinued. The representative of Norway stated in this connection that his delegation strongly objected to the ruling of the Chairman.

423. The Australian delegation stated that while it would have been preferable if a special paragraph on medical experimentation had been included in article 12 bis, its absence would not leave children unprotected. Other paragraphs in this article and other articles in the convention more generally, clearly prohibited medical experimentation not in the best interests of the child.

424. The Working Group then adopted paragraph 5 of E/CN.4/1989/WG.1/WP.64 with the addition of the word "progressively" after the word "achieving". This paragraph thus became paragraph 4 of article 12 bis.

425. Article 12 bis as adopted reads as follows:

> "1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. The States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
>
> 2. States Parties shall pursue full implementation of this right and in particular, shall take appropriate measures:
>
> (a) To diminish infant and child mortality,
>
> (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care,

(c) To combat disease and malnutrition including within the framework of primary health care, through inter alia the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution,

(d) To ensure appropriate health care for expectant mothers,

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use, of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents,

(f) To develop preventive health care, guidance for parents, and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

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

27. Article 12 ter (Article 25)**

426. The Working Group had before it a text (contained in document E/CN.4/1989/WG.1/WP.2) of the article as adopted during the first reading which included a suggested linguistic revision. The text read as follows:

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

427. After brief comments by the representatives of the Union of Soviet Socialist Republics and Venezuela respectively about the translation of the word "placed", the revised text as contained in E/CN.4/1989/WG.1/WP.2 was adopted. The text of article 12 ter as adopted during second reading reads as follows:

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

28. Article 13 (Article 26)**

428. The Working Group had before it a text of the article as adopted during the first reading incorporating suggested revisions by UNICEF and the technical review carried out by the Secretariat (E/CN.4/1989/WG.1/WP.2). The text read as follows:

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

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

429. The representative of Venezuela orally proposed that the first two lines of paragraph 1 of article 13 read as follows:

"States Parties shall recognize for every child, in accordance with the domestic legislation of each country, the "

and further proposed that paragraph 2 read as follows:

"2. The benefits referred to in this article shall be granted taking into account the national resources available and the economic situation of the child or of the persons responsible for his or her maintenance".

430. The representatives of Australia, the Netherlands, Norway, the United Kingdom and the United States of America expressed support for the revised text as contained in document E/CN.4/1989/WG.1/WP.2.

431. The representative of the Union of Soviet Socialist Republics suggested that the Convention would not lose much by the deletion of article 13 as contained in document E/CN.4/1989/WG.1/WP.2. He took this view because he felt that the concerns covered by article 13 were already adequately covered by articles 8 and 14 of the Convention. He further stated that the article as contained in document E/CN.4/1989/WG.1/WP.2 did not take into consideration the considerable impact of private and voluntary charitable organizations. However, in view of the argument by the observer for Sweden that the revised text in E/CN.4/1989/WG.1/WP.2 was consistent with article 9 of the International Covenant on Economic, Social and Cultural Rights and the argument by the observer for the International Labour Organisation that article 13 would constitute the only mention in the Convention of the right of children to social security, the representative of the Union of Soviet Socialist Republics did not insist on his suggestion.

Paragraph 1

432. With regard to the proposal by the representative of Venezuela, the representative of Norway expressed a preference for the revised text as contained in E/CN.4/1989/WG.1/WP.2 because he felt that the reference to domestic legislation contained in the Venezuelan proposal would weaken the paragraph. The representative of the Federal Republic of Germany expressed a preference for the text adopted during the first reading and indicated that since States parties would be deciding what was "appropriate" the old wording would meet the concerns of the representative of Venezuela. The representative of Senegal expressed a desire for the text to more closely resemble article 9 of the International Covenant on Economic, Social and Cultural Rights. However, he indicated that he would otherwise be willing to support the revised text contained in E/CN.4/1989/WG.1/WP.2.

433. The observer for Kuwait supported the proposal by the representative of Venezuela. The representative of the Union of Soviet Socialist Republics indicated that the reference to domestic legislation could not be viewed as weakening the paragraph because such a view would be inconsistent with the wording of article 2 (1) of the International Covenant on Economic, Social and Cultural Rights. The representative of Poland indicated a willingness to support the proposal by the representative of Venezuela but with the substitution of the words "the domestic legislation of the country" with the words "national considerations".

434. The observer for Canada indicated that there was no need to have a qualifying phrase in this paragraph because the Convention already contained a qualifying article in the form of article 5. He took the view that the word "resources" in that article was enough to meet the concerns of delegations who felt a need to qualify this paragraph.

435. After brief consultations, the representatives of Sweden and Venezuela proposed the addition of the words "in accordance with their national legislation" to the end of the revised text of paragraph 1. The observer for Australia expressed support for this proposal but indicated that he would rather the word "law" were used instead of "legislation" as the latter word could be construed to refer only to existing legislation.

> "1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law."

Paragraph 2

436. The representative of Senegal took the view that there was no need for a paragraph 2 because it would be enough to simply set out the right to social security, as envisaged in paragraph 1, and leave it to special international instruments and States parties to settle the modalities for the achievement of the right. He indicated that, as envisaged, paragraph 2 added nothing to paragraph 1.

437. The observer for the International Labour Organisation expressed the view that the position taken by the representative of Senegal was a valid one. The representatives of Poland and the Union of Soviet Socialist Republics supported the suggestion of the representative of Senegal because they felt that the concerns covered by paragraph 2 were already adequately covered by articles 8 and 14. The representative of Norway expressed a similar opinion. He took the view that the reference in paragraph 1 to national law allowed States parties to establish the enjoyment of the right as they saw fit.

438. The observer for Sweden indicated that paragraph 2 should be retained because it covered the degree of realization of the right established by paragraph 1. The representatives of India, Ireland and the United States of America supported the retention of paragraph 2 because they felt that it clarified the otherwise inexact terms of paragraph 1. The representative of India supported the retention stating that India's declaration to article 9 of the International Covenant on Economic, Social and Cultural Rights would also apply if paragraph 2 were adopted.

439. The representative of the Netherlands sought the retention of paragraph 2 as envisaged, in particular, so as not to create the situation in which States parties would be obliged to grant benefits to all children, including those of wealthy parents, regardless of their financial circumstances. The representative of the United Kingdom also sought the retention of paragraph 2.

440. In view of the Working Group's inability to reach consensus, the Chairman suspended the debate on paragraph 2 and established a drafting group to try to resolve the different positions taken by delegations.

441. The representative of the Netherlands, speaking on behalf of the informal drafting group, announced the outcome of consultations held in respect to paragraph 2 of article 13. A proposal was made to delete the words "the national resources available and" since there was some repetition with article 5 as already adopted.

442. The representative of India stated that his delegation would be ready to accept this proposal with the understanding that the provision of article 5 on the availability of resources equally applied to this paragraph.

443. The representative of Venezuela orally proposed to amend paragraph 2 by inserting the word "economic" before the word "circumstances" and by replacing the words "and persons responsible" by "or persons responsible".

444. After some discussion, the representative of Venezuela withdrew her amendments and the Working Group adopted paragraph 2 of article 13 reading as follows:

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

29. Article 14 (Article 27)**

445. The Working Group had before it the following text of article 14 as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

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

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

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

4. States Parties to the present Convention shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a different state from the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements as well as the making of other appropriate arrangements."

446. The revisions suggested to this article in the course of the technical review (E/CN.4/1989/WG.1/WP.2) included the deletion of "The" before, and of the words "to the present Convention" after, the words "States Parties", in paragraphs 1, 3 and 4 of the article.

447. It was proposed by UNICEF (E/CN.4/1989/WG.1/CRP.1) to insert the words "to the maximum of their available resources" after the words "appropriate measures" in paragraph 3. This proposal was not accepted by the Working Group.

448. Another suggestion endorsed subsequently by the Working Group was made by UNESCO (E/CN.4/1989/WG.1/CRP.1) to the effect that the words "in a different State from the child" in paragraph 4 be reformulated to read: "in a State different from that of the child".

449. The Working Group then adopted article 14, as revised, reading as follows:

> "1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
>
> 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
>
> 3. States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements as well as the making of other appropriate measures."

30. Article 15 (Article 28)**

450. The Working Group had before it a text of article 15 as adopted during the first reading incorporating suggested revisions by UNESCO and the technical review carried out by the Secretariat (E/CN.4/1989/WG.1/WP.2). The text read as follows:

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

(a) facilitate the provision of early childhood care and education, using all possible means, in particular for the disadvantaged child, in order to contribute to the young child's growth, development and to enhance his or her later success at other levels of education,

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

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

(d) make higher education equally accessible to all on the basis of capacity by every [appropriate] means, in particular by the progressive introduction of free education.

2. States Parties shall take all [appropriate] measures to ensure that school discipline is administered in a manner (reflective of) consistent with the child's human dignity and in conformity with the present Convention.

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

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

451. The Working Group also had before it a proposed text for article 15 (E/CN.4/1989/WG.1/WP.61) submitted by the drafting group, consisting of Canada, Colombia, Italy, Norway, Yugoslavia, the ILO, UNESCO and non-governmental organizations, established to consider the article. The text read as follows:

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

(a) make primary education compulsory and available free to all;

(b) develop different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) make higher education equally accessible to all on the basis of capacity by every appropriate means, in particular by the progressive introduction of free education;

(d) make educational and vocational information and guidance available and accessible to all children;

(e) take measures to encourage regular attendance at schools and the reduction of the drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

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

452. In introducing the proposal the observer for Canada indicated that the text contained in E/CN.4/1989/WG.1/WP.61 was essentially based on the text as adopted during the first reading but that it incorporated, in particular, suggestions by the representative of Venezuela and suggestions to make the text consistent with the International Covenant on Economic, Social and Cultural Rights.

453. The observer for Canada indicated that the chapeau to paragraph 1 was based on the one adopted during the first reading. With regard to sub-paragraph 1(a), he indicated that it was based on sub-paragraph 1(a) as adopted during the first reading but that it had been re-worded to make it consistent with the terminology of the International Covenant on Economic, Social and Cultural Rights. He also indicated that the words "as early as possible" had been eliminated from the sub-paragraph because the chapeau to the paragraph already contained a qualifying phrase. The observer for Canada further indicated that sub-paragraphs 1(d) and 1(e) were additions to the

article to take into account concerns raised by some delegations. In addition, the observer for Canada indicated that paragraphs 2 and 3 as contained in E/CN.4/1989/WG.1/WP.61 corresponded with, and were unchanged from, paragraphs 2 and 4 respectively of the text adopted during the first reading. He indicated that old paragraph 3 had been omitted because the adoption of article 5 bis of the Convention met the concerns covered by that paragraph.

Paragraph 1

454. With regard to sub-paragraph (b) as contained in E/CN.4/1989/WG.1/WP.61 the representative of Japan suggested that the word "progressive" be inserted in line 4, just before the word "introduction", in order to make the text more consistent with article 13 of the International Covenant on Economic, Social and Cultural Rights. The representative of the United States of America suggested that the beginning of the sub-paragraph as contained in document E/CN.4/1989/WG.1/WP.61 should be changed back to the way it was adopted during the first reading by replacing the word "develop" by the words "encourage the development of". This latter proposal gained the support of the representatives of Canada, Ireland, Japan and the Netherlands. The representative of UNESCO stated that UNESCO sought the deletion of the words "and encourage the development of" because their retention would make the sub-paragraph weaker than international standards, notably the UNESCO convention on discrimination in education.

455. Also in connection with sub-paragraph (b) as contained in E/CN.4/1989/WG.1/WP.61, the observer for the Netherlands expressed concerns about the adoption of the sub-paragraph if the word "free" was to be construed as meaning free of cost. The representative of Japan indicated that he interpreted the reference in the sub-paragraph to free education as merely giving an example of how education could be made accessible to all children, and not to mean that free education was a measure which States parties were obliged to adopt.

456. The observer for the Netherlands raised concerns regarding sub-paragraph (c) as contained in E/CN.4/1989/WG.1/WP.61 because although it was his country's policy to provide financial assistance for students pursuing higher

education it was not its policy to make higher education free of cost. The representative of the United Kingdom of Great Britain and Northern Ireland agreed with the position expressed by the observer for the Netherlands and therefore suggested that the words "as appropriate" be added to the end of the sub-paragraph. The representatives of Ireland, Japan and the United States of America expressed support for this proposal. The observer for Canada however indicated that he could not support the proposal of the United Kingdom of Great Britain and Northern Ireland because the sub-paragraph as contained in E/CN.4/1989/WG.1/WP.61 already contained the qualifying word "appropriate". The representative of Venezuela suggested that the sub-paragraph be adopted as contained in E/CN.4/1989/WG.1/WP.61.

457. In light of the foregoing debate the observer for the Netherlands suggested that the sub-paragraph be maintained as it was adopted during the first reading. The observer for Finland agreed with this position, in particular, because the reference to "progressive introduction" contained in E/CN.4/1989/WG.1/WP.61 was taken from the International Covenant on Economic, Social and Cultural Rights, a position which he felt had become outdated. The representative of Japan was also willing to support this proposal. With regard to both the old and the new texts, the representative of Portugal proposed that the word "equally" be deleted because its use in this context alone implied that other rights were not to be enjoyed equally.

458. The observer for the Netherlands welcomed the insertion of new sub-paragraph (e), contained in E/CN.4/1989/WG.1/WP.61, into the article. The observer for Sweden questioned whether the sub-paragraph as phrased would not promote the punishment of children who failed to attend school regularly. The observer for Canada indicated that the sub-paragraph was not meant to have such an effect, and that it was meant to promote positive measures to encourage regular attendance of school children. Nevertheless, the observer for Canada was of the view that article 18 sixto met the concerns raised by the observer for Sweden.

459. The representative of the United States of America indicated that since it would be inappropriate for this sub-paragraph to apply to tertiary education onwards he suggested that it be limited to primary and secondary education. The representative of France took the view that the sub-paragraph should be left as it was drafted in E/CN.4/1989/WG.1/WP.61 because even in

tertiary education there were students who dropped out for the wrong reasons and young students whose self-discipline could not be taken for granted.

460. The observer for Kuwait indicated that sub-paragraph (e) was not necessary since the concerns it covered would be taken care of by paragraph 2 as envisaged in E/CN.4/1989/WG.1/WP.61.

461. The Working Group adopted paragraph 1 in the light of the foregoing debate. The text of paragraph 1 of article 15 as adopted during the second reading reads as follows:

> "1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
>
> (a) make primary education compulsory and available free to all;
>
> (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
>
> (c) make higher education accessible to all on the basis of capacity by every appropriate means;
>
> (d) make educational and vocational information and guidance available and accessible to all children;
>
> (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates."

Paragraphs 2 and 3

462. With regard to paragraph 2, the observer for the Netherlands asked for some clarification as to the use of the words "in conformity with the present Convention" on the last line of the paragraph.

463. The representative of Ireland took the view that he would prefer the text of article 15 to retain the text of former paragraph 3, as adopted during the first reading because it expressly mentioned parents' rights regarding the education of their children. The observer for the Holy See also questioned the omission of that paragraph. The observer for Australia indicated that the paragraph had been omitted from the proposal contained in E/CN.4/1989/WG.1/WP.61 because the drafting group took the view that article 5 bis of the Convention met the concerns covered by that former paragraph.

464. The observer for Canada explained that through the use of this phrase, the aim of the drafting group was to reiterate the protection of the child guaranteed by the provisions of the Convention, in case school discipline was transformed into cruel and degrading treatment.

465. The Working Group then adopted both paragraphs 2 and 3 which read as follows:

> "2. States Parties shall take all the appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
>
> 3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries."

32. Article 16 (Article 29)**

466. The Working Group had before it the proposal of the drafting group composed of Canada, Colombia, Italy, Norway, Yugoslavia, the ILO and UNESCO (E/CN.4/1989/WG.1/WP.60) which read as follows:

> "1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents, and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, religious and indigenous groups;

(e) The development of respect for the natural environment.

2. No part of this article or article 15 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

467. On behalf of the drafting group, the observer for Canada explained that, in drafting the proposal, their objective was to remain faithful to the first text as much as possible, without, however, neglecting the adequate provisions of the International Covenant on Economic, Social and Cultural Rights as well as the suggestions made in the Technical Review. He added that, consequently, the chapeau remained similar to the first draft; sub-paragraph (a) was inspired by article 13 of the International Covenant on Economic, Social and Cultural Rights; sub-paragraph (b) contained elements from article 13 as well as the United Nations Charter; sub-paragraph (c) reflected old paragraph 2 with the addition of the words "... the development of respect for the child's parents"; sub-paragraph (d) reflected old paragraph (b) with the addition of

the words "understanding" and "equality of sexes"; sub-paragraph (e) resulted from a separation from old (c); and that paragraph 2 related to the protection for the establishment of private schools, in conformity with the remarks made by some delegations.

468. Following this statement the chapeau, sub-paragraph (a) and sub-paragraph (b) were adopted.

469. With regard to sub-paragraph (c) the observer for Canada read the new text including an amendment proposed by Yugoslavia:

> "(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she originates, and for civilizations different from his or her own."

470. This proposal raised doubts among certain delegations (Argentina, the Federal Republic of Germany and the United States of America) who expressed their concern over the inclusion of a concept which, according to them, was already covered in sub-paragraph (c) through a different wording and that furthermore, a differential education such as the one proposed by this amendment could create certain problems.

471. The delegate of the United Kingdom proposed the inclusion of the words "and/or" before the new phrase and the use of the word "may" before the verb "originate" in order to create more flexibility with regards to the curriculum that is to be applied to the child.

472. The delegate of Ireland proposed the following alternative:

> "... for the child's parents, for the cultural identity, language and values of the child's society or country of origin, for the national values...".

473. The representative of India endorsed this proposal.

474. Following the statement made by the delegate of Yugoslavia on the flexible approach she would adopt towards any one of these proposals, sub-paragraph (c) was adopted to read as follows:

"(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate and for civilizations different from his or her own;"

475. With regard to sub-paragraph (d), the delegate of the United States of America declared that he would prefer a different wording in the last two lines of the sub-paragraph and formulated his proposal as follows:

"(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all members of the human race, without discrimination."

476. While the inclusion of the word "understanding" drew unanimous support, the change proposed for the last two lines raised some doubts among the delegations of Yugoslavia, the Federal Republic of Germany and Italy, whereas the Holy See, Venezuela and Argentina stated that they could go along with the new text.

477. In order to reach a compromise, the observer for Australia proposed that after the words "all peoples" the following phrase be added:

"... without discrimination on the basis of ethnicity, religion, or indigenous origins;"

478. The observer for Canada proposed that after the words "all peoples", be added:

"... ethnic, national and religious groups and persons of indigenous origin;"

479. Given the absence of objection, sub-paragraph (d) was adopted to read as follows:

"(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin."

480. With regard to paragraph 2 of article 16, the observer for the Netherlands proposed the inclusion of a reference to article 15 in the beginning of the paragraph, along with the reference made to paragraph 1 of article 16.

481. Paragraph 2 was adopted to read as follows:

"2. No part of this article or article 15 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

482. Following the adoption of paragraph 2, the observer for the Netherlands expressed his concern over the absence of a reference in both articles 15 and 16, to article 13, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights concerning the freedom of the parents to choose the school of their children. The delegations of Italy, the Holy See, Ireland, United States of America and Canada joined him in this concern.

32. Article 16 bis (Article 30)**

483. The Working Group had before it the text of the article as adopted at first reading as well as the revisions suggested in the technical review (E/CN.4/1989/WG.1/WP.2) which read as follows:

"(In those States in which ethnic, religious or linguistic minorities or indigenous populations exist, a child belonging to such minorities or populations shall not be denied the right, in community with other members of its group, to enjoy its own culture, to profess and practise its own religion, or to use its own language.) A child belonging to an ethnic, religious or linguistic minority, or to an indigenous population, shall have the right, in community with other members of the group, to enjoy the culture, to profess and practice the religion and to use the language of that group."

484. The Working Group also had before it a proposal by the representative of Yugoslavia (E/CN.4/1989/WG.1/WP.47) reading as follows:

"A child belonging to an ethnic, national, religious or linguistic minority, or to an indigenous population, shall have the right, in community with other members of the group, to enjoy the culture, to profess and practice its own religion, or to use and to be trained in the language of that group."

485. In discussing this draft article, several delegates expressed their preferences for the text as adopted at first reading and it was decided to set up a drafting group on this article.

486. The representative of France, speaking on behalf of the drafting group composed of Brazil, France, Italy, Norway, Senegal and Yugoslavia, informed the Working Group that no consensus had been achieved on various proposals submitted with regard to article 16 bis. In these circumstances it was suggested that the Working Group should go back to the text of article 16 bis as adopted at first reading with a view to approving it without any substantive changes.

487. The representative of Yugoslavia pointed out that the amendments submitted by her delegation (E/CN.4/1989/WG.1/WP.47) on which the opinions divided in the drafting group had been based on the proposals of UNICEF (E/CN.4/1989/WG.1/CRP.1). In the opinion of the representative of Yugoslavia, the UNICEF proposals should be the basis of discussions in the Working Group in connection with article 16 bis.

488. Many participants indicated their general support for the text of article 16 bis as adopted at first reading. On the other hand, a view was expressed that article 16 bis and the amendments thereto contradicted a non-discrimination clause contained in article 4 as already adopted, and therefore felt the entire article should be deleted from the text of the draft convention.

489. Several participants stated they had difficulties with regard to the proposed inclusion into the convention of the concept of a "national minority". Some other speakers voiced their support for it and argued that this concept was not entirely new for international instruments since it had been already included in the Final Act of the Conference on Security and Co-operation in Europe.

490. Some delegations expressed the view that the expression "indigenous populations" should be replaced by some other wording, as had been already done earlier in article 9. A representative of one non-governmental organization made a statement on the negative implications that the word "populations" would have for the indigenous people.

491. Suggestions were also made that the language of article 16 bis should be made more positive, and to this effect the words "...a child... shall not be denied the right..." should be changed to "a child... shall have the right...".

492. After some discussion, a revised text of article 16 bis was formulated and read out by the Chairman. Following some editorial changes, the Working Group adopted article 16 bis reading as follows:

> "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

493. After the adoption of article 16 bis the representative of Venezuela stated that her delegation had earlier requested the deletion of this article as a whole and therefore it did not join in the consensus of the Working Group. In view of this Venezuela would enter a reservation to article 16 bis at a later stage.

33. Article 17 (Article 31)**

494. The Working Group had before it the following text of article 17 as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

> "1. States Parties to the present Convention recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
>
> 2. The States Parties to the present Convention shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity."

495. The proposed technical revisions included the deletion of the words "to the present Convention" in both paragraphs of the article.

496. It was proposed in the technical revision (E/CN.4/1989/WG.1/CRP.1) to substitute the words "to participate freely in cultural life and the arts" by the phrase reading: "shall encourage the provision of appropriate and equal opportunities for these purposes" in paragraph 1 and to delete the words "recreational and leisure" and to add "and" before "artistic" at the end of paragraph 2.

497. After some discussion the proposed substantive changes were not accepted and the Working Group then adopted article 17, as revised, which reads as follows:

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

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

34. Article 18 (Article 32)**

498. The Working Group had before it the following text of article 18 as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

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

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

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

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

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

499. The proposed technical revisions included the deletion of the words "to the present Convention" in both paragraphs of the article. It was also proposed (E/CN.4/1989/WG.1/CRP.1) to add the words "social and educational" before the word "measures" in the introductory part of paragraph 2. The latter proposal was subsequently accepted by the Working Group.

500. The representative of Japan proposed to delete the word "spiritual" in paragraph 1. After some discussion, the representative of Japan stated that he would be ready to withdraw his amendment on the understanding that this article was not incompatible with the principle of separation of religion from politics.

501. The delegation of India pointed out that its Government fully supports the right of the child to be protected from economic exploitation or from performance of work which is hazardous or interferes with the child's education. However, given the present state of economic development and social conditions obtaining in India, children are often required to work even at the cost of their education. Such a position also obtains in many other developing countries. The Government of India enacted the Child Labour Act in 1986 and followed this up with the National Policy on Child Labour in 1987. The National Policy on Child Labour aims to focus the programmes of the Government for creating socio-economic conditions in which the compulsion to send children to work diminishes and children are encouraged to attend schools rather than take up wage employment. A number of specific programmes are being undertaken in India in areas of child labour concentration towards this aim.

502. The representative of the United Kingdom indicated that paragraph 2(b) of article 18 presented problems for his delegation. The United Kingdom will enter a reservation in regard to this paragraph at the time of ratification of the Convention.

503. The Working Group then adopted article 18 as revised. It reads as follows:

> "1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
>
> 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of this article. To this end, and having regard to the relevant provisions of other international instruments, the States Parties shall in particular:

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

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

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

35. Article 18 bis (Article 33)**

504. The Working Group had before it the following text of article 18 bis as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

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

505. The proposed technical revisions included the deletion of the words "to the present Convention" (E/CN.4/1989/WG.1/CRP.1). An amendment was also submitted which sought to insert the word "administrative" before the word "social". This proposal was accepted by the Working Group.

506. The Working Group also accepted the amendments submitted by the Narcotic Drugs Division (E/CN.4/1989/WG.1/CRP.1). It was proposed to replace the words "illegal" in the text by the word "illicit" and to insert the word "drugs" after the word "narcotic".

507. The Working Group then adopted article 18 bis, as revised, to read as follows:

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

36. Article 18 ter (Article 34)**

508. The Working Group had before it the following text of article 18 ter as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

"The States Parties to the present Convention undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes the States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices;

(c) the exploitative use of children in pornographic performances and materials."

509. The proposed technical revision included the deletion of the words "to the present Convention" in the introductory part of the article. It was also suggested to consider whether the word "appropriate" should be maintained there.

510. The Working Group adopted article 18 ter, as revised, to read as follows:

"States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes the States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices;

(c) the exploitative use of children in pornographic performances and materials."

37. Article 18 quater (Article 35)**

511. The Working Group had before it the following text of article 18 quater as adopted at first reading:

"The States Parties to the present Convention shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form."

512. The proposed technical revision sought to delete the words "to the present Convention". It was also suggested to consider whether the word "appropriate" should be maintained in the text.

513. The Working Group adopted article 18 quater, as revised, to read as follows:

"States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form."

38. Article 18 quinto (Article 36)**

514. The Working Group had before it the following text of article 18 quinto as adopted at first reading:

> "The States Parties to the present Convention shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."

515. It was proposed in the course of the technical revision to delete the words "to the present Convention".

516. The Working Group adopted article 18 quinto, as revised, to read as follows:

> "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."

39. Article 18 sixto (Article 39)**

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

> "(The) States Parties (to the present Convention) shall take all [appropriate] measures to ensure the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

518. The Working Group also had before it a proposal (E/CN.4/1989/WG.1/WP.57) submitted by a drafting group consisting of Argentina, Finland, Norway, Senegal and the United Kingdom of Great Britain and Northern Ireland. The text read as follows:

"States Parties shall take all measures to enable physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment; punishment or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child."

519. In introducing the proposal the representative of Norway indicated that the two main differences between the proposal contained in document E/CN.4/1989/WG.1/WP.57 and the article as adopted during first reading were that the word "enable" had replaced the word "ensure" because the group felt that States could not be made to guarantee the recovery and reintegration of children and that the proposal also envisaged covering an aspect of armed conflicts which the Convention would otherwise have left uncovered.

520. The representative of Argentina suggested that the words "or imprisonment" be inserted after the word "punishment" in the proposal contained in E/CN.4/1989/WG.1/WP.59. The representatives of Canada and Venezuela were willing to support the proposal on the basis that the reference to imprisonment referred only to improper detention rather than imprisonment pursuant to the due process of law. However, the representatives of Norway and the Inter-American Oranization took the view that the words "any other form of cruel, inhuman or degrading treatment or punishment" should meet the concerns raised by the representative of Argentina. Pursuant to the foregoing debate the representative of Argentina indicated that he would not insist on the adoption of his proposal.

521. The representatives for Australia, Norway and Sweden agreed with the reference to the proposal contained in E/CN.4/1989/WG.1/WP.59 that the word "or" should replace the semi-colon between the words "treatment" and "punishment". They suggested that the semi-colon should be placed between "punishment" and "or armed conflicts".

522. The representative of the United States of America proposed with reference to the proposal contained in E/CN.4/1989/WG.1/WP.59 to replace the word "enable" with "promote" because the latter implied more of an ongoing obligation. He also suggested that the word "appropriate" be inserted in between "all" and "measures" because, without the qualifying word, the obligation placed on States would be unduly strong. The representative of the Federal Republic of Germany supported both of these amendments to the proposal (E/CN.4/1989/WG.1/WP.59). The representative of Norway supported the inclusion of the word "appropriate" and the representative of the United Kingdom of Great Britain and Northern Ireland supported the insertion of the word "promote". Although the observer for Sweden voiced concerns regarding the inclusion of the word "promote" and indicated that he would have preferred the use of the word "rehabilitation" instead of "recovery", in the interests of arriving at a consensus he did not insist on his reservations.

523. In the light of the foregoing debate, the text of article 18 sixto as adopted during the second reading reads as follows:

> "States Parties shall take all appropriate measures to promote physical and psychological recovery and social re-integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re-integration shall take place in an environment which fosters the health, self-respect and dignity of the child."

40. Article 19 (Article 37)**

524. 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."

525. 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, safe-guarding 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."

526. A drafting group, consisting of Argentina, Canada, China, Cuba, India, Mexico, Portugal, the United States of America, Venezuela and a number of non-governmental organizations was set up to take into account the various concerns of participants in the Working Group, proposed a further text for adoption as article 19 (E/CN.4/1989/WG.1/WP.67/Rev.1). The text read 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."

527. In introducing the proposal contained in document 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 international standards.

Introductory phrase

528. 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.

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

"States Parties shall ensure:"

Paragraph 1

530. 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.

531. 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.

532. 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.

533. 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.

534. 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.

535. 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

536. In introducing the paragraph, the observer for Canada indicated that it largely reflected both the International Covenant on Economic, Social and Cultural 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.

537. 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.

538. 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."

539. 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.

540. 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.

541. 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 observer for 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."

542. 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.

543. 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 observer for 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.

544. 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.

545. 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.

546. 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.

547. 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."

548. 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."

549. 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.

550. The observer for Canada then read out the following version of the second sentence: "The arrest, detention or imprisonment of a child 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

551. 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.

552. 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

553. 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 sentence "or other competent independent and impartial authority" be removed in accordance with article 9, paragraph 3, 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."

41. Article 19 bis (Article 40)**

554. 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 can not 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."

555. 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

556. With regard to paragraph 1, the observer for Canada 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 recognised as having infringed the penal law."

(b) "...and the desirability of the child's assuming a constructive role in society".

557. 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.

558. The observer for Canada then proposed: "...the desirability of promoting the child's rehabilitation and the child's assuming a constructive role in society."

559. 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.

560. 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."

561. With regard to paragraph 2, the chapeau and sub-paragraph (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."

562. Following a readjustment to the chapeau of sub-paragraph (b) required by the delegations of Japan and 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:

"1. Every child alleged as, or accused of having infringed the penal law, has at least the following guarantees."

563. Point (i) of sub-paragraph (b) was also adopted without discussion to read as follows:

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

564. 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.

565. 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.

566. 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.

567. 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.

568. As to legal assistance, some delegations including those of the Federal Republic of Germany, the Netherlands and Japan 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 defense of the child could be assured by non-lawyers. 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.

569. 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.

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

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

571. The Working Group adopted this version.

572. 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.

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

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

575. The delegates of the Federal Republic of Germany, the German Democratic Republic, Italy, Japan 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.

576. 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. Besides this reservation, he also declared that the principle of public hearing seemed incompatible with the concept of privacy formulated under point (vii).

577. 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.

578. 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, unless it is considered not to be in the best interest of the child, in particular, taking into account his/her age or situation, his or her parents or legal guardians."

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

580. Point (iv), which, according to the Canadian delegation, duplicated article 14, paragraph 3, sub-paragraphs (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;"

581. 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 <u>higher competent, independent and impartial</u> or judicial body."

582. 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;"

583. 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;"

583a. The delegations of Japan, the Federal Republic of Germany and the Netherlands made reservations on the concept of "free assistance" to the accused, since their respective legal systems had a different approach to the question.

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

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

585. 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

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

587. 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.

588. 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."

589. 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.

42. Article 20 (Article 38)

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

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

2. States Parties (to the present Convention) shall take all necessary (feasible) measures to ensure that no child takes a direct part in hostilities. This provision shall apply to every child who has not attained the age of 15 years and to any other child below the age of 18 years who, under the law of his or her State, has not attained the age of majority.

2bis. States Parties (and they) shall refrain (in particular) from recruiting any child who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, (the) States Parties (to the present Convention) shall endeavour to give priority to those who are oldest.

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

591. The Working Group also had before it a proposal for the article made by a drafting group consisting of Angola, Australia, Austria, France, India, Italy, Mozambique, the Netherlands, Norway, Sweden, the United States of America, UNHCR, ICRC and Radda Barnen (E/CN.4/1989/WG.1/WP.65). The text read as follows:

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

2. [States Parties shall take all feasible measures to ensure that no child takes a direct part in hostilities. With respect to persons who have attained majority before the age of 18 years, States Parties shall endeavour to prevent them from taking a direct part in hostilities. Persons who have not attained the age of 15 years shall not be allowed to take part in hostilities.]

2. [States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.]

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have

not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

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

592. In introducing the proposal contained in E/CN.4/1989/WG.1/WP.65 the observer for Sweden indicated that the group had reached a consensus on the text for paragraphs 1 and 3 but that, as the brackets indicated, no consensus had been reached on paragraph 2 or paragraph 4. With regard to paragraph 2 he indicated that the first version of that paragraph reflected the view of some members of the drafting group to not only observe current international standards but to arrive at a text which ensured the maximum possible protection for children involved in armed conflicts. He explained that it was therefore the desire of these delegates to bar absolutely the involvement of children below the age of 15 years in hostilities, whether they had attained majority or not. With regard to paragraph 4, consistent with the desire to ensure maximum protection for children involved in armed conflicts, some delegates supported the adoption of the word "necessary" because they took the view that that word was more in line with the absolute nature of current international standards concerning civilians in armed conflicts than the word "feasible", which had been adopted during the first reading.

593. Further to the comments of the observer for Sweden, the representative of the United States of America indicated that his delegation's desire was for the adoption of the same text for article 20 as had been agreed upon during the first reading. He, however, recognized that as adopted during the first reading, the article was inconsistent with existing international standards because although international standards sought to exclude children of up to 15 years of age from taking part in hostilities, in referring to "child" as defined under article 1, old paragraph 2 would have extended this protection to children of up to 18 years of age. It was for this reason that the representative of the United States of America sought to modify the first

sentence of old paragraph 2 into the new, second version of paragraph 2 as contained in E/CN.4/1989/WG.1/WP.65. In addition, the representative of the United States of America indicated with reference to paragraph 4 that the inclusion of the word "necessary" instead of "feasible" was inappropriate because taking the implication of "all necessary measures" to its logical extent States parties which were attacked would be obliged to surrender so as not to jeopardize the safety of civilian children by becoming involved in an armed conflict, a position which he felt was clearly in opposition to the inherent right of States to self defence. For this reason the representative of the United States of America expressed the support for the retention of the word "feasible" in paragraph 4.

594. Pursuant to the two introductory statements a lengthy debate was carried out regarding which text should be adopted for article 20. During the course of this debate a number of participants in the Working Group took the view that in order to ensure the maximum protection for children in the drafting of the present Convention, the Working Group should not feel constrained by existing international standards. It was, however, the opinion of the representatives of the Union of Soviet Socialist Republics and the United States of America that neither was the Working Group mandated to review existing standards in international law nor was it an appropriate forum in which to do so.

595. The representatives of the Federal Republic of Germany and the United States of America were of the opinion that if no consensus text for article 20 could be reached then the whole article should be deleted. Numerous delegations spoke in support of the retention of the article and, in particular, the representatives of Austria, India, the Netherlands and New Zealand suggested that if no consensus could be reached then it would be necessary to adopt a text with brackets or alternative wording, to be settled by the Commission on Human Rights when it reviewed the text of the Convention. In this connection, the Chairman suggested that it would be preferable for the Working Group to adopt a minimum text with a consensus rather than to transmit a text without consensus and with brackets to the Commission on Human Rights. Another solution put forward to solve a possible deadlock was that the article should be adopted only with whichever paragraphs on which a consensus could be reached.

Paragraph 1

596. Paragraph 1 as contained in E/CN.4/1989/WG.1/WP.65 was adopted without comment to read as follows:

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

Paragraph 2

597. With regard to the two versions of paragraph 2 contained in E/CN.4/1989/WG.1/WP.65 there was agreement amongst the representatives of Algeria, Angola, Argentina, Australia, Austria, Canada, China, Colombia, Finland, France, the German Democratic Republic, the Holy See, India, Italy, Mexico, Mozambique, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, the Union of Soviet Socialist Republics, the United Kingdom, Venezuela and the International Committee of the Red Cross in favour of the first version. The representatives of the Netherlands and New Zealand indicated that they would have preferred the paragraph to extend to children of up to 16 years of age but that they were willing to compromise and accept a ban extending only to children of up to 15 years of age. Further to this the representative of Colombia raised the question of why, if the Working Group was willing to recognize rights generally for children of up to 18 years of age, the Working Group was not willing to protect children in times of armed conflict up to the same age limit. The representatives of India and the United Kingdom indicated that, in spite of slight hesitations, they would support a consensus in favour of the first version of the paragraph. The representative of the United Kingdom indicated that his hesitation was based on the fact that the army of the United Kingdom contained children below the age of 18 years and that it would be difficult in times of hostilities to observe the express terms of the paragraph. Both the representatives of India and the United Kingdom indicated that if the first version of the paragraph was adopted they would wish to make reservations as to the extent to which their respective governments would observe it.

598. The representatives of the Union of Soviet Socialist Republics and the United States of America indicated their support for the adoption of the second version of the paragraph and their unwillingness to join a consensus in support of the first version of the paragraph.

599. In an effort to reach a compromise solution, the representative of the Union of Soviet Socialist Republics suggested that the concerns of the proponents of the first version could be met even if the second version was adopted by adding the words "in particular the provisions of article 77 of the first additional Protocol to the Geneva Conventions" to the end of paragraph 2. Although the representative of the German Democratic Republic supported the text of the first version of paragraph 2 he indicated that if no consensus could be reached on either text, the proposal of the representative of the Union of Soviet Socialist Republics would be acceptable to him, but with the modification that neither version of paragraph 2 should be included. The observer for Sweden indicated that he could not support this solution and in the interests of a compromise the representative of the Union of Soviet Socialist Republics withdrew his proposal for the addition to paragraph 1. Also in an attempt to find a compromise solution the observer for Sweden proposed a third possible text for paragraph 2 reading as follows:

> "(a) States Parties shall take all feasible measures to ensure that no child takes a direct part in hostilities.
>
> (b) No person below the age of 15 years may be exempted from the protection provided for in this paragraph on the grounds that he or she has attained majority."

600. In view of the inability of the Working Group to form a consensus in support of this proposal the observer for Sweden did not insist on its adoption and withdrew it.

601. Pursuant to the foregoing debate, the Chairman noted that some participants in the Working Group were unable to support the first version of the paragraph and observed that the Working Group could not agree on a compromise text to bridge the gap between the two versions contained in E/CN.4/1989/WG.1/WP.65. In view of these facts, he stated that since no participants in the Working Group had expressed opposition to the standards

contained in the text of the second version of the paragraph, it was his suggestion that the Working Group should adopt that second version as it was the maximum level of protection on which a consensus could be reached. Participants in the Working Group did not express any opposition to the solution to the deadlock proposed by the Chairman. Therefore, the text of the second version of paragraph 2 contained in E/CN.4/1989/WG.1/WP.5 was adopted.

602. The text of paragraph 2 of article 20 was adopted to read as follows:

> "2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities."

603. Following the adoption of the paragraph the representatives of Australia, Austria, Finland, Italy, the Netherlands, New Zealand, Norway, Sweden, Switzerland and Venezuela made statements indicating the view that although it was not the intention of their delegations to break the consensus on the adoption of paragraph 2, their delegations nevertheless wished to have their opposition to the adopted text reflected in the report.

604. The representatives of France and Italy made statements to be reflected in the report indicating that it was the policy of their respective governments not to allow children below the age of 18 years to take part in hostilities.

605. The observer for the Netherlands made a statement for the report indicating that it was regrettable that the Chairman had allowed paragraph 2 to be adopted in the light of such extensive opposition to the chosen text.

606. The representative of Italy regretted that she had been called out of the room to receive her Government's instructions at the time paragraph 2 was adopted. She further indicated that had she been present in the room she would have strongly opposed the text that was finally adopted.

Paragraph 3

607. The text of paragraph 3 as contained in E/CN.4/1989/WG.1/WP.65 was adopted without comment to read as follows:

> "3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest."

Paragraph 4

608. There was agreement amongst the representatives of Algeria, Angola, Argentina, Australia, Austria, Canada, China, Finland, the German Democratic Republic, the Holy See, Italy, Mexico, Mozambique, the Netherlands, Norway, Senegal, Spain, Sweden, Switzerland, Venezuela and the International Committee of the Red Cross to adopt paragraph 4 with the word "necessary" rather than "feasible", which had been adopted during the first reading. This group of participants took this position because they felt that the word "necessary" more accurately reflected the absolute nature of protection which international instruments accorded civilians in times of armed conflict. In a spirit of compromise, the representatives of Austria, the Holy See, Mexico, the Netherlands and Spain were of the view that if "necessary" could not be adopted, they could support a consensus in favour of the adoption of the word "feasible". The representative of the United States of America indicated a strong preference for the word "feasible" as had been adopted during the first reading in old paragraph 3.

609. In an effort to reach a compromise the representative of the United Kingdom suggested that the word "practicable" could be adopted as an alternative to either "necessary" or "feasible". This proposal was supported by the representatives of India, the Union of Soviet Socialist Republic and the United States of America. However, in view of the concern of the observer for Australia that the word would mean that States parties would do "only what they were able to do" the representative of the United Kingdom did not insist on his proposal. As a further alternative, the observer for Australia

suggested the use of the word "possible" but the representative of the United States of America felt unable to join a consensus in support of this word. In a spirit of compromise the observer for Australia did not insist on his proposal.

610. Pursuant to the foregoing debate the Chairman noted that there was opposition in the Working Group to the adoption of the word "necessary" and observed that the Working Group could not agree on a compromise word as an alternative to "necessary" or "feasible". Taking into account the fact that no participants in the Working Group had expressed opposition to the adoption of the word "feasible" and the fact that some delegations had indicated that they were willing to support a consensus in favour of the word, the Chairman suggested that it might be a solution for the Working Group to adopt that word. No participants in the Working Group objected to the solution put forward by the Chairman.

611. The text of paragraph 2 of article 20 was adopted to read as follows:

> "4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict."

612. After the adoption of article 20, the observer for Sweden requested the Secretariat to provide a transcript of the debate on that article.

43. Article 21 (Article 41)**

613. The Working Group had before it a text of article 21 as it had been adopted during the first reading incorporating a suggested revision by UNICEF (E/CN.4/1989/WG.1/WP.2). The text read as follows:

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

(a) the law of a State Party; (or)

(b) any other international convention, treaty or agreement in force for that State; or

(c) customary international law."

614. The Working Group also had before it a proposed text for article 21 submitted by a drafting group consisting of Brazil, Canada, Finland, the German Democratic Republic, the Federal Republic of Germany, the Netherlands and the ILO (E/CN.4/1989/WG.1/WP.59). The text read as follows:

"Nothing in this Convention shall affect the obligation of a State Party.

(a) to apply to the child any human right or any rule relating to the protection of the child to which that State Party is bound by its national law, by custom or by any international instrument, irrespective of such right or protection being recognized in this Convention as a right of the child.

(b) to apply any other provision that is more conducive to the realization of the rights or protection of the child and that may be contained in the law or custom of the State Party or in any international instrument by which that State Party is bound."

615. The representative of the Federal Republic of Germany, in introducing the proposal contained in E/CN.4/1989/WG.1/WP.59, indicated that the main concern of the drafting group was to ensure that the present Convention would not derogate from the existing human rights obligations undertaken by States parties. He further indicated that the words "irrespective of such right or protection being recognized in this Convention" in paragraph (a) of the proposal was to meet possible questions as to why certain rights accruing to children were not included in the Convention. The representative of the Federal Republic of Germany also stated that the group had not included a reference to customary international law in its proposal because few such laws referred to children and therefore may cause confusion if mentioned.

616. Participants in the Working Group debated the proposal contained in E/CN.4/1989/WG.1/WP.59 during the course of which a number of delegations voiced reservations about the proposal.

617. The representatives of Italy, Portugal and the United States of America questioned the omission from the proposal contained in document E/CN.4/1989/WG.1/WP.59 of a direct reference to customary law because, especially in the field of humanitarian law, they felt it was directly relevant to children. The representative of Italy further pointed out that in not providing for customary international law the Convention would be excluding the applicability of such law which may develop in future years. The representative of Argentina argued that such a reference would not be necessary because his delegation took the view that if customary international law did exist it only existed in special cases and not in the field of children's rights.

618. The representative of Poland, Portugal and Sweden also questioned why the proposal contained in document E/CN.4/1989/WG.1/WP.59 only spoke in terms of the protection of the child and not in terms of the rights of the child. The observer for Australia also questioned the use of the word "rule" in the proposal. He took the view, as did the representatives of Norway and Sweden, that as submitted the proposal could absolve States parties from applying the obligations of the Convention simply by acting in accordance with their domestic legislation, even if such legislation was not of as high a standard as the Convention provided. A number of delegations felt that the text of the proposal was not adequately clear for effective implementation.

619. The representative of Argentina expressed the view that although the language of the proposal contained in document E/CN.4/1989/WG.1/WP.59 was cumbersome it was more legally precise than the text as adopted during the first reading. The representative of the ILO also made the point that the reference in the text adopted during the first reading to "more conducive" raised the question of who would be the arbiter of such a decision and on what criteria the decision would be based.

620. In order to meet some of the concerns raised regarding the proposal contained in document E/CN.4/1989/WG.1/WP.59 the observer for Finland suggested that in line 3 of paragraph (a) the words "by its national law, by custom or" be deleted and that in line 4 of the same paragraph the word "any" be deleted and the word "instrument" be replaced by the word "law". He indicated that in simplifying its terms the text of the proposal became clearer and that, in having a reference to "international law", States would have the option of interpreting the phrase to include customary international law or not. Also with a view to meeting the concerns raised regarding the proposal contained in document E/CN.4/1989/WG.1/WP.59 the observer for Canada suggested that the text of article 5 (2) of the International Covenant on Economic, Social and Cultural Rights be substituted for paragraph (a). Both representatives felt it important to retain paragraph (b) as it was.

621. There was a consensus in the Working Group that the aim of article 21 was to ensure that the Convention established a minimum standard of rights to be enjoyed by children. However, in view of the fact that the Working Group could not arrive at a consensus in support of the proposal contained in document E/CN.4/1989/WG.1/WP.59 and because the drafting group which submitted it did not insist on its adoption, the Chairman suggested that consideration of article 21 should continue based on the text adopted during the first reading.

622. With regard to the text adopted during the first reading the representative of France wished to see the article remain as it was. The representatives of India, Italy, Poland, Portugal and the United States of America however expressed a preference for the text including the suggested revision by UNICEF, as contained in document E/CN.4/1989/WG.1/WP.2.

623. The representative of the Union of Soviet Socialist Republics proposed that the words "or protection" be inserted after the word "rights" in the chapeau to the article, that paragraph (b) be redrafted to read "any other provisions of international law in force for that State" and that the suggested revision proposed by UNICEF be omitted. He indicated that this proposal would allow States to interpret international law as covering

customary international law if they took the view that it did do so. The representative of Senegal also proposed that article 21 be basically left unchanged from the text adopted during the first reading but with a new paragraph reading "international law applicable to that State". He took the view that it was desirable to avoid a listing or definition of international law for the same reason as the representative of the Union of Soviet Socialist Republics.

624. The representatives of Italy, Portugal and Sweden questioned the inclusion of the words "or protection" in the proposal of the representative of the Union of Soviet Socialist Republics. They took the view that the word "rights" alone covered any idea of "protection" and avoided possible misinterpretation. The representative of Portugal questioned the inclusion of the words "provisions of" in paragraph (b) of the proposal by the representative of the Union of Soviet Socialist Republics since the word "provisions" already existed in the introductory phrase to the article.

625. On the basis that the representative of the Union of Soviet Socialist Republics was willing to accept the amendments to his proposal and on the basis that "international law" was to be given the broad interpretation as covering customary international law, consensus was reached on a text for article 21.

626. The text of article 21 was adopted to read as follows:

> "Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:
>
> (a) the law of a State Party; or
>
> (b) the international law in force for the State."

44. Article 21 ter (Article 42)**

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

> "(The) States Parties (to the present Convention) undertake to make the principles and provisions of the Convention widely known, by [appropriate] and active means, to adults and children alike."

628. After brief comments by participants in the Working Group to retain the word "appropriate", the Working Group adopted the article with suggested revisions.

629. The text of article 21 ter was adopted to read as follows:

> "States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."

45. Article 22 (Article 43)**

630. The Working Group had before it article 22 as adopted in first reading, without any suggested revisions (E/CN.4/1989/WG.1/WP.2):

> "1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
>
> 2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by the States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of 5 of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these 5 members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or for any other cause can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

10bis. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

11. [With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.]

or

[States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.]

[12. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to Paragraph 10 of this article.]"

631. As the first six paragraphs raised no discussion or objection, the Working Group adopted paragraphs 1, 2, 3, 4, 5 and 6.

632. With regard to paragraph 7, the delegate of Argentina stated that the wording was too broad and suggested more specific reference(s) to a member's incapacity to perform the duties of the Committee besides death or resignation. He reminded the Working Group that the status of a member could be for example jeopardized within his or her own country and that possibility too should be covered by a more adequate language in the paragraph.

633. In agreeing with this statement, the representative of Portugal proposed the inclusion, after the word "resigns", of the phrase "or manifests his or her impossibility to..."; or as a second alternative, the deletion of the phrase "or for any other cause can no longer perform the duties of the Committee". In that case, the paragraph would read: "If a member of the Committee dies or resigns, the State Party which nominated the member shall appoint ...".

634. The delegate of India suggested the deletion of the word "can" and the addition, after the words "no longer", of the verb "wishes". The phrase would thus read: "If a member of the Committee dies or resigns or for any other cause no longer wishes to perform ...".

635. The observer for Canada then proposed the addition, after the word "resigns", of the phrase "or if he or she or a member of his or her family indicates that he or she can no longer perform the duties of the Committee...".

636. The representative of the United Kingdom drew the Working Group's attention to two problems:

- given the absence of practical means of establishing causes of non-attendance, the family's statement could not at some point prevent an invitation to resignation; but a non-attendance of a certain number of meetings could be a preferable criterion;

- even though each member was to be considered in his/her personal capacity for the election, this was not the case for the replacement and that a fair method would be to replace the former member by the one who got the second highest voting rate in the secret ballot.

637. The delegate of the Union of Soviet Socialist Republics expressed his disagreement with the proposals and statements made so far, pointing out that an exhaustive list of impossibilities of attendance could not be practically included in the article, and that the "second best" policy proposed by the United Kingdom was against the principle of equitable geographical distribution. The representatives of Poland and Senegal also stressed the importance of this principle and stated that the words "subject to the approval of the Committee" provided a good solution for replacement and would thus permit the members to abide by this principle while proceeding with the substitution of a member.

638. Some delegations expressed their wish to not re-open the discussion on matters over which a difficult consensus had been reached and urged the Working Group to proceed with adoption.

639. The Working Group adopted paragraph 7 with the addition of the word "declares" after the words "resigns or", according to the proposal made by the representative of Portugal. The delegation of Senegal asked that its doubts and concerns about this paragraph be reflected in the report.

640. Paragraphs 8, 9, 10 and 10 bis were adopted without any discussion.

641. With regard to paragraphs 11 and 12, it was explained that they were presented in square brackets because consensus could not be reached over the financial matters which were left to the competence of the Commission on Human Rights.

642. The observer for Sweden which had sponsored the second alternative under paragraph 11, withdrew this proposal on the basis of its experience with other international instruments.

643. A proposal for amendment to paragraph 11 submitted by the observer for the Netherlands (E/CN.4/1989/WG.1/WP.54) read as follows:

> "11. The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities."

644. With regards to this proposal, some delegations stated that the matter was already covered by article 11 and preferred not to retain it.

645. The Working Group decided to leave paragraphs 11 and 12 in brackets for the consideration of the Commission on Human Rights replacing the reference to paragraph 10 in the last line of paragraph 12 by a reference to paragraph 10 bis, upon the proposal made by the delegation of the United States of America.

646. Article 22 was adopted by the Working Group to read as follows:

"1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by the States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of 5 of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these 5 members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares for any other cause can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at the United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

10bis. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

11. [With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.]

12. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 10 bis of this article."

46. Article 23 (Article 44)**

647. The Working Group had before it article 23 as adopted at first reading as well as the suggested revisions contained in E/CN.4/1989/WG.2/WP.2 which read as follows:

"1. States Parties (to the present Convention) undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) within two years of the entry into force of the Convention for the State Party concerned,

(b) thereafter every five years.

2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in (that) the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1(b) repeat basic information previously provided.

4. The Committee may request from (the) States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, every two years, reports on its activities.

6. (The) States Parties shall make their reports widely available to the public in their own countries."

648. The representative of Venezuela stated that, although the question of scientific experimentation was not explicitly dealt with by the Convention, it was a matter in which States parties should inform the Committee under paragraph 4.

649. The Working Group adopted paragraphs 1, 2, 3, 4, 5 and 6 with the suggested revisions to read as follows:

"1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) within two years of the entry into force of the Convention for the State Party concerned,

(b) thereafter every five years.

2. Reports made under this article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not in its subsequent reports submitted in accordance with paragraph 1(b) repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries."

47. Article 24 (Article 45)**

650. The Working Group had before it article 24 as adopted at first reading and the suggested revisions contained in E/CN.4/1989/WG.1/WP.2 which read as follows:

"In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, (and) UNICEF and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, UNICEF and other competent bodies as it may consider [appropriate] to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, (and) UNICEF and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

(b) The Committee shall transmit, as it may consider [appropriate], to the specialized agencies, UNICEF and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee's observations and suggestions, if any, on these requests or indications.

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 23 and 24 of this Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

651. Following the adoption of the chapeau, the delegation of Venezuela asked for clarification of sub-paragraph (a). Referring to the previous discussions of the Working Group contained in paragraphs 167-187 of document E/CN.4/1988/28 and to the amendment proposed by the Union of Soviet Socialist Republics in paragraph 188 of that document, the delegate of Venezuela reminded the Working Group that the first sentence had been discarded and formally requested the deletion of the sentence.

652. The Chairman ruled that the proposal had been tabled too late and that the Working Group had already proceeded to the second reading.

653. Many delegations expressed their wish to focus on the revised text as contained in E/CN.4/1989/WG.1/WP.2 instead of re-opening discussion.

654. The delegate of the United States of America declared that he agreed with the additions suggested by the UNHCR in the first sentence, that the second sentence should remain unchanged, but proposed for the third sentence the inclusion of the words "and other competent bodies as it may deem appropriate" instead of the reference to "other UN organs", in order to allow the non-governmental organizations to submit reports along with the intergovernmental organizations. The representatives of Norway, Ireland, the United Kingdom and Sweden expressed their support for this proposal whereas the delegations of Italy, Australia, Portugal, the Federal Republic of Germany, Egypt and Morocco and the Union of Soviet Socialist Republics stated their preference for the text as contained in E/CN.4/1989/WG.1/WP.2 and expressed their concern over the inclusion of additional groups to the process of submission of reports.

655. The Working Group adopted sub-paragraph (a) with the suggestions contained in E/CN.4/1989/WG.1/WP.2. Sub-paragraphs (b), (c), and (d) were adopted without any discussion or objection.

656. Article 24 as adopted by the Working Group reads as follows:

"In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, UNICEF and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, UNICEF and other competent bodies as it may consider [appropriate] to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, UNICEF and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, UNICEF and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance along with the Committee's observations and suggestions, if any, on these requests or indications.

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child.

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 23 and 24 of this Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties."

48. Articles 25, 25 bis and 25 ter (Articles 46, 47 and 48)**

657. In connexion with its consideration of articles 25 to 31, the Working Group had before it the proposals for the final clauses contained in E/CN.4/1989/WG.1/WP.66 submitted by Poland at the request of the Chairman which read as follows:

Article 25, Signature

The present Convention shall be open for signature by all States until ... at United Nations Headquarters in New York

Deleted - see below art. 30/revised/

Article 25 bis , Ratification

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

Article 25 ter, Accession

The present Convention shall remain open for (be open to) accession by any (all) State(s). The instruments of accession shall be deposited (Accession shall be effected by the deposit of an instrument of accession) with the Secretary-General of the United Nations."

658. The observer for Poland explained that since article 25 was dealing with four different matters, they had, in accordance with the suggestion made by the Legal Counsel and UNESCO, separated the article into different articles as 25, 25 bis, 25 ter and that the paragraph dealing with the depositary was moved under new article 30. The Polish delegate also added that the elimination of the titles would be preferable since no other article in the Convention had a title. Finally, he pointed out that the addition of the phrase "until...at United Nations Headquarters in New York" as suggested by the Legal Counsel was not necessary.

659. The delegate of Morocco stated that, taking into consideration the variety of rights covered by the Convention, the harmonization of the final clauses could be made on the basis of the two Covenants and more specifically, on the basis of article 43, paragraph 1, of the International Covenant on Civil and Political Rights and article 26 of the International Covenant on Economic, Social and Cultural Rights regarding signature and accession. This proposal was endorsed by the delegation of Senegal.

660. The representative of the Legal Counsel explained that their suggestion had to be understood in the light of the Vienna Convention on the Law of Treaties, which was a development that came after the Covenants, but that the Working Group was free to choose its approach to the final clauses.

661. The delegate of Italy drew the Working Group's attention to the difference between the Vienna Convention - which was a codification of international law - and the present Convention which exclusively concerned human rights, and added her preference for the approach proposed in E/CN.4/1989/WG.1/WP.66.

662. The Working Group adopted article 25 without the phrase "until...at United Nations Headquarters in New York".

663. The Working Group then adopted articles 25, 25 bis and 25 ter as proposed in document E/CN.4/1989/WG.1/WP.66 to read as follows:

"Article 25, Signature

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

Article 25 bis, Ratification

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

Article 25 ter, Accession

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

49. Article 26 (Article 50)**

664. The Working Group had before it the text of article 26 as contained in the working paper submitted by Poland (E/CN.4/1989/WG.1/WP.66). This text, which reflected the suggestions made during the technical review, read as follows:

Article .., Amendments

"1. Any State Party to the present Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to (the) States Parties (to the present Convention) with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one-third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of (the) States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph (1) of this article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of (the) States Parties (to this Convention).

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted."

665. The Working Group accepted the proposed revisions and adopted article 26, as revised, reading as follows:

"1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that within four months from the date of such communication at least one-third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph (1) of this article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted."

50. Article 27 (Article 49)**

666. The Working Group had before it the text of article 27 as contained in the working paper submitted by Poland (E/CN.4/1989/WG.1/WP.66). This text, which reflected the suggestions made during the technical review, read as follows:

Article .., Entry into Force

"1. The present Convention shall enter into force on the thirtieth day following (after) the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying (the present Convention) or acceding to the Convention (it) after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the (date of the) deposit by such State of its (own) instrument of ratification or accession."

667. The Working Group accepted the proposed revisions and adopted article 27, as revised, reading as follows:

"1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession."

51. Article 28 (Article 51)**

668. The Working Group had before it the text of article 28 as contained in the working paper submitted by Poland (E/CN.4/1989/WG.1/WP.66). This text, which reflected the suggestions made during the technical review, read as follows:

Article .., Reservations

"1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

(2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.)

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations who shall then inform all States (thereof). Such notification shall take effect on the date on which it is received by the Secretary-General."

669. With regard to the proposed deletion of paragraph 2, the representative of the Legal Counsel explained that a similar formulation had been already included into article 19 of the Vienna Convention on the Law of Treaties and it was therefore deemed unnecessary to repeat it in the present draft.

670. In the discussion that followed the observer for Turkey expressed the view that the subject of paragraph 2 went beyond the framework of this convention, the role of which should not be to re-write the law of treaties. He therefore favoured the deletion of paragraph 2.

671. Some other delegations opposed the deletion of paragraph 2 and argued that this important provision of the convention should be maintained. The representative of Italy indicated in this connection that not all the States had ratified the Vienna Convention and therefore its application was not yet universal; besides, emerging new States would not be bound by its provisions. Paragraph 2 was subsequently retained.

672. The Working Group then adopted article 28, as revised, reading as follows:

"1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General."

52. Article 29 (Article 52)**

673. The Working Group had before it the text of article 29 as adopted at first reading (E/CN.4/1989/WG.1/WP.2).

674. No revisions or amendments were proposed and the Working Group therefore adopted article 29 to read as follows:

"A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General."

53. Article 30 (Article 53)**

675. The Working Group had before it the following text of article 30 as adopted at first reading:

"The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions;

(b) The date of entry into force of this Convention and the date of the entry into force of any amendments;

(c) Denunciations."

676. The Working Group also had before it the text of article 30 as contained in the working paper submitted by Poland (E/CN.4/1989/WG.1/WP.66). This text, which reflected the suggestions made by the Legal Counsel and UNESCO during the technical review, read as follows:

"Article ..., Depositary

The Secretary-General of the United Nations is designated as the depositary of the present Convention."

677. The observer for Poland, who introduced these proposals, explained that a description of the functions of depositary was not necessary in this text since the Secretary-General was under obligation to perform such functions as specifically provided for in article 77 of the Vienna Convention on the Law of Treaties.

678. The Working Group accepted the proposed change and adopted article 30, as revised, reading as follows:

"The Secretary-General of the United Nations is designated as the depositary of the present Convention."

56. Article 31 (Article 54)**

679. The Working Group had before it the following text of article 31 as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

"1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States."

680. The Working Group also had before it the text of article 31 as contained in the working paper submitted by Poland (E/CN.4/1989/WG.1/WP.66). This text, which reflected the suggestions made by the Legal Counsel during the technical review, read as follows:

Article .., Authentic Texts

"1. (This Convention,) The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

(2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.)

2. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

3. Done at ... this ... date of ... 198... in the name of ....."

681. The Working Group accepted the proposed revisions and, after having made some editorial changes, adopted article 31, as revised, to read as follows:

"The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

Done at ... this ... day of ... 19....."

57. Reordering of the articles

682. The Working Group had before it a proposal submitted by the drafting group on the reordering of articles of the draft convention (E/CN.4/1989/WG.1/WP.69) which read as follows:

"Proposal for reordering of articles

PREAMBLE

PART I

New	Old	
1	1	(Child -- age)
2	4	(Non-discrimination
3	3	(Best interest of child)
4	5	(Implementation of rights recognized)
5	5 bis	(Parental guidance)
6	1 bis	(Right to life)
7	2	(Right to name and nationality)
8	9 bis	(Preservation of identity)
9	6	(Parental care/non-separation from parents)
10	6 bis	(Family reunification)
11	6 ter	(Illicit transfer and non-return)
12	7	(Child's right to express opinions)
13	7a	(Freedom of expression and information)
14	7 bis	(Freedom of thought, conscience and religion)
15	7 ter	(Freedom of association and freedom of peaceful assembly)
16	7 quater	(Privacy, honour and reputation)
17	9	(Mass media)
18	8	(Upbringing and child-rearing)
19	8 bis	(Prevention of abuse)
20	10	(Parentless children)
21	11	(Adoption)
22	11 bis	(Refugee child)

23	12	(Disabled child)
24	12 bis	(Health)
25	12 ter	(Periodic review of placed children)
26	13	(Social security)
27	14	(Standard of living)
28	15	(Education)
29	16	(Objectives of education)
30	16 bis	(Cultural, religious and linguistic rights)
31	17	(Rest and leisure)
32	18	(Protection from economic exploitation)
33	18 bis	(Protection from narcotic and psychotropic substances)
34	18 ter	(Protection from sexual exploitation)
35	18 quater	(Prevention of abduction, sale and traffic)
36	18 quinto	(Protection from all other forms of exploitation)
37	19	(Torture/capital punishment)
38	20	(Armed conflicts)
39	18 sixto	(Recovery and re-integration)
40	19 bis	(Treatment in penal matters)
41	21	(Other more favourable provisions)

Part II

42	21 ter	(Dissemination of the principles and provisions of the convention)
43	22	(Establishment of the committee)
44	23	(Reports from States parties)
45	24	(Methods of work of the committee)

Part III

46	25	(Signature)
47	25 bis	(Ratification)
48	25 ter	(Accession)
49	27	(Entry into force)
50	26	(Amendments)

51	28	(Reservations)
52	29	(Denunciation)
53	30	(Depositary)
54	31	(Authentic texts)

683. In introducing this proposal the co-ordinator of the drafting group, the representative of Norway, indicated that the suggested reordering of articles was based on the proposals submitted earlier (E/CN.4/1989/WG.1/CRP.1/Add.1).

684. The Working Group agreed with the proposals of the drafting group and the articles were reordered accordingly.

III. PROPOSALS DISCUSSED BUT NOT ADOPTED BY THE WORKING GROUP

1. Proposal relating to article 2

685. In connexion with the discussion of article 2, the delegation of the Federal Republic of Germany submitted the following proposal (E/CN.4/1989/WG.1/WP.5):

"Article 2 (new)

Replace article 2 by the following:

"Article 2 (new)

(1) The States Parties shall ensure

(a) that all human rights recognized by them also apply to children,

(b) that general human rights as enshrined in the International Covenant on Civil and Political Rights even apply to children, if a State Party to the present Convention is not a Party to the Covenant.

(2) In order to take into account the evolving capacities of the child to take decisions under his own responsibility, provision may be made for the child to exercise some of his rights to be specified under the law of his State as if he had attained the age of majority; in this case, State Parties shall ensure that the legal effects of the decision taken by the child are recognized, except the child acted before having attained the minimum age prescribed under the law of his State."

686. The delegate of the Federal Republic of Germany pointed out that many rights which under the International Covenants already apply to children, were included again specifically for children in the draft convention, but on the other hand, not all the rights guaranteed by the Covenants appeared in the draft convention, for example, the right of self-determination, the equal rights of men and women, the ban on slavery, the right of a person arrested or detained to be brought promptly before a judge, even though they also should apply to children. The delegate said that this selective double-regulation of rights would create problems and even contradictions with the Covenants and that a general clause ensuring the application of general human rights to children, should be substituted for the present article 2.

687. The observer for Australia stated that the proposal of the Federal Republic of Germany to replace article 2 was totally new and raised the question of the whole approach to the Convention and that it should have been raised eight years ago.

688. The delegate of India stated that the proposal to replace article 2 should constitute by itself a basis for a new draft convention, and he expressed his hesitation to consider, at this stage, such a new approach.

689. The delegation of Portugal pointed out that the proposal of the Federal Republic of Germany referred solely to the Covenant on Civil and Political Rights, while other conventions including the Geneva Conventions and Protocols had been omitted.

690. The delegate of Poland said that it was too late to adopt the proposal of the Federal Republic of Germany and pointed out the problem that would be posed by the countries which were not parties to the Covenant on Civil and Political Rights. He added that despite repetitions between the draft Convention and the Covenant, the former was an independent instrument and that work on this Convention should continue.

691. Noting the importance of the issue raised by the Federal Republic of Germany, the delegate of Ireland, reminded the Working Group that article 21 of the draft convention allowed the application of the highest human rights standards enshrined in other international instruments and suggested that article 21 might be moved forward to follow article 1 bis.

692. The observer for Finland drew the Working Group's attention to the issue raised under the present article 21 and stated that this had already been addressed by Finland and the ILO in E/CN.4/1989/WG.1/CRP.1, and proposed the inclusion of these two suggestions in article 21.

693. The representative of the Federal Republic of Germany withdrew his proposals relating to article 2 (E/CN.4/1989/WG.1/WP.5).

2. Proposals relating to article 5

694. In connexion with its discussion of article 5, the representative of Senegal submitted a proposal (E/CN.4/1989/WG.1/WP.17, paras.5 and 6) which sought to insert two new articles reading as follows:

"Article 5 ter (article 8 ter)

The States Parties shall grant the protection necessary to the family, the natural environment of the child and shall attend to his physical and moral health.

Accordingly, the States Parties shall provide, in case of need, appropriate assistance to the family with a view to helping it to assume its responsibilities for the harmonious development of the child.

Article 5 quater (article 8 quater)

The child has the duty to respect his parents and to give them assistance, in case of need."

695. In introducing his proposals the representative of Senegal indicated that he did not insist on consideration by the Working Group of article 5 ter which was thus withdrawn, but he would maintain his proposal with regard to a new article 5 quater which thus becomes article 5 ter.

696. Some participants said that, although they shared the concern of the author of the proposal, they still were hesitant to support it because the duty to respect parents was, in their view, more a moral obligation than a legal one. It was also pointed out that in practical terms it would be hardly possible for the States parties to report on their compliance with such a provision of the convention.

697. Some other delegations, however, voiced their support for the inclusion of this article or at least of this idea into the future convention. It was argued that in quite a number of international instruments the rights were accompanied by corresponding duties, and in this convention certain duties might also be laid down.

698. The representative of Ireland orally proposed to change the second part of the article to read: "...and to accord them appropriate assistance". The observer for Egypt suggested that after the word "assistance" the words "if they are capable of doing so" be added.

699. The observer for Sweden expressed the view that consideration of the proposal of Senegal would be more appropriate within the framework of issues under article 16 which related to the objectives of education of the child.

700. The representative of Senegal agreed with this idea and indicated that he would be prepared to discuss his proposal under article 16.

701. The Chairman announced that Senegal was thus included as a member in the Working Group on education issues.

3. Proposal relating to article 11

702. The Working Group had before it a proposal submitted by Yugoslavia for an article 11 ter (E/CN.4/1989/WG.1/WP.44). The text of the proposed article read as follows:

"Article 11 ter (new paragraph)

States of employment, parties to this Convention shall ensure respect for cultural identity of children of migrant workers and in co-operation with States of origin shall undertake appropriate measures to help them to use and to be trained in their mother tongue and to maintain cultural links with their country of origin. States of origin and states of employment will undertake appropriate measures to facilitate (re)integration of children of migrant workers in the school and social system of the State of origin upon their return there."

703. The proposal was introduced by the representative of Yugoslavia who indicated that the inclusion of a specific reference to the children of migrant workers would make the Convention more comprehensive in its scope.

704. The representatives of Argentina, Egypt, Mexico, Morocco and Turkey were in favour of the adoption of the proposed article as contained in E/CN.4/1989/WG.1/WP.44.

705. In the ensuing debate, a number of delegations expressed the view that although the issue of the children of migrant workers was an important one, there were however a number of reasons why the proposed article should not be incorporated in the Convention.

706. Some delegations took the view that the children of migrant workers were adequately protected by the existing article 16 of the present Convention. Others took the view that because the General Assembly had set up a Working Group to draft a convention on migrant workers, and since that Working Group had adopted article 45, which met the specific concerns of the Yugoslavian proposal, they felt it better to leave the issue to that other Working Group. Other reasons given for opposition to the proposal were that the definition of the terms "migrant workers", "state of employment" and "State of origin" were not clear and that the adoption of the proposed article would impose great burdens on States to which it applied. Another reason voiced for the

opposition to the proposal was that in singling out a particular group of immigrants for special promotion there would be a greater chance that others, not so protected may be discriminated against. Representatives particularly emphasized that, because they had not been given enough time to obtain government instructions on the fundamental issues covered by the proposal, such as immigration and social policy, they would not be able to support the proposal. It was further pointed out by some representatives that since the second reading was essentially to polish the text of the Convention and to settle any anomalies, the introduction of the proposal for a new article was inappropriate.

707. The observer for Mexico stated that the fact that the General Assembly had established a Working Group to draft a convention on migrant workers did not prevent the present Working Group from including an article on this issue in the present Convention. The representative of Egypt indicated that the question raised in the proposal was so important that even if the proposal were not adopted its contents should be reflected elsewhere in the Convention. The representative of Yugoslavia agreed with the observer for Mexico and further stated that in agreeing to the adoption of this proposal at that stage States would not necessarily be inextricably bound to its inclusion in the Convention. The representative of Yugoslavia however indicated that she would not insist on the adoption of the proposal, but would leave its fate to the good judgment of the Chairman.

708. In view of the fact that the concerns raised by the proposal were already covered by article 16 of the present Convention and would also be covered by the Working Group established by the General Assembly to draft a convention on migrant workers, the Chairman decided to adjourn the discussion of the proposal.

IV. ADOPTION OF THE REPORT

709. At the 23rd meeting of its eleventh session on .....1989, the Working Group adopted the present report.

ANNEX I

Response of the Legal Counsel to the request for confirmation by the representative of the United Kingdom regarding preambular paragraph 6 (paragraph 9)**

Regarding your request of 30 November 1988 on whether Chairman of Working Group preparing draft Convention on rights of the child may on behalf of entire Working Group include a statement in the travaux préparatoires which would read "in adopting this preambular paragraph, the Working Group does not intend to prejudice the interpretation of article 1 or any other provision of the Convention by States Parties", we have not, of course, seen the text of the preambular paragraph in question or the text of any of the provisions of the draft Convention and, thus, our views set out below are somewhat abstract in nature.

1. The preamble to a treaty serves to set out the general considerations which motivate the adoption of the treaty. Therefore, it is at first sight strange that a text is sought to be included in the travaux préparatoires for the purpose of depriving a particular preambular paragraph of its usual purpose, i.e, to form part of the basis for the interpretation of the treaty. Also, it is not easy to assess what conclusions States may later draw, when interpreting the treaty, from the inclusion of such a text in the travaux préparatoires. Furthermore, seeking to establish the meaning of a particular provision of a treaty, through an inclusion in the travaux préparatoires may not optimally fulfil the intended purpose, because, as you know, under article 32 of the Vienna Convention on the Law of the Treaties, travaux préparatoires constitute a "supplementary means of interpretation" and hence recourse to travaux préparatoires may only be had if the relevant treaty provisions are in fact found by those interpreting the treaty to be unclear.

2. Nevertheless there is no prohibition in law or practice against inclusion of an interpretative statement in travaux préparatoires. Though this is better done through the inclusion of such interpretative statement in the final act or in an accompanying resolution or other instrument. (Inclusion in the final act, etc., would be possible under article 31 of the Vienna Convention on the Law of the Treaties). Nor is there a prohibition in law or practice from making an interpretative statement; in the negative sense, intended here as part of the travaux préparatoires.

Carl August Fleischhauer
The Legal Counsel

9 December 1988