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DRAFT CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

DRAFT REPORT OF THE WORKING GROUP OF THE WHOLE ON THE DRAFTING OF
THE CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Working paper prepared by the Secretariat

Addendum

Contents

	<u>Pages</u>
Article 17 (former 16)	2
Additional article proposed by the United Kingdom	4
Article 18 (former 17)	4
Article 19 (former 18)	5
Article 20 (former 19) to be issued in a separate addendum	
Article 21 (former 20)	5
Former article 21 (deleted)	
Article 22 (Additional article on reservations)	6
Article 23 (Additional article on settlement of disputes)	8
Article 24 (former 22)	10

Article 17 (former 16)

The Working Group considered Article 16 of the Draft Convention at its second, third and fourth meetings on 4, 11 and 19 October 1979.

Paragraph 1

The following amendments to paragraph 1 were submitted (A/C.3/34/WG.1/CRP.2):

Morocco

Add the following clause at the end of the paragraph: "... than those provided for in the Convention".

Austria

Replace the words "if they are more favourable to women" by the words "if they provide for a more equal treatment of the sexes".

Congo: subamendment to Austrian amendment

Replace the words "the sexes" by the words "men and women".

Article as a whole

In the light of the above proposal a new version of the article, as a whole, was submitted by Sweden (A/C.3/34/WG.1/CRP.2). It reads as follows:

"This Convention shall not be construed as affecting any provisions that are more conducive to the achievement of equality between men and women which may be contained in the legislation of a State Party or in any other international convention, treaty or agreement adopted under the auspices of the United Nations."

At the third session, on 11 October 1979, the representative of Sweden, when introducing this new version, orally revised it in light of consultations with other delegations, by deleting at the end of the text the words "under the auspices of the United Nations" (A/C.3/34/WG.1/CRP.2/Add.1).

Denmark suggested a period after the word "agreement".

The following amendments were submitted to the Swedish revised text (A/C.3/34/WG.1/CRP.2/Add.1):

Syrian Arab Republic

Replace the words "international Convention" by the words "relevant regional or international instrument".

Brazil as subamended by the United Kingdom

After the words "treaty or agreement" at the end of the paragraph add the words "in force for that State".

Nigeria

After the words "legislation of a State Party" add the words "; similarly, it shall not affect" and delete the words "or in".

Zambia

Transpose the phrase "that are more conducive to the achievement of equality between men and women" to the end of the paragraph.

At the same meeting, the representative of Sweden, after consultations with a number of delegations, orally proposed a second version, for the article as a whole which reads as follows:

Paragraph 1

"Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained in the domestic legislation of a State Party."

Paragraph 2

"Similarly nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained in any other international Convention in force between two or more contracting States."

During the discussion of both Swedish versions oral suggestions were made. The representative of the United Kingdom orally proposed a compromise text which reads as follows (A/C.3/34/WG.1/CRP.2/Add.1):

"Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained

(a) in the legislation of a State Party

(b) or in any other international Convention, treaty or agreement in force for that State."

At the fourth meeting, on 19 October 1979, the Working Group adopted the above compromise text proposed by the United Kingdom.

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Additional article proposed by the United Kingdom

The United Kingdom proposed an additional article to be placed after article 16 of the Draft Convention. The article reads as follows:

"This Convention shall not apply in relation to service in the naval, military or air forces of States Parties" (A/32/218/Add.1, para. 56).

The Working Group considered this proposal at its second and third meetings on 4 and 11 October 1979.

After an exchange of views on the proposed additional article the United Kingdom withdrew its proposal. When withdrawing its proposal, the United Kingdom noted that it had been assured that it would be possible to enter an appropriate reservation.

Article 18 (former 17)

The Working Group considered article 17 of the Draft Convention at its second and fourth meetings on 4 and 19 October 1979 (A/C.3/34/WG.1/CRP.1).

Paragraph 1

The Working Group considered and adopted paragraph 1 of article 17 at its second meeting on 4 October 1979. The text reads as follows:

"The present Convention shall be open for signature by all States."

Paragraph 2 (additional para. proposed by the United Kingdom)

At the fourth meeting on 19 October, the representative of the United Kingdom orally proposed the addition of a new paragraph to read as follows:

"The Secretary-General of the United Nations is designated as the depository of the Convention."

The Byelorussian SSR and the USSR proposed that this new paragraph become new paragraph 2.

At the same meeting, the United Kingdom proposal, placed as orally proposed by the Byelorussian SSR and the USSR, was adopted.

New paragraph 2 reads as follows:

"The Secretary-General of the United Nations is designated as the depository of the Convention."

Paragraph 3 (former para. 2)

The Working Group considered former paragraph 2 of the Draft Convention, at its second and fourth meetings on 4 and 19 October 1979.

The following revision was proposed by the USSR (A/C.3/34/WG.1/CRP.2):

Add at the end of the paragraph the words "Who is designated to be the depository of the Convention".

The above proposal was later withdrawn in light of the adoption of new paragraph 2 above.

At the fourth meeting, on 19 October 1979, the Working Group adopted former paragraph 2 as new paragraph 3. The text reads as follows:

"The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations."

Paragraph 4 (former para. 3)

The Working Group considered former paragraph 3 of article 17 of the Draft Convention at its second and fourth sessions on 4 and 19 October 1979 (A/C.3/34/WG.1/CRP.1)

At the fourth meeting, on 19 October, the Working Group adopted former paragraph 3, as new paragraph 4. The text reads as follows:

"The present Convention shall be open to accession to any State. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations."

Article 19 (former 18)

The Working Group considered article 18 of the Draft Convention at its fourth meeting, on 19 October 1979 (A/C.3/34/WG.1/CRP.1), and adopted both paragraphs of the article. The text reads as follows:

"1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations."

"2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request."

Article 21 (former 20)

The Working Group considered article 20 of the Draft Convention at its fourth

meeting on 19 October 1979 (A/C.3/34/WG.1/CRP.1) and adopted both paragraphs of the article. The text reads as follows:

"1. The present Convention shall enter into force on the thirtieth day 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 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 of its own instrument of ratification or accession."

Former article 21

The Working Group considered article 21 of the Draft Convention at its fourth meeting on 19 October 1979 (A/C.3/34/WG.1/CRP.1) and decided to delete it.

Article 22 (Additional article on reservations)

The Working Group considered an additional article on reservations (A/C.3/34/WG.1/CRP.1) at its fourth, fifth, seventh and eighth meetings on 19 and 25 October and 8 and 14 November 1979.

Some delegations expressed the view that the inclusion of such an article in the text of the Convention was unnecessary as, in their opinion, its provisions were covered in the Vienna Convention on the Law of Treaties and under the Rules of International Law on Reservations. Other delegations expressed support for the first sentence of paragraph 1, the three first lines of paragraph 2, and for paragraph 3, as, in their view, only the other portions of the article were taken care of under the Vienna Convention.

During the discussion, the representative of the Office of Legal Affairs answered questions from delegations regarding the article.

The representative of Morocco orally proposed that the second sentence of paragraph 1 be deleted.

The representative of the United Kingdom orally proposed a compromise formula for the article as a whole, incorporating the Moroccan proposal on paragraph 1, proposing deletion in paragraph 2, of all the words after the words "not be permitted", and the retention of paragraph 3.

The representative of Romania orally proposed, in paragraph 3, the insertion after the words "Secretary-General" of the following words: "of the United Nations".

The representative of Ethiopia proposed the addition of the following sentence: "The Secretary-General should circulate to States Parties the withdrawal of reservations."

The Ethiopian proposal was revised by Morocco to read: "who would then inform all States Parties thereof", and these words to be added at the end of the first sentence.

At its fifth meeting, on 25 October 1979, the Working Group adopted paragraph 3 as amended. The text reads as follows:

"3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations who would then inform all States Parties thereof. Such notification shall take effect on the date on which it is received."

The representative of Australia made reservations on paragraphs 1 and 2 and the representative of Brazil on paragraph 2 of the compromise formula proposed by the United Kingdom.

In the meeting of 8 November 1979 the representative of Australia, in attempting to clarify its position on the compromise formula, requested, in maintaining its reservation, that the following be reflected in the records:

"We reserved our position on the United Kingdom's compromise draft for a reservations article for this Convention.

"The Australian Government, after careful consideration of the United Kingdom's proposal, appeals to the working group to retain the existing draft text for the reservations article.

"The Australian position is based on the particularly complicated relationship between our Federal and State Governments, which would have a major role in the Convention's implementation. The advantage to Australia of the original draft text, identical to the reservations article in CERD, is that the CERD has already run the gamut of Australia's Federal/State procedures. A satisfactory reservations article will be crucial to Australia's ability to adhere at an early stage to this Convention and it is the strong desire of the Australian Government to do so.

"Although the Vienna Convention provides a useful guide to international law and practice, the Australian authorities are concerned in this case at the appropriateness of relying on the provisions of a Convention to which a number of parties who may be parties to the Women's Convention do not adhere.

"Should the Working Group find the 90-day provision in paragraph 1 of the existing draft unacceptable, the Australian Government suggests a six-monthly period of lodgement of objection to reservations entered by a State on becoming a party to this Convention."

The representative of Brazil withdrew his reservation.

At the eighth meeting on 14 November 1979, Australia, in a spirit of compromise, withdrew its reservations with the understanding that their earlier position be reflected in the records.

The Working Group then adopted paragraphs 1 and 2 of the compromise formula proposed by the United Kingdom and the article as a whole. The text reads as follows:

"1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to the present Convention 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 would then inform all States parties thereof. Such notification shall take effect on the date on which it is received."

Article 23 (Additional article on settlement of disputes)

The Working Group considered an additional article on settlement of disputes proposed by the United States (A/C.3/34/WG.1/CRP.2/Add.2) at its fourth, fifth, sixth and tenth meetings on 19, 25 October, 1 and 20 November 1979. The text, which is identical to article 22 of the Convention on the Elimination of Racial Discrimination reads as follows:

"Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."

This proposed article was further revised by its sponsor to delete the words "or by procedures expressly provided for in this Convention" (A/C.3/34/WG.1/CRP.2/Add.3).

While a number of representatives opposed the inclusion of this new article on the grounds that the Convention dealt with internal rather than international affairs, other delegations were of the view that there was a need for such an article since disputes arising from the interpretation and application of the Convention were bound to come up in the future. Furthermore, since such an article was to be found in many Human Rights Conventions its absence from the text could be construed as a trend by the international community to attribute less importance to matters relating to women.

The representative of France expressed concern that the United States proposal was not explicit enough on the question of negotiations prior to the appeal to the International Court of Justice and proposed a compromise text which was identical to Article 15 of the Draft of the International Convention against the Taking of Hostages (A/C.3/34/WG.1/CRP.2/Add.3). The text reads as follows:

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"1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

The United States orally proposed to amend the French compromise text by adding at the end of paragraph 2 the following two sentences:

"In that case all States Parties to the dispute shall be obligated to submit the dispute to conciliation. If within six months the Parties are unable to agree on organization of conciliation, a conciliator shall be appointed by the Secretary-General of the United Nations."

An exchange of views took place during which preference was expressed for either the original text proposed by the United States, or the compromise text proposed by France.

The representatives of the Office of Legal Affairs and of the Centre for Social Development and Humanitarian Affairs provided clarifications regarding queries put to them by delegations. At its tenth meeting, on 20 November 1979, the Working Group adopted the French compromise text which reads as follows:

"1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations."

The United States requested that the report should reflect the preference of his delegation for the inclusion of its proposed amendment to paragraph 2 of the article.

Article 24 (former 22)

The Working Group considered former article 22 of the Draft Convention at its fourth meeting, on 19 October 1979 (A/C.3/34/WG.1/CRP.1).

The representative of Syria orally proposed the inclusion of the words "the Arabic" before the words "the Chinese".

The representative of Austria orally proposed the deletion of the last sentence "Duly ... States" of paragraph 1.

The suggestion made by the representative of the Office of Legal Affairs to replace the words "in the archives of the United Nations" by the words "with the Secretary-General of the United Nations" was accepted by the Working Group.

The representative of the United Kingdom orally proposed the inclusion of a second paragraph, to read as follows:

"The Secretary-General of the United Nations shall transmit to the Governments of the signatory and acceding States, duly certified copies of the present Convention."

This proposal was later withdrawn.

At its fourth meeting, on 19 October 1979, the Working Group adopted former article 22 (now new article 24) as orally amended. The text reads as follows:

"The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention."
