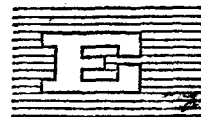


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COMMISSION ON HUMAN RIGHTS
REPORT ON THE THIRTY-EIGHTH SESSION

ADDENDUM

Reports of the informal open-ended working groups of the Commission

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A.

REPORT OF THE INFORMAL OPEN-ENDED WORKING GROUP ON A DRAFT CONVENTION
AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Introduction

1. On the recommendation of the Commission on Human Rights in its resolution 25 (XXXVII), the Economic and Social Council, by its resolution 1981/37 of 8 May 1981 authorized the meeting of an open-ended Working Group for a period of one week prior to the thirty-eighth session of the Commission in order to complete the work on a Draft Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, with a view to the submission of the draft, together with provisions for the effective implementation of the future Convention, to the thirty-seventh session of the General Assembly.
2. As authorized by the Commission at its meeting on 10 March 1981, the Group continued its work during the session. The Group held 17 meetings on 25-29 January, 1, 5, 17-19 February and 1, 2 and 4 March 1982. It provisionally adopted three articles of the Draft Convention. In this connection, it should be recalled that the open-ended Working Group established prior to the thirty-sixth and thirty-seventh sessions of the Commission, had adopted a number of articles. The text of the articles adopted so far may be found in Annex I of the present report.
3. At the first meeting on 25 January 1982, Mr. Jan Herman Burgers (Netherlands) was elected Chairman-Rapporteur by acclamation.

Documents

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

E/CN.4/1285	Draft International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by Sweden.
E/CN.4/WG.1/WP.1	The revised Draft Convention submitted by Sweden.
E/CN.4/NGO/213	Draft Convention for the Prevention and Suppression of Torture submitted by the International Association of Penal Law.
E/1980/13, paras. 201-209	Report of the 1980 Working Group.
E/1981/25, paras. 180-139	Report of the 1981 Working Group.
E/CN.4/1427	Draft preamble and proposed final provisions submitted by Sweden.
E/CN.4/1409	Draft provisional protocol submitted by Costa Rica.
E/CN.4/1493	Revised Draft relating to implementation clauses submitted by Sweden.

Consideration of substantive articles

5. The Working Group established at the present session considered Article 1, paragraph 2; Article 3, paragraph 2; Article 5, paragraph 2; Article 6, paragraphs 4 and 5; Article 7; Article 8, paragraph 2; Article 9; Article 14; Article 16.

Article 1

6. Article 1 of the Draft, as it emerged from debates at previous sessions of the Working Group, read as follows:

"1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him or an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering only from, inherent in or incidental to lawful sanctions.

[2. Torture is an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.]

3. This article is without prejudice to any international instrument or national law which does or may contain provisions of wider application."

7. With regard to paragraph 2, some representatives considered it essential to affirm from the outset that the prohibition of "cruel, inhuman or degrading treatment or punishment" was included within the scope of the Convention, and to make it clear that torture was, in their view, at the highest end of the scale of such treatment or punishment. Such a clarification was, in their view, necessary in order that the crime of torture be defined with sufficient precision for purposes of their domestic criminal law. Some other representatives, pointing out that there was no universally accepted concept of "cruel, inhuman or degrading treatment or punishment", felt that the reference in paragraph 2 as presently worded would be far too vague for inclusion in a treaty, and that it would tend to bring imprecision to the concept of "torture" which had been agreed upon in paragraph 1. They proposed deletion of paragraph 2.

8. The discussion on this matter was then shifted to Article 16, paragraph 1 (see below under this article). As a result of the discussion and the incorporation of new language in Article 16, paragraph 1, the Group decided to delete Article 1, paragraph 2.

Article 3

9. Article 3 of the Draft, as it emerged from debates at previous sessions of the Working Group, read as follows:

"1. No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. [For the purpose of determining whether there are such grounds all relevant considerations shall be taken into account, including, where applicable, the existence in the State concerned of a consistent pattern of gross violations of human rights, such as those resulting from a State policy of apartheid, racial discrimination or genocide, colonialism or neo-colonialism, the suppression of national liberation movements or the occupation of foreign territory.]"

10. With regard to paragraph 1, some delegations indicated that their States might wish, at the time of signature or ratification of the Convention or accession thereto, to declare that they did not consider themselves bound by Article 3 of the Convention, in so far as that article might not be compatible with obligations towards States not parties to the Convention under extradition treaties concluded before the date of the signature of the Convention.

11. Referring to paragraph 2, some representatives felt that it was very important to include in the Convention the proposed illustrative list of gross violations of human rights, which had several precedents in United Nations resolutions. In the view of some other delegations, this paragraph should be deleted as superfluous. It was also stated that many of the items in the proposed illustrative list did not, either legally or logically, constitute a basis for believing that an extradited person would be subjected to torture. One view was that, if the provisions were kept, references to other types of gross violations should be added. An alternative proposal was to keep the paragraph but to delete all words after "gross violations of human rights".

12. The Group decided to retain provisionally paragraph 2 between square brackets and to return to the question at a later stage.

Article 5

13. Article 5 as adopted by the Working Group established at the thirty-seventh session of the Commission reads as follows:

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

[2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this article.]

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law."

14. In the course of the debate on paragraph 2, reference was made to an informal proposal submitted in 1981 (E/CN.4/1981/WG.2/WP.8) to add to the above text of paragraph 2 a sub-paragraph reading as follows:

"Without prejudice to the foregoing paragraphs, an alleged offender should normally be tried by the State in whose territory the offence is committed."

Some delegates stated that they agreed with the tenor of this proposal, but felt that such a clause should not be included in the operative part of the Convention but in the preamble.

15. The Working Group felt that article 5 should not be considered separately from article 7. At the conclusion of the discussion regarding the article 7 (see paras. 19 to 36 inclusive below), it was noted that those delegations which could support the provisions contained in article 7 could accept paragraph 2 of article 5 (see para. 13 above). However, one representative expressed the view that the establishment of jurisdiction as envisaged in article 5(2) should be made dependent upon the refusal of a request for extradition. If such a clause could not be included in the text of the Convention itself, this delegation would consider making a declaration or reservation to that effect when adhering to the Convention.

Article 6

16. Article 6, as adopted by the Working Group in 1980, read as follows:

"Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in Article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the fact.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides.

[4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in Article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.]

5. Any person regarding whom proceedings are being carried out in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings."

17. The Working Group felt that paragraph 4 of article 6 should not be considered separately from article 7. At the conclusion of the discussion on article 7, it was noted that those delegations which could support the provisions of article 7 could accept paragraph 4 of article 6.

18. The Working Group confirmed last year's decision that paragraph 5 of article 6 should be included in article 7 after adoption of that article as a whole.

Article 7

19. The Working Group continued the consideration of article 7 of the Swedish draft, which read as follows:

"The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in any territory under its jurisdiction, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State."

20. As indicated above, the Group felt that article 7 should be examined together with article 5 (as well as article 6, paragraph 4) in view of the close link between these provisions.

21. The delegate of the Netherlands informed the Group that his government had decided to withdraw the amendment it had submitted in 1981 with regard to article 7 (1981/WG.2/WP.2).

22. Several speakers considered that a system of universal or quasi-universal jurisdiction as envisaged in the articles 5 and 7 of the Swedish draft was indispensable in a convention against torture in order to ensure that there would be no "safe havens" for torturers. Corresponding provisions had already been included in many other treaties for the suppression of evils which the international community deemed unacceptable, such as the Convention for the Suppression of Unlawful Seizure of Aircrafts, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and the Convention against the Taking of Hostages. Reference was also made to the Geneva Conventions of 1949 on humanitarian law applicable in armed conflicts.

23. Some delegates indicated that, although their governments had previously expressed reservations concerning the inclusion of a system of universal jurisdiction in the proposed convention against torture, they were now prepared to accept it in order to facilitate agreement on the convention.

24. Several other delegations maintained their opposition to or reservations concerning the inclusion of a system of universal jurisdiction in the draft convention. Difficulties of a practical kind were mentioned as regards the transfer of evidence from the country where the crime had been committed towards the State of arrest and trial under the universal jurisdiction clause. If the latter State would not extradite the alleged offender to the former State, this might lead to frictions which would turn illusory the holding of a fair trial against the defendant, since

it would be impossible to obtain the necessary evidence. Misgivings were also expressed that the system of universal jurisdiction could be exploited for political reasons and that it could result in trials on the basis of spurious accusations and fabricated evidence.

25. One delegation expressed the view that the system of universal jurisdiction was not the appropriate one to deal with a crime that is not international in its nature, like those dealt with in the Conventions cited as precedents in the Working Group. This delegation stated that the primary objective of the Convention should be to ensure the compliance with its norms by any State which does not punish acts of torture carried out by its public officials. According to this delegation, the establishment of universal jurisdiction would not contribute to this end, since such a system would only apply to the improbable case in which a torturer would leave his own State where he enjoyed impunity for his crimes, in order to travel to another State which, being a party to the Convention, might arrest and prosecute him. The system that was proposed to face this highly hypothetical case could be a source of controversies between States. The intention of a State to prosecute a case of torture on the basis of universal jurisdiction could be interpreted by the State where the crime had been committed as a demonstration of lack of trust in its own judicial system, a violation of its sovereignty and even as an interference in its internal affairs.

26. Another delegation replied that universal jurisdiction was intended primarily to deal with situations where torture is a State policy and, therefore, the State in question does not, by definition, prosecute its officials who conduct torture. For the international community to leave enforcement of the Convention to such a State would be essentially a formula to do nothing. Therefore, in such cases, universal jurisdiction would be the most effective weapon against torture which can be brought to bear. It could be utilized against official torturers who travel to other States, a situation which is not at all hypothetical. It could also be used against torturers fleeing from a change in government in their States if, for legal or other reasons, extradition to that State would not be possible.

27. Regarding due process and the adequacy of evidence, it was stated that the text of the draft Convention as a whole, including the Chair's proposed article 7, made it clear that criminal prosecution would take place only when adequate evidence exists and it is possible to ensure fair treatment at all stages of the proceedings. In particular cases, such as when a torture victim is present in a State Party, it would be quite possible to meet these requirements.

28. During the discussion of article 7, reference was also made to a revised version that had been submitted in 1981 by Brazil and Sweden but that subsequently had been withdrawn, as well as to a text proposed in 1981 during informal consultations which the Group had not been able to discuss owing to lack of time. The possibility was mentioned of re-drafting article 7, taking into account those alternative proposals and qualifying the exercise of universal jurisdiction in a manner which could alleviate some of the concerns expressed by delegations, in particular regarding the risk of discrepancies as to the standards of evidence.

29. In the light of these discussions the Chairman-Rapporteur suggested the following new text for article 7 (WP.5):

"1. A State Party which has established its jurisdiction over an offence according to article 5 shall, when the alleged offender is present in a territory under its jurisdiction, submit the case to its competent authorities for the purpose of prosecution, if it does not extradite him.

2. These authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any offence set forth in article 4 shall enjoy all guarantees of a fair and equitable trial."

30. A number of delegates supported this suggestion in general terms, considering that it was a constructive synthesis, which retained the substance of the original Swedish draft while making clear certain protections accorded to an accused. Some other delegates observed that the new proposal did not reduce significantly their difficulties concerning acceptance of the principle of universal jurisdiction. During the debate arguments were reiterated that had been put forward in earlier discussions.

31. In the course of the discussions concerning the proposal of the Chairman-Rapporteur, most speakers indicated that their governments were prepared to support the inclusion of a system of universal jurisdiction in the draft convention. In particular one delegation announced that its government, although retaining its reservations concerning the advisability of including universal jurisdiction in the convention against torture, had now decided to accept this in the interests of facilitating progress towards agreement on a final text.

32. One other delegation stated that it could accept the proposed text for article 7, depending on its understanding of article 5, since it preferred to make the establishment of universal jurisdiction as envisaged in article 5, paragraph 2, dependent on the refusal of a request for extradition. The view was also expressed that paragraph 2 of article 5 would be more acceptable if the provision mentioned in paragraph 14 of this report would be added to it.

33. On the other hand, some delegations made it clear that they could not accept the inclusion of a system of universal jurisdiction in the Convention.

34. Several speakers who supported the proposal of the Chairman-Rapporteur in general terms stated that in their view some drafting changes would be desirable. In particular the text should be harmonized with the formulations already appearing in comparable treaties such as the Convention for the Suppression of Unlawful Seizure of Aircrafts. After consultations with these delegates the Chairman-Rapporteur submitted a revised version of his proposal (WP.5/Rev.1), which was again discussed in the Working Group. This discussion led to further amendments of the text. Article 7, as it emerged finally from the discussion, reads as follows:

"1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings."

35. It was noted that all delegations who could accept the inclusion of universal jurisdiction in the draft convention against torture, could support this text. The same delegations could also support the text of article 5, paragraph 2, and of article 6, paragraph 4. For the position of one delegation with regard to article 5, paragraph 2, reference is made to paragraphs 15 and 32 above.

36. Some delegations stated that, since document WP.5/Rev.1 had been submitted to the Group at its last meeting dealing with the substance of the draft convention, and only in English and French, they had not had enough time to study its contents.

Article 8

37. At the present session, the Working Group in examining article 8 was mainly concerned with the alternatives "may" and "shall" between brackets in paragraph 2 of article 8.

38. After some discussion, the Group adopted the text with the deletion of the word "shall" and the removal of the brackets around the word "may".

39. Article 8 as adopted by the Working Group in 1982 reads as follows:

"Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1."

Article 9

40. One delegation sought clarification of the extent of the obligation under article 9 that requires States Parties to assist one another in criminal procedures under the Convention. In particular, that delegation asked whether the provisions might require the supplying of evidence that might be inadmissible as evidence in the requested State. There was no dissent from the opinion expressed by some delegations that the law of the requested State would apply to determine such matters.

Article 14

41. The Working Group considered article 14 provisionally agreed to last year and decided to retain it as it is:

"1. Each State Party shall ensure in its legal system that the victim of an act of torture committed in any territory under its jurisdiction be redressed and have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."

42. One delegation asked that reference be made in the report to the reservation concerning article 14 which it had entered at the two previous sessions. 1/

Article 16

43. The text of article 16 as it had emerged from the 1981 session read as follows:

"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not constitute torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12, 13 and [14] shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion."

The debate on article 16, paragraph 1, was carried over from the earlier discussion on article 1, paragraph 2 (see paragraph 7 above).

1/ E/CN.4/L.576, para. 44; E/1980/13, para. 206.

44. As regards paragraph 1 of article 16, the delegation of the United States introduced an amendment (WP.2) to include either the following phrases, "which are not sufficient to constitute torture" or "which do not amount to torture", after the words "inhuman or degrading treatment or punishment".

45. In support of the amendment, several speakers considered it important to indicate clearly in the Convention that torture was the gravest form of "cruel, inhuman or degrading treatment or punishment", and that the whole range of such treatment or punishment should be covered by some articles at least of the Convention. Some other delegations felt, however, that the proposal introduced an undesirable element of vagueness into the text. One opinion was that the difference between torture, as defined or referred to in national laws and in some international decisions, and "cruel, inhuman or degrading treatment or punishment" was one of substance and not of degrees. After some debate, it was agreed to adopt the second alternative in WP.2 on the understanding that one delegation maintained its objection against this formulation.

46. The Group then considered whether to refer to article 14 regarding compensation, in paragraph 1 of article 16.

47. Some speakers, referring to article 11 of the United Nations Declaration against Torture favoured a reference to article 14, on the grounds that victims of cruel, inhuman or degrading treatment or punishment may have a legitimate claim to compensation. Other representatives did not feel that extension of the scope of their compensation laws to an ill-defined field to include all such treatments would be warranted. Since no consensus could be reached, the Group decided to revert to this question at a later stage.

48. Article 16 paragraph 1 reads therefore as follows:

"1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12, 13 and [14] shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."

PROVISIONS RELATING TO IMPLEMENTATION

49. In 1981, the Working Group had engaged in a general debate on measures of international implementation, mainly on the basis of the Swedish draft in document E/CN.4/1285. 2/

50. At the present session, Sweden presented a revised draft on implementation (E/CN.4/1493). 3/

2/ E/CN.4/L.1576, paras. 50-54, reproduced in E/1981/25, para. 185.

3/ See Annex 2 to this report.

51. A preliminary discussion took place on whether to consider first the nature and composition of the proposed implementation organ, or its functions. At the request of some representatives, the Group started with a debate on the latter, as a decision on the type of organ required would, in their view, depend largely upon the kind of functions assigned to it. At a later stage, both the organizational and the functional aspects were discussed at considerable length.

52. After the completion of the meetings of the pre-session Working Group, during which several amendments were made, the Chairman-Rapporteur, in an effort to reconcile the divergent views expressed by members of the Working Group on the problems of implementation, submitted a new set of implementation provisions as a possible alternative to the Swedish draft articles 17 to 34, contained in document E/CN.4/1493. This new set of implementation provisions was reproduced in document E/CN.4/1982/WG.2/WP.6. 4/

53. In the framework of the general discussion which took place on measures of implementation, some speakers reiterated the view that, basically, implementation should be assured by each State Party within the context of its legal system, and expressed doubts regarding the advisability of establishing international bodies with extensive jurisdiction. It was suggested that the provisions concerning international supervision should be made optional. Other delegates stated that self-policing by States has not been entirely successful and, therefore, effective implementation provisions were an indispensable part of the treaty. In the view of yet other delegates, the inclusion in the treaty of the principle of universal jurisdiction was even more important than implementation provisions because such a principle could be invoked even in regard to alleged torturers from non-States Parties. On the other hand, implementation provisions were totally ineffective vis-à-vis non-States Parties.

Nature and composition of the implementation organ

54. It may be recalled that the initial Swedish draft (E/CN.4/1285) had proposed to entrust the task of implementation to the Human Rights Committee established under the International Covenant on Civil and Political Rights. A Netherlands amendment (1981/WP.3) had provided for the establishment of a committee composed of the members of the Human Rights Committee. The Working Group had taken note of a telegram from the Legal Counsel of the United Nations (1981/WP.6) explaining the legal difficulties that he believed would arise if the Human Rights Committee were designated as the international implementation body under the Convention.

55. At the present session, the representative of Sweden submitted a revised draft (E/CN.4/1493). The revised Swedish draft provided for the election by the States Parties of a committee composed of persons, serving in an individual capacity, who "shall, so far as possible, be chosen among members of the Human Rights Committee" (article 17).

56. A number of delegates felt that the revised Swedish text was a constructive proposal. In their view, the new draft, based on the concept of a committee of individual experts, had the advantages of attempting to ensure the independence of the committee from governmental instructions or pressures while avoiding the difficulties pointed out in the cable of the Legal Counsel.

4/ See Annex 3 to this report.

57. It was explained by the author that the clause under which the members should "so far as possible" be also members of the Human Rights Committee was designed to facilitate harmonization between the decisions of the two organs on similar matters, and to reduce the cost of the new scheme. As regards financial implications, attention was also drawn to articles of the revised Swedish draft which provided, as in the Convention against Racial Discrimination, that States Parties would be responsible for the expenses of the members of the Committee while they were performing their duties.

58. In the view of other delegates who had reservations concerning the multiplication of international organs, the revised Swedish draft would raise difficulties. They felt that it would create a new body with sizeable financial implications and no strong safeguards against duplication with the Human Rights Committee. In this regard, those speakers felt that the phrase "so far as possible", in paragraph 2 of article 1 of the draft, was too vague and inappropriate in a binding legal instrument. Some delegates considered the proposed provisions too lengthy and complicated in proportion to the material provisions.

59. In this context, some restated their preference for entrusting the supervisory functions to the Human Rights Committee established under the Covenant. It was observed, however, that it would be difficult to pursue this option in view of the problems raised by the Legal Counsel of the United Nations.

60. Some delegates, without necessarily endorsing the very concept of a permanent international machinery, felt that, if this concept were accepted, it should rather be expressed in terms of an inter-governmental body or of a body organically linked with inter-governmental organs of the United Nations. One speaker observed that the Group of Three Members of the Commission on Human Rights established under article IX of the International Convention on the Suppression and Punishment of the Crime of Apartheid was performing valuable work and might constitute a useful precedent.

61. In his alternative text (1982/WG.2/WP.6), submitted after consultations with several delegates, the Chairman-Rapporteur suggested the creation of "a group of five persons ..." whom the Chairman of the Commission on Human Rights would "appoint from among representatives to the Commission on Human Rights who are nationals of States Parties to the Convention" (art. 17, para.2). It was provided in paragraph 3 that the members of that group "shall serve in their personal capacity".

62. The Chairman-Rapporteur explained that he had tried to suggest a possible solution for the composition of the implementation organ which would avoid the creation of an entirely new body outside the already existing structures for the promotion and protection of human rights, and which would avoid the need for spelling out election procedures etc. in considerable detail, taking as his starting point the machinery provided for in the International Convention on the Suppression and Punishment of the Crime of Apartheid.

63. A number of speakers felt that the Chairman-Rapporteur's text was a constructive compromise which was likely to promote effective implementation with a minimum of financial and administrative implications.

64. While not disagreeing that the text could form the basis of a constructive compromise, one delegation suggested the following amendment to it: "The Chairman of the Commission on Human Rights should appoint the members of the Group from among nationals of Member States of the Commission on Human Rights which are parties to the Convention." Other representatives expressed objections or reservations concerning the proposed appointment of members by the Chairman of the Commission from among the representatives on that body: such a procedure would, in their view, introduce strong political factors which were especially undesirable as regards implementation of a Convention designed to prohibit torture by public officials. Those delegates considered that the clause of paragraph 2 regarding membership "in personal capacity" would leave matters ambiguous and would not suffice to guard against the risk of politicization. Queries were also voiced on the absence of provisions concerning the terms of office of members, criteria for selection of members and the frequency and duration of meetings.

65. One speaker observed that he found himself in a particular position since he was on the one hand a representative of his Government to the Commission on Human Rights while he was on the other hand a member of one of the Commission's Working Groups, serving as an expert in his personal capacity. He was therefore fully aware of the dilemmas which might arise for a Government representative to the Commission if such a representative would have at the same time to perform the delicate functions envisaged in the draft proposals under discussion. In this context, it was suggested that it might be better to have the members of the supervisory body appointed by the Chairman of the Human Rights Committee from among the members of that Committee who would be nationals of States Parties to the Convention. If the members of the Committee were to serve in this capacity, it would be totally different and apart from their functions under the Covenant. This would seem to some delegations to avoid the legal problem raised by the United Nations legal expert.

66. In the course of the ensuing debate, a number of delegates expressed their preference, with varying emphasis, for the following basic elements: election of the implementation organ by the States Parties; requirement that all or part of the members should also belong to the Human Rights Committee; and term of office to be carried out in a personal capacity. Other delegations spoke in favour of the establishment of an entirely new organ.

67. Some delegations maintained their preference for a body organically linked to the Commission on Human Rights.

68. The International Commission of Jurists put forward a compromise proposal (WP.7), according to which the members of the implementation organ would be appointed for a period of three years at a meeting of representatives of the States Parties to the Convention, after consultation by their Chairman with the Chairman of the Commission on Human Rights and the Chairman of the Human Rights Committee. They would be appointed from among representatives to the Commission and members of the Committee, who were nationals of States Parties to the Convention and willing to serve on the implementation organ under the Convention. The organ would report both to the Commission on Human Rights and to the Human Rights Committee.

69. One delegate suggested a two-phase procedure for the composition of the implementation organ. Initially, as long as only a limited number of States had become parties to the Convention, the members of the organ would be appointed; in a later stage, after a certain number of ratifications or accessions had been reached, the members would be elected by the States Parties.

Measures of international implementation

70. Several delegations expressed their support for the proposal contained in article 29 of the new Swedish draft, providing for the submission of reports and other information by the States Parties and the consideration thereof by the implementation organ to be set up under the Convention. On the other hand, some delegations objected to the inclusion of "other information" in this procedure. The delegation of Brazil submitted amendments to draft article 29, which were reproduced in document E/CN.4/1982/WG.2/WP.3, and which related both to paragraph 1 and paragraph 2 of this draft article. According to the first proposed amendment, paragraph 1 would be replaced by the following text:

"1. The States Parties to the present Convention undertake to submit to the Secretary-General of the United Nations reports on the measures they have adopted to give effect to their undertakings under the Convention:

(a) within one year of the entry into force of the Convention for the States Parties concerned;

(b) whenever there is any change in those measures;

(c) when the Committee so requests."

During the discussion of this proposed amendment, some changes were suggested which were accepted by the delegation of Brazil. The revised version, as reproduced in document E/CN.4/1982/WG.2/WP.3/Rev.1, which was also acceptable to the Swedish delegation, reads as follows:

"1. The States Parties to the present Convention undertake to submit to the Secretary-General of the United Nations reports on the measures they have taken to give effect to their undertakings under the Convention:

(a) within one year of the entry into force of the Convention for the States Parties concerned; and

(b) whenever any new measures have been taken; and

(c) when the Committee so requests."

According to the second amendment proposed by the delegation of Brazil, the first sentence of paragraph 2 of article 29 would read as follows:

"Such reports shall be considered by the Committee, which shall transmit them with such comments or suggestions as it may consider appropriate to the States Parties."

71. This second amendment met with no objections in the Working Group.

72. The Working Group discussed at some length the proposed procedure for enquiries as contained in article 30 of the new Swedish draft.

73. The Netherlands delegation also recalled the fact-finding proposal set out in the amendments submitted by the Netherlands in 1981. There was some support for this proposal. Some delegations, however, remarked that, while their governments might be prepared to accept for themselves a fact-finding system as provided for in the Netherlands proposal, they felt such a system was too stringent for the purpose of a convention which was intended to obtain worldwide support.

74. With regard to the Swedish proposal several points of criticism were raised. It was observed that draft article 30 did not make it clear that a step-by-step approach would be required: first the implementation organ should consider whether there were sufficient reasons for addressing itself to a State Party, in a second stage the organ should consider, taking into account all relevant information at its disposal, whether it would be warranted to initiate an enquiry, and finally the organ should consider, in the light of the results of the enquiry, whether to transmit any comments or suggestions to the State Party concerned. It was also recommended to specify in the text that all the proceedings under this article should be confidential.

75. One delegation submitted that torture is an evil of such a grave nature that publicity would be justified if a government would clearly fail to take the necessary measures to suppress this evil. This delegation suggested to include in the Convention a provision along the following lines: If the implementation organ would consider that compelling grounds existed for believing that repeated violations of the Convention had occurred on the territory of a State Party and that the State Party had not taken satisfactory action in respect of these violations, the organ should advise the State Party confidentially that in its opinion prosecution of alleged offenders would be required in accordance with article 7 of the Convention. If after a period of one year after the communication of such advice no action to prosecute had been taken by the State Party concerned, the implementation organ in its discretion might include an account, which might be a summary account, of the situation in its public report to the Economic and Social Council.

76. Some delegations expressed hesitations with respect to this suggestion. It was pointed out that the draft Convention does not entail an obligation to prosecute but only an obligation to submit cases to the competent authorities who have to decide about prosecution. Moreover, it was observed that adequate measures to suppress the evil of torture may often be of a different character than measures in the field of penal law.

77. In the light of the discussion with regard to article 30, the delegation of Sweden submitted a revised text of this draft article. The revised text, which was reproduced in document E/CN.4/1982/WG.2/WP.4, reads as follows:

"Article 30

1. If the Committee receives information from any source which appears to indicate that torture is being systematically practised in the territory of a State Party, the Committee shall give that State Party the opportunity to state its views on the situation.

2. On the basis of all relevant information available to the Committee, including any explanations which may have been given by the State Party concerned, the Committee may, when the circumstances so warrant, designate one or more of its members to make a confidential enquiry and to report to the Committee urgently.

3. An enquiry made in accordance with paragraph 2 of this article may include a visit to the territory of the State Party concerned, unless the Government of that State Party refuses to give its consent.

4. After examining the report of its member or members submitted in accordance with paragraph 2 of this article, the Committee may transmit to the State Party concerned any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee under this article shall be confidential."

78. The revised text of draft article 30, presented by Sweden, evoked several comments from members of the Working Group. It was said that the implementation organ should form its own judgement as to whether any information received appeared to indicate the occurrence of systematic practices of torture. Therefore, in paragraph 1 the words "in its view" should be inserted before "appears to indicate". Again, the organ should make its own judgement as to whether the initiation of an enquiry according to paragraph 2 would be warranted. Therefore, in paragraph 2 the words "when the circumstances so warrant" should be replaced by "if it decides that this is warranted". The formula "to state its views on the situation" at the end of paragraph 1 was criticized because the word "situation" might seem to imply that the practice of torture did indeed occur; therefore this formula should be replaced by a more neutral expression. A similar observation was made with regard to the term "explanations" in paragraph 2. As to paragraph 3, it was suggested to read the last part of it as follows: "unless the Government of that State Party, when informed of the intended visit, does not give its consent". All these suggestions were accepted by the Swedish delegation.

79. Several delegations expressed their support for the complaint procedures contained in the Swedish draft articles 31 and 32. Other delegations had misgivings with regard to the inclusion of such procedures in the Convention. In particular since the implementation organ could not be the Human Rights Committee as envisaged in the original Swedish proposal, there might be a risk of duplication and even conflict between these procedures and the corresponding procedures under the International Covenant on Civil and Political Rights and the Optional Protocol of 1966. Taking into account also that the proposed procedures would be optional, some delegations wondered whether it would not be preferable to omit these procedures from the Convention.

80. In connection with the optional procedure for State complaints contained in article 31 of the new Swedish draft, the delegate of the Netherlands invited comments with regard to the proposal for a mandatory State complaint procedure as contained in the amendments submitted by his Government in 1981. One delegation stated its preference for a mandatory procedure as envisaged in the Netherlands proposal; most other delegations who expressed themselves on this question stated that they preferred an optional procedure in the Convention under discussion.

81. One other delegation observed that, in so far as State complaints were in fact allegations by a State that another State was not fulfilling its obligations under the Convention, the question could be considered as involving a dispute between two States about the interpretation or the application of the Convention. Such a dispute should then be necessarily subject to the procedures for peaceful settlement set out in the Charter of the United Nations. It could therefore be specified in the Convention that, once a dispute thus arose, the parties to the dispute accepted the obligation to submit it to a procedure such as mandatory conciliation, unless they agreed to another procedure. This would have the advantage of establishing clearly a mandatory procedure to be applied to the settlement of the dispute. At the same time, conciliation was a method that States could more easily accept than other procedures, such as arbitration or judicial adjudication, in which States were bound to accept not only the method of settlement but also the award or sentence. In the view of this delegation, allegations by a State that another State was not taking effective measures to prevent acts of torture - an obligation assumed under the Convention - could thus be dealt with simply as a dispute concerning the interpretation or application of the Convention, without the need to give the allegation the character of a "complaint". In its view, that solution would be as effective as a system of "complaints" and States were more likely to accept it, since it would fall in the generally accepted treatment of inter-State disputes concerning a treaty that binds them.

82. In introducing his alternative proposal for the implementation provisions, the Chairman-Rapporteur explained that his proposed articles 18 and 19 contained no new elements but simply reflected the outcome of the discussions that had taken place concerning articles 29 and 30 of the Swedish draft. Article 20 and the accompanying annex had been inspired by the suggestion of one delegation to include in the Convention a mandatory conciliation procedure for disputes between States. The text of this article and the annex were a copy, with some necessary adaptations, of the corresponding provisions in the Vienna Convention on the Law of Treaties. The alternative set of implementation provisions, suggested by the Chairman-Rapporteur, did not provide for the inclusion of procedures for State complaints or individual complaints regarding non-fulfilment by a State Party of obligations under the Convention.

83. Some members expressed their hesitations with regard to the mandatory conciliation procedure as contained in article 20 and the annex of the proposal of the Chairman-Rapporteur. One speaker pointed out that the precedents mentioned by the Chairman-Rapporteur related to international treaties regarding subjects of an entirely different character than the envisaged Convention. Some delegations observed that there was a difference between disputes regarding the application of such provisions of the Convention as those in the field of jurisdiction and extradition, which would often lend themselves to judicial or quasi-judicial settlement, and disputes regarding the occurrence of the practice of torture, which would more naturally be the subject of complaint procedures. In this context it was considered an advantage of the complaint procedure contained in the Swedish proposals that the matter was not dealt with exclusively between the parties to the dispute but that the implementation organ had a certain role to play. Some delegations stated that, for their Governments, only an optional conciliation procedure would be acceptable. On the other hand one delegation recommended to include in the Convention a mandatory procedure for judicial settlement of disputes relating to the interpretation or application of the Convention by the International Court of Justice, as contained in article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination and numerous other treaties.

Annex I

Article 1 d/

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. a/

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. a/

3. An order from a superior officer or a public authority may not be invoked as a justification of torture. c/

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. a/

2. [For the purpose of determining whether there are such grounds all relevant considerations shall be taken into account, including, where applicable, the existence in the State concerned of a consistent pattern of gross violations of human rights, such as those resulting from a State policy of apartheid, racial discrimination or genocide, colonialism or neo-colonialism, the suppression of national liberation movements or the occupation of foreign territory.] e/

Remark: Some delegations indicated that their States might wish, at the time of signature or ratification of the Convention or accession thereto, to declare that they did not consider themselves bound by article 3 of the Convention, in so far as that ~~article might not be compatible with obligations towards States not Party to the Convention under extradition treaties concluded before the date of the signature of the Convention.~~

a/ Adopted in 1979.

b/ Adopted in 1980.

c/ Adopted in 1981.

d/ Adopted in 1982.

e/ Not yet adopted.

Article 4 b/

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. */
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State; b/
 - (b) When the alleged offender is a national of that State; c/
 - (c) When the victim is a national of that State if that State considers it appropriate. c/
- [2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.] l/
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law. c/

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 if present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted. b/

*/ The term "complicity" includes "encubrimiento" in the Spanish text.

In the Spanish text

[Add at the end of para. 1: "o encubrimiento de la tortura".]

In the French text

[Add a foot-note reading: "le terme 'complicité' comprend 'encubrimiento' dans la texte espagnol".]

l/ See paragraphs 9 to 12 of the report.

2. Such State shall immediately make a preliminary inquiry into the facts. b/
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides. b/
- [4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.] 2/

Article 7 3/

1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8 d/

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

2/ See paras. 16 to 18 of the report.

3/ See paras. 19 to 36 of the report.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9 b/

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10 a/

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11 a/

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12 b/

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13 b/

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14 d/

1. Each State Party shall ensure in its legal system that the victim of an act of torture be redressed and have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15 b/

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12, 13 and [14] shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment. e/

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

ANNEX II

REVISED DRAFT ARTICLES SUBMITTED BY SWEDEN REGARDING THE
IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE (E/CN.4/1493)

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee). It shall consist of nine members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Convention and, so far as possible, of persons who are also members of the Human Rights Committee established in accordance with Article 28 of the International Covenant on Civil and Political Rights. The members of the Committee shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 18

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 17 and nominated for the purpose by the States Parties to the present Convention.
2. Each State Party to the present Convention may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 19

1. 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.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy in accordance with article 23, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Convention to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Convention no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Convention convened by the Secretary-General of the United Nations at the Headquarters of the United Nations or at the United Nations Office at Geneva. At that meeting, for which two thirds of the States Parties to the present Convention shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

Article 20

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 21

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of the present Convention.

Article 22

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 23

1. When a vacancy is declared in accordance with article 22 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Convention, which may within two months submit nominations in accordance with article 18 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Convention. The election to fill the vacancy shall then take place in accordance with the relevant provisions of the present Convention.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 22 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 24

The States Parties to the present Convention shall be responsible, in the same proportions as their contributions to the general budget of the United Nations, for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 25

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.

Article 26

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations or at the United Nations Office at Geneva.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 27

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 28

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - (a) six members shall constitute a quorum;
 - (b) decisions of the Committee shall be made by a majority vote of the members present.

Article 29

1. The States Parties to the present Convention undertake to submit to the Secretary-General of the United Nations:
 - (a) within one year of the entry into force of the Convention for the States Parties concerned, reports on measures they have taken to give effect to their undertakings under the Convention; and
 - (b) subsequently, when so requested by the Committee, reports or other information relating to the application of the Convention.
2. Such reports or other information shall be considered by the Committee, which shall transmit such comments or suggestions relating to them as it may consider appropriate to the States Parties. The Committee may also transmit such comments or suggestions to the Economic and Social Council along with copies of the reports it has received from the States Parties.

3. The States Parties may submit to the Committee observations on any comments or suggestions that may be made in accordance with paragraph 2 of this article.

Article 30

1. If the Committee receives reliably attested information from any source indicating that torture is being systematically practised in the territory of a State Party to the present Convention, the Committee, after giving that State Party the opportunity to state its views on the situation, may designate one or more of its members to make a confidential enquiry and to report to the Committee urgently.

2. An enquiry made in accordance with paragraph 1 of this article may include a visit to the territory of the State Party concerned, unless the Government of that State Party refuses to give its consent.

Article 31

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of the present Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of the present Convention.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the present Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission.

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (c) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.

(ii) If a solution within the terms of subparagraph (c) is not reached, the Committee shall confine its report to a brief statement of the facts: the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to the present Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article: no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 32

1. A State Party to the present Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party to the Convention which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the present Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to the present Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that

(a) the same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

(b) the individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of the present Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to the present Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 33

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 31, paragraph 1 (c), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 34

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

Annex III

Implementation provisions suggested by the Chairman-Rapporteur as a possible alternative to the draft articles 17-34, contained in document E/CN.4/1493 (E/CN.4/1982/WG.2/WP.6)

Article 17

1. For the performance of the functions described in articles 18 and 19 there shall be established a group consisting of five persons of recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
2. The Chairman of the Commission on Human Rights shall appoint the members of the group from among representatives of the Commission on Human Rights who are nationals of States Parties to the Convention. If fewer than five States Parties to the Convention are members of the Commission on Human Rights, the Secretary-General of the United Nations shall, after consulting with all States Parties to the Convention, designate one or more nationals of States Parties which are not members of the Commission to take part in the work of the group until the next session of the Commission on Human Rights.
3. The members of the group established in accordance with the preceding paragraphs shall serve in their personal capacity.
4. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the group established in accordance with paragraphs 1 and 2.
5. The group established in accordance with paragraphs 1 and 2 shall forward an annual report on its performance of the functions described in articles 18 and 19 to the States Parties to the Convention. It shall forward a copy of this report to the Commission on Human Rights.

Article 18

1. The States Parties to the Convention undertake to submit to the Secretary-General of the United Nations reports on the measures they have taken to give effect to their undertakings under the Convention:
 - (a) within one year of the entry into force of the Convention for the States Parties concerned; and
 - (b) whenever any new measures have been taken; and
 - (c) when the group established in accordance with article 17 so requests.
2. Such reports shall be considered by the group established in accordance with article 17, which shall transmit them with such comments and suggestions as it may consider appropriate to the States Parties. The group may also transmit such comments or suggestions to the Commission on Human Rights along with copies of the reports it has received from the States Parties.

3. The States Parties may submit to the group established in accordance with article 17 observations or any comments or suggestions that may be made in accordance with paragraph 2 of the present article.

Article 19

1. If the group established in accordance with article 17 receives information from any source which in its view appears to indicate that torture is being systematically practised in the territory of a State Party to the Convention, the group shall invite that State Party to submit observations with regard to the information concerned.

2. On the basis of all relevant information available to the group, including any observations which may have been submitted by the State Party concerned, the group may, if it decides that this is warranted, designate one or more of its members to make a confidential enquiry and to report to the group urgently.

3. An enquiry made in accordance with paragraph 2 of this article may include a visit to the territory of the State Party concerned, unless the Government of that State Party when informed of the intended visit, does not give its consent.

4. After examining the report of its member or members submitted in accordance with paragraph 2 of this article, the group may transmit to the State Party concerned any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the group under this article shall be confidential.

Article 20

1. The States Parties to the Convention shall seek a solution to any dispute that may arise between them concerning the interpretation or application of the Convention through the means indicated in article 33 of the Charter of the United Nations.

2. The existence of a dispute shall particularly be recognized when one State Party to the Convention has addressed to another State Party a written communication alleging that this other State Party has failed to fulfil one of its obligations under the Convention and the State Party to whom the communication has been addressed denies the allegation or fails to reply within 45 days.

3. If after the expiry of a period of 45 days after the existence of the dispute is recognized the States Parties concerned have not agreed on another method of settlement, any of them may set in motion the procedure of conciliation specified in the Annex to the present Convention, through a request made to the Secretary-General of the United Nations.

ANNEX

1. A list of conciliators consisting of persons of high moral character and recognized competence in the field of human rights shall be maintained by the Secretary-General of the United Nations. To this end, every State Party to the Convention shall be invited to nominate two conciliators, and the names of the persons so nominated shall constitute the list. The term of a conciliator, including that of any conciliator nominated to fill a vacancy, shall be five years and may be renewed. A conciliator whose term expires shall continue to fulfil any functions for which he shall have been chosen under the following paragraphs.

2. When a request has been made to the Secretary-General in accordance with article 20, paragraph 3, of the Convention, the Secretary-General shall bring the dispute before a Conciliation Commission constituted as follows.

The State or States constituting one of the parties to the dispute shall appoint:

- (a) one conciliator of the nationality of that State or one of those States, who may or may not be chosen from the list referred to in paragraph 1, and
- (b) one conciliator not of the nationality of that State or of any of those States, who shall be chosen from the list.

The State or States constituting the other party to the dispute shall appoint two conciliators in the same way. The four conciliators chosen by the parties to the dispute shall be appointed within 45 days following the date on which the Secretary-General receives the request.

The four conciliators shall, within 45 days following the appointment of the last of them, appoint a fifth conciliator from the list, who shall be the chairman of the Conciliation Commission.

If the appointment of the chairman or of any of the other conciliators has not been made within the period prescribed above for such appointments, it shall be made by the ~~Secretary-General~~ within 45 days following the expiry of that period. Any of the periods within which appointments must be made may be extended by agreement between the parties to the dispute.

Any vacancy shall be filled in the manner prescribed for the initial appointment.

3. The Conciliation Commission shall decide its own procedure. Decisions and recommendations of the Commission shall be made by a majority vote of the five members.

4. The Commission shall hear the parties to the dispute and examine the claims and objections. It may make recommendations at any time and shall present a Final Report within 180 days after its constitution. The Report, and any recommendations made by the Commission, shall not be binding upon the parties and shall have no other character than that of recommendations submitted for consideration to the parties.

5. The Secretary-General shall provide the Commission with such assistance and facilities as it may require for the performance of its function. The expenses of the Commission shall be borne by the United Nations.

B.

REPORT OF THE INFORMAL OPEN-ENDED WORKING GROUP ESTABLISHED
UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 23 (XXXVII)

Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission; alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms

1. By its resolution 23 (XXXVII), the Commission on Human Rights decided to establish at its thirty-eighth session an open-ended working group to continue the over-all analysis on the further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission and alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms.

2. The Working Group met on 11, 12, 22 and 24 February, and on 3 March 1982. At its first meeting, Mr. T.C.A. Rangachari (India) was unanimously elected Chairman-Rapporteur.

3. The Working Group had before it the following documentation:

(a) The report of the Working Group established under Commission on Human Rights resolution 23 (XXXVI) (E/CN.4/L.1577);

(b) A report by the Secretary-General on national institutions for the promotion and protection of human rights (A/36/440);

(c) A report by the Secretary-General on the development of public information activities in the field of human rights (E/CN.4/1496);

(d) A note by the Secretary-General on information submitted in accordance with Economic and Social Council resolution 1159 (XLI) regarding co-operation with regional intergovernmental bodies concerned with human rights (E/CN.4/1982/1);

(e) The annual report of the Inter-American Commission on Human Rights, 1980-81 (E/CN.4/1982/2);

(f) A written statement submitted by the Christian Democratic World Union, a non-governmental organization in category II consultative status (E/CN.4/1982/NGO/4).

4. The following working papers were submitted to the Working Group:

E/CN.4/1982/WG.3/WP.1 submitted by Brazil;

E/CN.4/1982/WG.3/WP.2 submitted by Japan;

E/CN.4/1982/WG.3/WP.3 submitted by Australia;

E/CN.4/1982/WG.3/WP.4 submitted by Bulgaria and Poland;

E/CN.4/1982/WG.3/WP.5 submitted by the Chairman/Rapporteur.

These working papers are annexed to the present report.

5. The meeting of the Working Group was preceded by a general debate on this item held by the Commission at its 14th-16th meetings. During the debate, a number of opinions, proposals and suggestions on conceptual, structural and organizational matters were mentioned. It was widely felt that in view of the complexity and diversity of issues raised, it would be advisable for the Working Group to adopt a step-by-step approach instead of seeking to make quantum jumps. There was general agreement that the Commission, in continuing its work on this subject should also devote particular attention to rationalizing and streamlining its work methods. (For details of the plenary debate, see E/CN.4/SR.14, SR.15 and SR.16.)

6. At its first meeting on 11 February 1982, the Chairman of the Working Group summarized in light of the discussion in plenary various opinions, suggestions and proposals which might be discussed during the Working Group's meetings, it being understood that the order of discussion would depend on the wishes of delegations:

(a) Structural issues, such as the proposal for the establishment of a High Commissioner for Human Rights, which the General Assembly requested the Commission to examine at the present session; a possible intersessional role for the Bureau of the Commission; the possibility of re-designating the Division of Human Rights as a Centre of Human Rights; the possibility of redefining the terms of reference of the Commission on Human Rights and the possibility of holding emergency sessions of the Commission.

(b) Organizational issues, such as streamlining the work of the Commission by reducing items on the agenda, or alternating some of the items at different sessions; the procedure for the consideration of communications on human rights in terms of Economic and Social Council resolution 1503 (XLVIII) and the principles for the selection of situations or issues involving alleged violations of human rights; and the evolution of a long-term programme of work of the Commission.

(c) The role of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

(d) Public information and educational activities.

(e) The further development of human rights concepts.

7. Delegations made suggestions regarding the order in which these matters could be discussed and suggested other topics for consideration under the various categories listed in the summary of suggestions and proposals presented by the

Chairman. There was a general feeling that the issues that should be discussed by the Working Group under this item were extensive and complex and that the four meetings provided to the Working Group during the current session were too short to deal adequately with all of them. The issues themselves were important and deserved thorough consideration but some of the issues had been under consideration for several years and it was evident that the positions of delegations were too far apart for a generally acceptable understanding to be evolved in a short period of four meetings. It was therefore generally agreed that the time available should be utilized for making progress, even if it be on a modest scale, on some issues which had immediate relevance and on which the position of delegations was not too divergent. In this context, particular emphasis was placed on improving the functioning and work methods of the Commission. The Working Group eventually decided to commence discussion, at its second meeting, on possible improvements in the functioning of the Commission.

8. At its second meeting, on 12 February 1982, the Working Group discussed the functioning of the Commission on Human Rights. The Chairman of the Working Group suggested that the following aspects, among others, could be given attention:

- The agenda of the Commission;
- The procedures of the Commission;
- The working methods of the Commission;
- The schedule of meetings of the Commission;
- The functioning of the Working Groups of the Commission.

9. During the discussions held at this meeting the delegations of Australia, Brazil and Japan outlined certain ideas which they subsequently submitted in written working papers. In summary, these concerned the rationalization of the agenda of the Commission; the procedure for achieving such a rationalization; and the schedule of meetings of the Sub-Commission, the Commission, the Economic and Social Council and the General Assembly. The details of these ideas are contained in working papers 1, 2 and 3, which are annexed to the present report. Informal consultations were also held on these matters between meetings.

10. At its second and third meetings, members of the Working Group commented on the suggestions contained in these working papers. At the third meeting, the delegation of Bulgaria also outlined certain ideas for consideration which it intended to submit in a written working paper and which was subsequently issued as working paper 4, also annexed hereto. A number of speakers stressed the importance of the elaboration of the programme of work of the Commission with a view to implementing the concepts laid down in General Assembly resolution 32/130.

11. During the discussions at the second, third and fourth meetings, the general feeling of delegations was that ideas contained in working papers 1 and 3 commended themselves to many members of the Working Group, although some changes, additions or refinements could be made to it. The experience of previous sessions showed that the agenda of the Commission was too long and a number of items could not be considered at all, or were considered only cursorily owing to lack of time. Efforts should be made to identify items which could be taken up periodically rather than being retained annually on the agenda without being properly considered. There was also scope for rationalization of the agenda but care should be exercised to ensure

that in the name of rationalization, the subject did not lose its meaning or importance. One delegation suggested that the Commission's efficiency could be improved and more work accomplished if a time-limit was set on statements - possibly a maximum of 20 minutes for members, 15 minutes for observers and 10 for NGOs. This suggestion was commended by some delegations as a practical way of dealing with the pressing problem of paucity of time, while some delegations expressed reservations. In connection with the elaboration of the agenda the view was expressed that the Commission should avoid duplicating the work of other organs of the United Nations.

12. The procedural aspect of improving the Commission's functioning was also considered and different views were expressed in regard to the "Informal Agenda Group" proposed in working paper 1. An alternative suggestion was put forward in working paper 4, as a one-time measure, to convene a meeting of the Bureau of the thirty-eighth session, two days before the convening of the thirty-ninth session to consider the agenda for that session. However, some speakers pointed out that a meeting of this sort would not help since it was necessary to adopt a provisional agenda at the conclusion of a session to enable delegations and the Secretariat to make adequate preparations. It was suggested, though, that this problem might be brought to the attention of the Commission so that efforts could be made at the next session to give thought to it and find ways of dealing with it. It was also the general view that working paper 3 could be considered as containing some ideas which could be used in the amplification of working paper 1.

13. There was a general feeling that the Commission's session is held too soon after the General Assembly. It would be desirable to have the annual sessions of the Commission later in the year. The view was also expressed that the Sub-Commission should meet prior to the Commission, while there was an opposing view in favour of retaining the present practice.

14. In the light of information provided by the Secretariat, the general feeling among delegations was that plan 1 contained in working paper 2, could be presented in general terms by the Commission on Human Rights to the Economic and Social Council so that the Council, taking into account all relevant factors, could consider the feasibility of the plan and possible steps for its implementation. Some delegations expressed reservations about some aspects of the plan.

15. In regard to the proposal for the creation of a post of High Commissioner for Human Rights, which the General Assembly in resolution 36/35 had asked the Commission to discuss, it was said that the four meetings provided for the Working Group were not sufficient for a thorough discussion. Some speakers stated that the Sub-Commission had already made a recommendation in that regard in its resolution 12 (XXXIV) and it would therefore be more appropriate to consider this question under the agenda item on the Sub-Commission and that that body should be asked to study this question further. Some other delegations opposed this approach and stated that the appropriate item to discuss the question was the one that the Working Group dealt with. It was also felt that the Commission could continue to keep this question under consideration. A number of delegations referred to the need for evolving consensus on an important question like the proposed High Commissioner as otherwise it would affect the efficacy and credibility of the post if created. A number of delegations also stressed the importance of upgrading the Division of Human Rights into a Centre. At the same time, the need was stressed to increase the effectiveness of the activities of the Division.

16. The Working Group also briefly discussed the role and functioning of the Working Groups. It was noted that while the Working Group mostly dealt with treaty making activities, other subjects were also assigned to Working Groups. Meetings were held sessionally as well as inter-sessionally. It might be useful to evaluate the functioning of Working Groups taking into account also the participation in Working Groups while treaty making activities would best be undertaken in open-ended Working Groups, it might be useful to consider if other subjects could be dealt with by Working Groups. The discussions were inconclusive but it was generally felt that the subject might be considered further.

17. Some speakers stated that the items on the agenda should be as concise and clear as possible, and that it would, therefore, be advisable for the Commission to consider the agenda with a view to rephrasing the titles, where necessary. A few speakers considered that an attempt should also be made to reflect in the agenda, possibly by inscribing a new item, the increased attention being given to a thematic approach to the consideration of global human rights questions. It was pointed out, however, that in such consideration it should not be forgotten that each agenda item had its own legislative authority history and purpose and that this should be taken into account.

18. At its fourth meeting, the Working Group decided that its Chairman/Rapporteur should present a synthesis of proposals which he felt the Working Group would be able to agree upon as recommendations to the Commission. The Working Group discussed the proposals submitted by its Chairman/Rapporteur (WP.5) at its fifth meeting on 3 March 1982. In the light of informal consultations which had been held subsequent to the issuance of WP.5, the Chairman/Rapporteur submitted the following revised proposals:

The Commission on Human Rights,

Recalling General Assembly resolution 34/46 of 23 November 1979, 35/174 of 15 December 1980 and 36/133 and 36/135 of 14 December 1981,

Taking into account the concepts contained in General Assembly resolution 32/130 of

Bearing in mind the measures taken by Economic and Social Council in its resolution 1979/36 of 10 May 1979,

Recalling also its resolution 23 (XXXVII) in which it decided to continue, at its thirty-eighth session, its ongoing work on the over-all analysis with the view to further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission and alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms,

Cognizant of the contribution that this ongoing work can make to the efforts within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms,

Attaching importance to improving the functioning of the existing system of United Nations organs dealing with Human Rights.

1. Takes note with satisfaction of the report of the open-ended working group established at its thirty-eighth session;
 2. Decides to recommend to Economic and Social Council to consider at its first regular session in 1982, the possibility of rescheduling the annual session of the Commission and if necessary the Sub-Commission with a view to enabling the Commission to meet later in the year;
 3. Decides to consider at its thirty-ninth session the possibility of rationalizing its agenda and to this end to establish during the session an informal group of 10 members to consider what might be done to that effect with regard to the agenda for the fortieth session;
 4. Requests the informal group to take into account the Report of the open-ended working group established at its thirty-eighth session;
 5. Decides also to consider at its thirty-ninth session the elaboration of its programme of work bearing in mind the concepts set forth in General Assembly resolution 32/130 and other subsequent relevant resolutions;
 6. Decides to consider at its thirty-ninth session a time limit of statements in order to ensure that adequate time is made available for consideration of all items;
 7. Decides to examine the organization and functioning of open-ended working groups at its thirty-ninth session;
 8. Decides, in response to General Assembly resolution 36/135 to inform the General Assembly through the Economic and Social Council that it intends to keep under continued consideration the proposal for the creation of a post of a United Nations High Commissioner for Human Rights;
 9. Decides to establish an open-ended working group at its thirty-ninth session to continue the ongoing work on over-all analysis;
 10. Requests the Secretary-General to bring the present resolution and the relevant chapter of its report on the thirty-eighth session to the attention of the General Assembly through the Economic and Social Council.
19. The following amendments or suggestions were made on these proposals:
- (a) First preambular paragraph: The delegation of the United States of America suggested that the reference to General Assembly resolution 36/135 be kept in abeyance pending the determination of the text of operative paragraph 8.

(b) Operative paragraph 2: The delegations of the United States of America and Japan suggested that the text of operative paragraph 4 of WP.5 should be re-inserted. 1/ The delegation of Japan also suggested that the text of operative paragraph 3 of WP.5 should also be re-inserted. 2/

(c) Operative paragraph 3: The delegation of the United States of America suggested that a reference to equitable geographical representation be inserted after "10 members".

(d) Operative paragraph 5: The delegation of Denmark suggested that the words after "set forth in" should be deleted and replaced by the following: "existing human rights instruments and relevant General Assembly resolutions, including General Assembly 32/130".

(e) Operative paragraph 8: The delegation of Bulgaria suggested that the following words be inserted at the end of the paragraph: "within the framework of the over-all analysis". The delegation of Italy suggested that the paragraph be re-worded as follows: "8. Decides, in response to General Assembly resolution 36/135 to inform the General Assembly through the Economic and Social Council that it will consider the proposal for the creation of a post of a United Nations High Commissioner for Human Rights at the next session, taking into account the work being done on this issue by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in implementation of its resolution 12 (XXXIV) and of its decision 3 (XXXIV)."

(f) Operative paragraph 9: The delegation of Bulgaria suggested that the following words be added at the end of the paragraph: "and to provide it with enough meetings."

20. The Working Group decided that the proposals of the Chairman, together with the amendments or suggestions of delegations should be submitted to the Commission as a part of the report and that informal consultations be held in the meantime to try and evolve a consensus.

21. The Working Group adopted the present report at its fifth meeting on 3 March 1982.

1/ "Also requests the Economic and Social Council to consider the possibility of having the report of the Commission considered at its second regular session in July if a decision is taken with regard to rescheduling the Commission's annual session."

2/ "Requests the Economic and Social in giving consideration to the above proposal to consider also the possibility of adopting the following chronology of meetings: Sub-Commission, Commission, Economic and Social Council, General Assembly."

ANNEX I

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

WORKING PAPER SUBMITTED BY THE DELEGATION OF BRAZIL

Principles

1. Efforts should be made to reduce the number of items included in the agenda of each Session of the Commission, in order to facilitate its adequate consideration.
2. Some items could be included in the agenda at periodic intervals, or when studies or reports related to them are ready for consideration.
3. Efforts should be made to give each item a title which being as concise as possible gives a clear indication of the subject to be considered under the item.
4. In the preparation of the agenda attention should be given to the possibility of grouping several related items under a single heading.

Procedure

At the beginning of each Session, the Chairman of the Commission should appoint an Informal Agenda Group of no more than ten representatives, with representation of the different regional groups to present suggestions for the agenda of the next session of the Commission. Taking into account the principles indicated above, the Informal Group will present its suggestions before the penultimate week of the Session.

ANNEX II

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

WORKING PAPER SUBMITTED BY THE DELEGATION OF JAPAN

Rescheduling of meetings of the Commission on Human Rights

In order to achieve a more balanced scheduling of meetings of the Commission on Human Rights to deal with violations of Human Rights throughout the year,

In order to provide more adequate time for the preparation of documents which are essential for the work of the Commission,

In order to minimize additional financial requirements resulting from holding intersessional meetings of the Commission,

The following two plans are proposed for consideration:

Plan A

February	Sub-Commission
May/June (immediately after the session of the Economic and Social Council)	Commission
July	Economic and Social Council
September/December	General Assembly *Intersessional meetings of the Commission in case of emergency

Plan B

February	Sub-Commission
March (two weeks)	Commission (Working Groups)
August/September (four weeks)	Commission
October	Resumed session of the Economic and Social Council General Assembly *Intersessional meetings of the Commission in case of emergency

ANNEX III

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

WORKING PAPER SUBMITTED BY THE DELEGATION OF AUSTRALIA

The following observations on the agenda of the Commission on Human Rights are based on a concern to enhance the effectiveness of the Commission's organization of work, as well as on resolutions relating to the over-all analysis adopted in recent years by the General Assembly, the Economic and Social Council and the Commission.

Importance is attached to simplifying the agenda wherever possible, and to seeking a clearer reflection of the principal concerns of the Commission; suggestions are also made concerning the frequency with which some issues need to be considered.

The following specific suggestions are proposed for the consideration of the Working Group:

1. In the light of the principle of the interdependence and indivisibility of human rights and the concern of the Commission with the universal acceptance and implementation of international human rights instruments, it is suggested that there be an item on the agenda entitled:
"Questions relating to the implementation of human rights instruments".
2. Taking into account the above suggestion, it is proposed that item 8 be simplified to read:
"Consideration of the question of the right to development".
3. Resolution 32/130, paragraph 1 (e) indicated examples of the situations of human rights violations to which priority should be accorded. Later resolutions, including resolution 36/133, elaborated on the paragraph. Accordingly, it is suggested that the chapeau of item 12 of the agenda be revised to read:
"Question of the violation of human rights and fundamental freedoms in any part of the world".

- It is further suggested that the separate agenda item on Chile be deleted, and the relevant materials submitted under item 12.
4. It is recommended that the agenda reflect the increasing extent to which the work of the Commission is based on an issue-oriented or thematic approach to the promotion of human rights; attention is drawn in this regard to paragraph 1 (d) of resolution 32/130 which states that "human rights questions should be examined globally, taking into account both the over-all context of the various societies in which they present themselves, as well as the need for the promotion of the full dignity of the human person and the development and well-being of the society".

5. With regard to items 16 and 18, it is suggested that a single item be formulated, perhaps as follows:

"Consideration of measures to combat racism and racial discrimination, including the implementation of the programme for the Decade for Action to Combat Racism and Racial Discrimination".

(a) Implementation of the International Convention on the Suppression and Punishment of the Crime of Apartheid.

6. Consideration might be given to reformulating item 11; there may also be an interest in seeing a separate subitem on national and regional approaches to human rights, and the relationship of such approaches to human rights activities within the United Nations system.
7. In the interest of streamlining the work of the Commission, it is suggested that some items on the agenda need not be considered every year. For example, it may be sensible to discuss items 14, 17 and 22 on a biennial basis.

ANNEX IV

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Working Paper submitted by the delegations of Bulgaria and Poland

For the purpose of further improving and strengthening the efficiency of the work of the Commission on Human Rights and subsequently the Sub-Commission on Prevention of Discrimination and Protection of Minorities, it would be advisable to recommend that the Commission should adopt the following measures:

- (1) To decide to proceed, at its thirty-ninth session, with the elaboration of its programme of work on implementing the concepts set forth by General Assembly resolution 52/150, with a view to concluding this elaboration during the same session;
- (2) To request the Sub-Commission on Prevention of Discrimination and Protection of Minorities to inform the Commission, at its thirty-ninth session, on the progress made in the realization of concrete requests made by the Commission;
- (3) To decide that two days prior to the thirty-ninth session, the Bureau should be convened for preparing recommendations on the organization of work of that session of the Commission;
- (4) To suggest to the Secretary-General that he should consider the possibility for the Commission to hold its annual sessions in May/June.

ANNEX V

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF
THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION:
ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE
UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE
ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Working paper submitted by the Chairman

At its fourth meeting, the Working Group decided to request its Chairman, after consulting interested delegations, to submit proposals which could be recommended by the Working Group for adoption by the Commission. The following draft is accordingly presented by the Chairman for the consideration of the Working Group.

The Commission on Human Rights,

Recalling General Assembly resolution 34/46 of 23 November 1979, 35/174 of 15 December 1980 and 36/135 of 14 December 1981,

Taking into account the concepts contained in General Assembly resolution 32/130 of 16 December 1977,

Bearing in mind the measures taken by the Economic and Social Council in its resolution 1979/36 of 10 May 1979.

Recalling also its resolution 23 (XXXVII) in which it decided to continue, at its thirty-eighth session, its ongoing work on the over-all theme is with the view to further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission and alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms,

Cognizant of the contribution that this ongoing work can make to the efforts within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms,

Conscious of the limited time available to the open-ended Working Group established at its thirty-eighth session,

1. Takes note with satisfaction of the report of the open-ended Working Group established at its thirty-eighth session,

2. Decides to recommend to the Economic and Social Council to consider at its first regular session in 1982, the possibility of rescheduling the meetings of the Commission and Sub-Commission with a view to allowing the Commission to meet later in the year so that human rights issues receive periodic consideration within the United Nations system throughout the year,

3. Requests the Economic and Social Council in giving consideration to the above proposal to consider also the possibility of adopting the following chronology of meetings: Sub-Commission, Commission, Economic and Social Council, General Assembly.

4. Also requests the Economic and Social Council to consider the possibility of having the report of the Commission considered at its second regular session in July if a decision is taken with regard to rescheduling the Commission's annual session,

5. Decides to consider with high priority at its thirty-ninth session, rationalization and streamlining of its agenda in order to facilitate adequate allotment of time for consideration of each of the items on its agenda and for this end, decides to establish at the very beginning of its thirty-ninth session, an Informal Agenda Group of no more than ten persons with due regard to the principle of equitable geographic distribution to consider the agenda for its fortieth session and present its recommendation for the Commission's consideration before the conclusion of its thirty-ninth session,

6. Requests the Informal Agenda Group to consider the possibility of having items considered at periodic intervals having due regard for the importance and timeliness of the items and state of documentation,

7. Also requests the Informal Agenda Group to consider the possibility of adopting a thematic approach in the preparation of the agenda, bearing in mind also the concepts contained in General Assembly resolution 32/130.

8. Decides to recommend to the Commission at its thirty-ninth session to consider imposing a time limit on statements from the very beginning of the session as follows: Member States 20 minutes, non-Members/Observers 15 minutes, non-governmental organizations 10 minutes, in order to ensure that adequate time is made available for consideration of all items and in this regard, requests the Bureau of its thirty-ninth session to place this recommendation before the Commission at the time of consideration of organization of its work,

9. Decides to examine the organization and functioning of the open-ended working group at its thirty-ninth session,

10. Decides, in response to General Assembly resolution 36/135 to inform the General Assembly through the Economic and Social Council that it intends to keep under continued consideration the proposal for the creation of a post of a United Nations High Commissioner for Human Rights,

11. Decides to establish an open-ended Working Group at its thirty-ninth session to continue the ongoing work on over-all analysis.

12. Requests the Secretary-General to place before the Working Group the report of the Working Group established with regard to this item at the thirty-seventh and thirty-eighth sessions,

13. Requests the Secretary-General to bring the present resolution and the relevant chapter of its report on the thirty-eighth session to the attention of the General Assembly through the Economic and Social Council.

REPORT OF THE INFORMAL OPEN-ENDED WORKING GROUP
ON THE RIGHTS OF THE CHILD

Introduction

1. By resolution 26 (XXXVII) of 10 March 1981, the Commission on Human Rights decided to continue at its thirty-eighth session as a matter of priority, its work on a draft convention on the rights of the child with a view to completing the elaboration of the convention at that session for transmission to the General Assembly through the Economic and Social Council. By decision 1981/144 of 8 May 1981, the Economic and Social Council noted resolution 26 (XXXVII) of the Commission on Human Rights, and decided to authorize a one-week session of an open-ended working group prior to the thirty-eighth session of the Commission to facilitate completion of the work on a draft convention on the rights of the child. At its thirty-sixth session, the General Assembly, by resolution 36/57 of 25 November 1981, welcomed Economic and Social Council decision 1981/144 and requested the Commission on Human Rights to give the highest priority to the question of completing the draft convention.

2. At its fourth meeting on 2 February 1982, the Commission on Human Rights by decision 101/1982 decided that a sessional open-ended Working Group should be established for the consideration of item 13 on its agenda concerning the drafting of a convention on the rights of the child.

3. The 1982 pre-sessional Working Group held 10 meetings from 25 January 1982 to 29 January 1982, at which it discussed articles 6, 9, 10 and 11 of the revised draft convention (E/CN.4/1349). The sessional Working Group had discussions on articles 6, 11 and 12 during meetings held on 2, 3, 4, 8 and 9 February 1982. At its meeting on 5 March 1982, the Working Group considered article 12 and adopted its report.

Elections

4. At the first meeting of the pre-sessional Working Group, on 25 January 1982, Mr. Adam Lopatka (Poland) was elected Chairman-Rapporteur by acclamation. Mr. Lopatka continued as Chairman-Rapporteur of the Working Group established by the Commission on Human Rights at its thirty-eighth session to continue the work of the pre-sessional Working Group.

Participation

5. The meetings of the pre-sessional and the sessional Working Groups, which were open to all members of the Commission on Human Rights, were attended by representatives of the following States: Argentina, Australia, Brazil, Bulgaria, the Byelorussian SSR, Canada, China, Cuba, Denmark, France, Germany, Federal Republic of, India, Italy, Japan, Netherlands, Philippines, Poland, Senegal, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yugoslavia.

The following States, non-members of the Commission on Human Rights, were represented at the meetings of the Working Group by observers: Colombia, the German Democratic Republic, Holy See, Norway, Sweden and Switzerland.

The International Labour Organisation, United Nations High Commissioner for Refugees and United Nations Children's Fund, as well as a number of non-governmental organizations, were represented at the Working Group by observers.

The Associated Country Women of the World, the International Association of Juvenile and Family Court Magistrates, the International Federation of Women in Legal Careers, the International Association of Penal Law, the International Catholic Child Bureau, the International Commission of Jurists, the International Council on Social Welfare, the International Federation of Women Lawyers, the International Union for Child Welfare, the Minority Rights Group, the World Movement of Mothers and Radda Barnen's Rikförbund sent observers to the Working Group.

Documents

6. The Working Group had before it a number of documents including the Revised Draft Convention on the Rights of the Child (E/CN.4/1349), the document submitted by Poland on the status of a Draft Convention on the Rights of the Child (A/C.3/36/6), the report of the Secretary-General on the views, observations and suggestions on the question submitted by Member States, competent specialized agencies, regional intergovernmental organizations and non-governmental organizations (E/CN.4/1324 and Corr.1 and Add.1-5), the reports of the 1979, 1980 and 1981 Working Groups (E/CN.4/L.1468, E/CN.4/L.1542 and E/CN.4/L.1575), the reports of the Working Group on Slavery on its fifth, sixth and seventh sessions (E/CN.4/Sub.2/434, E/CN.4/Sub.2/447, E/CN.4/Sub.2/486 and Corr.1), the Study on the Exploitation of Child Labour (E/CN.4/Sub.2/479), and summary records of the debates referring to child labour during the thirty-fourth session of the Sub-Commission (E/CN.4/Sub.2/SR.908-911, and 921-922). Non-governmental organizations in consultative status also submitted the following written statements: E/CN.4/NGO.230, 234, 244, 265, 276 and E/CN.4/1982/WG.1/WP.1. This latter statement was sponsored by the Afro-Asian People's Solidarity Organization, the All India Women's Conference, Arab Lawyers Union, Associated Country Women of the World, International Alliance of Women, International Association of Democratic Lawyers, International Association of Juvenile and Family Court Magistrates, International Catholic Union of the Press, International Council of Jewish Women, International Federation of Business and Professional Women, International Federation of Women Lawyers, Radda Barnen's Rikförbund, Soroptimist International (subject to reservation on article 20 of the Draft Convention proposed in E/CN.4/1982/WG.1/WP.1), Women's International League for Peace and Freedom, World Association of Girl Guides and Girl Scouts, World Confederation of Organizations of the Teaching Profession and Zonta International, in addition to the non-governmental organizations indicated in document E/CN.4/1982/WG.1/WP.1. */

7. As in 1981, the basic working document for the discussions in the Working Group was the revised draft convention submitted by Poland (E/CN.4/1349). It will be recalled that the preamble as well as articles 1 to 5 and 7 and 8 as adopted, were annexed to the report of the Working Group of 1981 (E/CN.4/L.1575).

Consideration and adoption of articles

8. The Working Group adopted paragraphs 1 and 2 of article 6, paragraphs 1 and 2 of article 10, paragraphs 1 and 2 of article 11, article 11 bis and the first sentence of paragraph 1 of article 12.

*/ The suggestions contained in this document not all having been considered at the meetings covered by this report, the organizations concerned expressed their wish to have the document E/CN.4/1982/WG.1/WP.1 before the Working Group at its future meetings.

Article 6

9. Article 6 of the revised Polish draft read as follows:

"The parents shall have the right to specify the place of the child's residence unless, guided by his best interests, a competent state organ is authorized, in accordance with national law, to decide in this matter."

10. Article 10 of the revised Polish draft read as follows:

"A child of pre-school age shall not be separated from his parents, with the exception for cases when such separation is necessary for the child's benefit."

11. At the Working Group's session of 1981, the delegation of the United States proposed that the original wording of articles 6 and 10 of the revised draft convention, be replaced by an amended text which read as follows:

"1. States Parties shall ensure that a child shall not be involuntarily separated from his parents, except when competent authorities determine, in accordance with procedures and criteria specified by domestic law, that such separation is necessary for the welfare of the child in a particular case, such as one involving maltreatment or abuse 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.

"2. In cases where both parents lawfully reside in one State party and their child lawfully resides in another State party, the States parties concerned shall deal with applications for family reunification in a positive, humane and expeditious manner. States parties shall charge only moderate fees in connection with such applications and shall not modify in any way the rights and obligations of the applicant(s) or of other members of the family concerned. States parties shall ensure that applications for the purpose of family reunification of parents with their children which are not granted for any reason may be renewed at the appropriate level and will be considered ~~xxx~~ at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned, and, in such cases, fees will be charged only when applications are granted. Until family reunification in a particular case is accomplished, all States parties involved shall permit frequent and regular family contacts.

"3. The provisions of paragraph 2 shall also apply in cases where a child's only surviving parent lawfully resides in one State party and the child lawfully resides in another State party.

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

This proposal, which was reintroduced at the 1982 session of the Group, was the subject of some further amendments by its sponsor.

12. At the Working Group's session of 1981, the representative of Australia proposed to replace the aforementioned text of article 10 by the following:

"A child of pre-school age shall not be separated from his parents unless extraordinary circumstances determine that such separation is necessary for the child's welfare."

This proposal was reintroduced at the 1982 session of the Group by several non-governmental organizations as contained in document E/CN.4/1982/WG.1/WP.1.

13. Several non-governmental organizations suggested the following paragraph, as contained in document E/CN.4/1982/WG.1/WP.1, to replace paragraph 3 of the amendment to articles 6 and 10 originally submitted by the representative of the United States at the Working Group's session in 1981:

"Where a child is placed in the custody of one parent because of a marital dispute between the parents residing in different countries, resulting in divorce, separation or other interlocutory proceedings, and due to conflicting private international law considerations there has been no final determination of the issue of the child's custody or the child is unlawfully held by one parent because of the non-execution of an order of the court of competent jurisdiction, the States parties shall endeavour to resolve the issue by bilateral agreements or multilateral arrangements reached where appropriate under the auspices of a regional intergovernmental body, the best interest of the child being the guiding principle."

14. The Minority Rights Group, a non-governmental organization proposed the following text in substitution for the proposed new paragraph 3 mentioned above:

"The States Parties shall endeavour, by new or updated bilateral agreements or multilateral arrangements, reached where appropriate under the auspices of a regional intergovernmental body, the best interest of the child concerned being the guiding principle, to resolve the issues arising:

- (i) When a child has been placed in the custody of one parent or in joint custody because of a marital dispute between the parents residing in different countries, resulting in divorce, separation or other interlocutory proceedings, and due to conflicting private international law considerations there has been no final determination of the issue of the child's custody;
- (ii) When a child is unlawfully held and hidden by one parent because of the non-execution or later breach of an order of the court of competent jurisdiction; or
- (iii) When, there being no order of a court of competent jurisdiction as to custody, one parent assumes control over the child contrary to the wish of the parent normally exercising it; and exercises that control in a country other than that in which the latter parent resides."

The main intention of this proposal was to extend the endeavours which States would undertake to make to children who are in effect kidnapped across international frontiers by a parent, particularly those kidnapped in circumstances where no court order on custody exists; these cases are numerous and may in fact be more numerous than those to which an order of custody applies.

15. Some speakers drew attention to the situation of children of parents separated by divorce or for other reasons who are not of the same nationality or who may reside in countries other than the country of residence of the child, and to the need of a child in such a situation to retain his links with both his parents. Accordingly, the representative of France made the following proposal: "The child of a separated international family shall, as far as possible, retain his links with both his parents." The French proposal was supported by several delegations, but it was thought that it dealt more properly with paragraph 2 of the article under discussion and it would be very appropriate if it were the first sentence of paragraph 2. At a later stage in the proceedings, the representative of France submitted a new draft to replace his earlier proposal as mentioned above. The text read as follows:

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

The French representative indicated that:

(a) the Convention on the rights of the child would in the future serve as a bench-mark for co-operation agreements between States. In view of its importance, the French representative believed that the Convention would benefit if it were completed by including a clause concerning a matter which had not so far been dealt with, namely the situation of children of separated parents of different nationalities;

(b) experience had shown that private family disputes which gave rise to the abduction of children across frontiers occurred more and more frequently and that no country could consider itself exempt. In France, for example, the Ministry of Justice had estimated that there were 1,000 cases of abduction per year involving no fewer than 41 States. It was a situation which gravely affected society;

(c) the Convention, which constituted a basic text at the international level, must by its very nature be universal. Preventive measures should be taken to impede that its provisions be interpreted from a nationalistic point of view. It was absolutely necessary that the child's interests should be evaluated on the basis of all the elements of his family background, whether such elements were national or international. Experience had shown that the nationalistic approach to the child's interests had in most cases resulted in making a legal orphan of a child with a foreign father or mother;

(d) the Convention should not take second place to the existing conventions which have confirmed at the multilateral level the principle of the maintenance of relations between the child and both his parents of different nationalities. The conventions, which had already been ratified by many countries, were the European Convention of Luxembourg of 20 May 1980 on the recognition and enforcement of decisions relating to children's custody and the restoration of custody rights, and The Hague Convention of 25 October 1980 on the civil aspects of international child abduction.

16. In connection with a child's place of residence, it was said that the Convention also should address itself to certain subjects, namely, the right of the child to liberty of movement and freedom of residence within any State party together with the right to leave any State - including his own - and to enter his own State, the right of the child to seek asylum from persecution without fear of retaliation, and the right of the child and his parents to be free from arbitrary or unlawful interference with their privacy, family, home or correspondence.

17. Some delegations strongly opposed any distinction whatsoever of children by age, stating that the essential point was that separation of a child from his parents should not occur under any circumstances, while other delegations continued to find some value in distinguishing the position regarding pre-school children, and considered that the same kind of protection cannot be awarded to very young and much older children.

18. In keeping with the view expressed by his delegation at the Group's 1981 session that the idea contained in article 10 was reflected in paragraph 1 of the United States text for article 6 (set forth in paragraph 11 above) the representative of the United States proposed the merger of these two texts. This suggestion was favourably received by some delegations.

19. In addition, it was repeatedly emphasized by some delegations that the separation of a child from his parents should preferably be of a temporary or provisional nature, that the separation period should be made as short as possible under national legislation, and that a child should be returned to his parents as soon as circumstances changed favourably making the separation no longer necessary.

20. The representative of the United States proposed that after the words "competent authorities" in the first sentence of paragraph 1 of the United States text for article 6, the words "subject to judicial review" should be inserted. He also suggested that the Group should consider using, throughout the Convention, the term "best interests of the child" rather than the term "welfare of the child". Also, he proposed that the concept of "neglect" of the child should be introduced into the Convention and hence suggested the incorporation of the words "or neglect" after the word "abuse" in the first sentence of paragraph 1 of article 6, and the deletion of the word "maltreatment". Further, he proposed the introduction, at the end of the first sentence of the same paragraph of a new example concerning the child's place of residence to read "or one where there is a disagreement between parent(s) and child as to the child's place of residence". The use of the term "parent(s)" resulted from a suggestion by the representative of Norway that cases of single parents must be covered.

21. The representative of Norway suggested the deletion of the word "involuntarily" from the first sentence of paragraph 1 of article 6 and the insertion of the words "against their will" after the word "parents" in the same sentence. Further, she proposed that any reference to the age of children should be removed completely from the texts under discussion. This proposal was supported by several delegations.

22. The delegation of France suggested that the words "in accordance with applicable law and procedures" should replace the words "in accordance with procedures and criteria specified by domestic law" in the first sentence of paragraph 1 of article 6. This proposal was supported by various delegations.

23. Some speakers questioned the appropriateness of having the letter "s" in the word "parents" between brackets, as in the proposal of the delegation of the United States in paragraph 20, noting that the Convention was intended, as far as possible, to cover regular situations where a child has both his parents.

24. Delegations having found the first lines of paragraph 1 of article 6 up to the words "welfare of the child", as amended, acceptable, the Working Group adopted them by consensus. They read:

"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."

25. The representative of the United States submitted the following revised text to replace the original wording of the amendment to articles 6 and 10 presented by his delegation at the Working Group's session of 1981 and reintroduced by him at the beginning of the Group's 1982 session.

"1. 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 in a particular case, such as one involving abuse or neglect of the child by the parents, one where the parents are living separately and a decision must be made as to the child's place of residence, or one where there is a disagreement between parent(s) and child 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.

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

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

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

26. A discussion ensued as to whether the examples listed in the second half of the first sentence of the above-mentioned proposal were called for. One delegation expressed its preference for not having any listing of examples whatsoever while another, in supporting this viewpoint, stated that it was impossible to present an exhaustive list of examples and objected in particular to the addition of any example to those already existing in the text submitted by the representative of the United States at the Group's session of 1981.

27. The representative of the United States agreed to delete the third example contained in the first sentence of its proposal which read "or one where there is a disagreement between parent(s) and child as to the child's place of residence". Further, he suggested that the sentence containing the examples in his proposal should start with the phrase "Such a determination may be necessary".

28. The Working Group then adopted by consensus the following text:

"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."

29. The representative of Poland proposed that the opening sentence of article 6 contained in document A/C.3/36/6 of 7 October 1981 which read as follows: "The States parties to the present Convention shall recognize the right of the child to have his residence to be determined by his parents", should also be the opening sentence of the paragraph under consideration by the Group. In this connection, the delegation of the United States suggested that the sentence be amended to read: "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".

30. The text originally proposed by the representative of Poland, as amended by the representative of the United States, was supported by the Working Group and was adopted by consensus. The Chairman decided that that text should become paragraph 1 of article 6.

31. The Working Group then adopted the last two sentences of paragraph 1 in the United States text for article 6, and placed them at the end of paragraph 2 of article 6. These sentences read as follows:

"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."

32. The delegation of France requested that at the end of the French version of paragraph 2 the following clause be added: "sous reserve de cas prevu par le paragraphe 3".

33. Paragraphs 1 and 2 of article 6, as adopted by the Working Group, read as follows:

"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."

Article 9

34. Article 9 of the revised Polish draft read as follows:

"Parents, guardians, State organs and social organizations shall protect the child against any harmful influence that mass media, and in particular the radio, film, television, printed materials and exhibitions, on account of their contents, may exert on his mental and moral development."

35. The representative of Australia submitted a revised proposal as noted hereunder:

"States Parties shall encourage mass media agencies to develop special programmes for the benefit of children and to design guidelines, consistent with the right to freedom of expression, to protect the child from written, printed or recorded material injurious to his physical or mental health and development, bearing in mind also that in accordance with article 8, the primary responsibility for such protection rests with the parents or guardians of the child."

36. The representative of the Union of Soviet Socialist Republics and a number of other delegations supported draft article 9 proposed by Poland; however, some delegations objected to that draft article. Then, the representative of the Union of Soviet Socialist Republics proposed as a compromise the following text for article 9 as contained in document A/C.3/36/6.

"1. The States Parties to the present Convention shall encourage opinion-making quarters to disseminate information which promotes the upbringing of children in the spirit of the principles as laid down in article 16.

"2. The States Parties shall also encourage parents and guardians to provide their children with appropriate protection if, on account of its contents, the disseminated information might negatively affect the physical and moral development of the child."

37. In the view of some representatives, the mass media does far more good than harm and therefore the article should be phrased in positive terms, rather than in terms seeking to protect children from the mass media. These representatives urged deletion of the article unless it could be reformulated in such a way as to take a positive approach to the question, acknowledging the need for reciprocity in the free flow of information across international borders and the importance of guaranteeing children access to information from a diversity of sources. In addition, the educational role of the mass media and the dangers of government

ensorship were emphasized. The attention of the Group was also drawn to the problems of child neglect and abuse, as well as of negligence and cruelty to children. It was stressed that such problems should be dealt with in the elaboration of the Convention. Other speakers stressed the idea that the States Parties to the Convention should have the obligation to protect children against any harmful influence that the contents of mass media may exert on their mental and moral development.

33. It was further stated that the article under consideration should be formulated in a more positive way and that the right of the child to protection from exploitation and abuse should be dealt with by the Group later on.

39. One representative, while acknowledging the educational role of the mass media, emphasized the fact that information must not exert a negative influence on the child, and pointed out that the question of protecting the child from the harmful influences of the mass media in such matters as apartheid, racist theories and ideologies and the like deserved special treatment by the Working Group. He also suggested that the Group should prepare a separate article concerning child abuse.

40. The observer of the Holy See again proposed that the words "spiritual and social" should be introduced between the words "moral" and "development" in the revised Polish draft of article 9.

41. The Working Group postponed to its next session consideration of article 9.

Article 10

42. Paragraphs 1 and 2 of article 11 of the revised Polish draft read as follows:

"1. A child deprived of parental care shall be entitled to the protection and assistance provided by the State.

"2. The States Parties to the present Convention shall be obliged to provide appropriate educational environment to a child who is deprived of his natural family environment or, on account of his well-being, cannot be brought up in such environment."

43. The representative of Denmark reintroduced the following amendments to article 11 submitted by her delegation in 1981:

"Replace paragraph 2 by:

"The States Parties to the present Convention shall ensure that a child who is deprived of his natural family environment or on account of his well-being, cannot be brought up in that environment shall be provided with a guardian."

44. The representative of Norway also reintroduced the proposal submitted last year by her delegation to add to article 11 a new paragraph 4 that read as follows:

"If a child's parents, or one of them, is imprisoned, taken into custody, exiled or deported, or by any other judicial or administrative action prevented from caring for the child, it is the duty of the State party to secure to the child adequate care and fostering, if necessary by support to the other parent, relatives or foster parents."

45. At the Working Group's session of 1981, the representative of Australia made the following proposal to amend article 11:

"Replace paragraph 2 by:

"The States Parties to the present Convention shall provide an appropriate environment for the upbringing of a child who is deprived of his natural family environment or who, for reasons concerning his welfare, cannot be brought up in such an environment."

46. The above-mentioned Australian and Norwegian proposals were reintroduced almost in their entirety at the 1982 session of the Group by Poland, as contained in document A/C.3/36/6 and noted hereunder:

"A child deprived of parental care shall be entitled to special protection and assistance provided by the State.

"The States Parties to the present Convention shall provide appropriate environment for the upbringing of a child who is deprived of his natural family environment or who, on account of his well-being, cannot be brought up in such an environment.

"The provisions of the preceding paragraphs apply accordingly, if the parents or one of them cannot provide the child with appropriate care because of imprisonment or another similar judicial or administrative sanction."

47. The representative of Australia suggested the addition at the end of the Danish proposal of the following words: "or shall otherwise insure the provision of an appropriate environment for the upbringing of a child". This proposal was supported by certain delegations.

48. Some speakers indicated their preference for the new paragraph 1, as contained in document A/C.3/36/6 proposed by Poland, as the introductory paragraph for the article under consideration by the Working Group.

49. After an exchange of views, the Working Group adopted the first paragraph of the article under discussion, which read as follows:

"A child deprived of parental care shall be entitled to special protection and assistance provided by the State."

50. In the opinion of one speaker, the words "natural family environment", contained in the revised Polish draft and in the Australian and Danish proposals, were too loose for use in a convention; he suggested that they should be replaced by the term "biological family". The same speaker also referred to the word "well-being", which appeared both in the revised Polish draft and in the new Polish proposal as well as in the Danish proposal, and suggested that it be replaced by the words "best interests".

51. Yet another speaker expressed a preference for the formulation "natural family environment" considering that it included the "biological family". Within this framework the delegation of India made the following proposal for paragraph 2 of the article under consideration:

"The States Parties to the present Convention shall ensure that a child deprived of his natural family environment or who for reasons of his well-being cannot be brought up in that environment shall be provided with alternative family care which would include, inter alia, foster placement, and placement in community and State child care institutions."

52. The representative of the United States proposed that paragraph should read:

"In cases where a child cannot be cared for by his parents or other members of his biological family, the competent authorities of States parties shall take appropriate measures to facilitate permanent adoption of the child, including appropriate financial assistance to adopting families."

53. Some speakers fully supported the wording suggested by the delegation of India for paragraph 2, pointing out that provision had not been made in the text for the concept of adoption. In reference to the proposal by the representative of the United States those speakers considered that it was not right to present adoption as the only solution in cases when a child cannot be cared for by his biological family. They also queried the advisability of introducing the concept of providing financial assistance to adopting families as a measure to facilitate permanent adoption of the child.

54. Following the Chairman's request that a compromise text be elaborated after consultations, the delegations of India and the United States submitted a text that read as follows:

"The States Parties to the present Convention shall ensure that a child permanently or temporarily deprived of his normal family environment or who in his best interests cannot be allowed to remain in that environment shall be provided with alternative family care which could include, inter alia, adoption, foster placement, or placement in community or State child care institutions."

55. Several speakers expressed their approval in general terms of the joint proposal submitted by the delegations of India and the United States. Nevertheless, the representative of Australia said that it would be preferable to insert the word "suitable" before the words "community or State child care institutions", and this suggestion met with the approval of the Working Group. A further suggestion, made by the representatives of Brazil and of the Byelorussian Soviet Socialist Republic, was that the word "normal" as applied to family environment, be deleted from the text in order to avoid conceptual difficulties arising from the use of this term.

56. Some speakers called for amendments to paragraph 1 already adopted. The representative of France indicated his preference for the words "deprived of his family environment" rather than the words "deprived of parental care". The representative of the United States suggested the addition of the words "for any reason" after the words "deprived of his family environment" proposed by the French delegation.

57. After an exchange of views, it was agreed to use the formulation "permanently or temporarily", which appeared in paragraph 2, after the words "A child" in paragraph 1. In addition, it was proposed that the words "community or State" at the end of paragraph 2 should be deleted and that the words "child care institutions" at the very end of the paragraph should be replaced by the words "institutions for the care of children".

58. The Working Group adopted by consensus, in their revised versions, paragraphs 1 and 2 of the article under consideration which, it was decided should become article 10.

59. Article 10 as adopted read as follows:

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

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

60. The representative of the United States requested the introduction of a new paragraph dealing with the situation of children placed under foster care, and in particular the need to ensure that the situation of such children be subject to periodic review by competent judicial or administrative authorities. Therefore, he submitted the following proposal for such a paragraph:

"The States Parties to the present Convention shall take appropriate measures to ensure that the situation of a child placed under foster care is periodically reviewed by competent judicial or administrative authorities."

The Working Group was unable to consider this proposal for lack of time.

61. The Working Group also started consideration of the question of a child who cannot be afforded adequate care by his parents because of imprisonment, exile, deportation or another similar judicial or administrative sanction.

62. A brief discussion ensued during which one speaker felt that acknowledgement must be made of the fact that imprisonment or other similar judicial or administrative sanction are not the only reasons that would prevent children from receiving appropriate care from their parents. The same speaker maintained that focusing only on judicial or administrative sanctions as reasons for children being deprived of parental care would thus create a false emphasis.

63. The Working Group postponed its discussion of this topic to a later stage of its work.

Article 11

64. Paragraph 3 of article 11 of the revised Polish draft read as follows:

"The States Parties to the present Convention shall undertake measures so as to facilitate adoption of children and create favourable conditions for establishing foster families."

65. The delegation of Denmark had submitted in 1981 the following text as an amendment to article 11 of the revised Polish draft:

"Add to paragraph 3 the following:

"The child shall not, however, be adopted unless there has been a serious attempt to investigate and elucidate his status concerning parents, guardians, relatives and other biological and stable social relations."

This proposal was reintroduced at the Group's 1982 session.

66. At the Working Group's 1981 session, the representative of Australia made the proposal to replace paragraph 3 of article 11 of the revised Polish draft with:

"The States Parties to the present Convention shall take measures to facilitate adoption of children where appropriate and shall ensure favourable conditions for establishing foster families."

67. The above-mentioned Australian proposal was reintroduced by Poland with a slight change at the Group's 1982 session, as contained in document A/C.3/36/6 and noted hereunder:

"The States Parties to the present Convention shall take measures, where appropriate, to facilitate adoption of children, and shall provide favourable conditions for establishing foster families."

68. Several non-governmental organizations suggested the following text, as contained in document E/CN.4/1982/WG.1/WP.1, for inclusion in article 11 of the revised Polish draft:

"Adoption can only be decided by a competent body set up in accordance with principles of national law."

69. Several delegations supported in general the formulation of this article as contained in the revised Polish draft and in the Australian and Danish proposals. They also supported the inclusion of the paragraph suggested by non-governmental organizations.

70. After an exchange of views, the following proposals which had been put forward for consideration by the Working Group, received the support of the delegations present: (a) the introduction in the revised Polish draft, which was almost identical to the Australian amendment, of the words "where appropriate" after the word "measures", the deletion of the words "so as", the insertion of the words "the process of" between the words "facilitate" and "adoption", the replacement of the word "children" by the words "the child", and the deletion of the rest of the sentence; (b) the replacement in the proposal of the non-governmental organizations of the words "can only" by the word "shall", the replacement of the word "decided" by the word "authorized", the replacement of the words "a competent body set up" by the words "competent authorities acting", the deletion of the words "principles of", the replacement of the word "national" by the word "applicable" and the addition of the words "and procedures" after the word "law"; and (c) the substitution in the Danish proposal of the words "shall not, however" for "will only", and of the words "unless there has been a serious attempt to investigate and elucidate" for the words "if the competent authorities have reliable information as to".

71. After a further exchange of views, a compromise text was elaborated which read as follows:

"The States Parties to the present Convention shall undertake measures, where appropriate, to facilitate the process of adoption of the child who is parentless or who cannot be cared for in his family environment, in order that such a child is provided with a stable family environment. Adoption shall be authorized only by competent authorities acting in accordance with applicable law and procedures. A child shall only be adopted if the competent authorities, on the basis of reliable information have determined his status concerning parents, guardians, relatives and other biological and stable social relations."

72. A proposal to delete from the end of the first sentence the following words "who is parentless or who cannot be cared for in his family environment, in order that such a child is provided with a stable family environment" was accepted by the Working Group.

73. The delegation of the United States proposed the reformulation of the second and third sentences of paragraph 1 as follows:

"Adoption of a child shall only be authorized after the competent authorities have determined, on the basis of all pertinent and reliable evidence, that the child is legally available for adoption, and that sufficient counselling has been provided to the biological parents, if any, to enable them to reach an informed decision."

74. Further to the Chairman's request that another compromise text, which would take into account the new proposals put forward for consideration by the Working Group, be elaborated jointly by the delegations of Denmark and the United States, those delegations proposed the following formulation for paragraph 1:

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

75. The representative of France proposed that the word "evidence" in the second sentence of the above-mentioned paragraph 1 be replaced by the broader term "information", and suggested that the words "the appropriate persons concerned have given their informed consent" should replace the words "the appropriate persons concerned have received sufficient counselling", since it was more proper to place emphasis on consent rather than on counselling. The representative of Australia suggested that the phrase proposed by the French delegation should be completed by the words "to the adoption on the basis of such counselling as may be necessary".

76. The Working Group adopted by consensus the revised version of paragraph 1 as follows:

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

77. The Working Group proceeded to consider the question of intercountry adoption. The representative of Norway submitted the following proposal for paragraph 2 of article 11 which would deal with this question:

"When intercountry adoption is considered, policy and legislation should be established to protect the children concerned. Placements should be made through authorized agencies, providing the same safeguards and standards as are applied in national adoptions. All necessary consents must be in a form which is legally valid in both countries. Legal validation of the adoption should be assured in the countries involved. The child should at all times have a name, nationality and legal guardian."

The representative of the United States suggested that the opening phrase of the Norwegian proposal which read "When intercountry adoption is considered" should be replaced by the following "In order to ensure the existence of proper safeguards governing intercountry adoption, the States parties to the present Convention should establish".

78. Several delegations indicated that they were in favour of including in the Convention a provision relating to intercountry adoption. During the ensuing discussion of the Norwegian proposal, some speakers drew the attention of the Working Group to the fact that a basic idea was missing, namely the idea of encouraging bilateral agreements on intercountry adoptions. It was also pointed out that the last sentence of the paragraph enunciated a general rule applicable to all children, not only to those who would be adopted, and should therefore be deleted.

79. Further to the Chairman's request that a compromise text be elaborated by the Argentine, French and Norwegian delegations, following consultations, the representative of France submitted a text that read as follows:

"The States Parties to the present Convention shall take all necessary measures to secure the best interests of the child who is the subject of intercountry adoption. Therefore States should ensure that placements are made through authorized agencies, providing the same safeguards and standards that are applied in national adoptions, and that legal validation of the adoption is assured in the countries involved. States or authorized agencies should conclude agreements to this effect."

80. It was proposed that the word "parties" should be inserted after the word "States" in the second and third sentences of that text.

81. Some speakers questioned the need for a reference to "authorized agencies" in the text. Another speaker wondered what purpose the agreements concluded by States or authorized agencies mentioned in the last sentence of the paragraph were intended to serve. Referring to the term "national adoptions" which appeared in the second sentence of the paragraph, the same speaker suggested that reference should rather be made to "domestic adoptions". That point of view was shared by another speaker.

82. In the course of the exchange of views that ensued, the delegation of India proposed that the following words should be added to the first sentence: "and should conclude agreements for this purpose". This proposal was supported by certain other delegations.

83. The representative of the United States suggested that in the second sentence the words "competent authorities or other" should be inserted before the words "authorized agencies" and that the words "except in extraordinary circumstances the legal validity of the adoption shall be" should be inserted before the words

"assured in the countries involved". Some delegations agreed that in the second sentence reference should be made only to "competent authorities" and not to "other authorized agencies". The representative of Australia proposed that the last sentence should be replaced by the following: "States parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral or multilateral agreements."

84. There followed a discussion on the suitability of using the word "shall" or the word "should" in the text of the paragraph. Further, it was suggested that in the second sentence, the words "through authorized agencies" should be replaced by the words "by authorized agencies or other appropriate parties under the general supervision of competent authorities".

85. Taking into account the views expressed by members of the Group, the following text was reached as a possible compromise:

"The States Parties to the present Convention shall take all appropriate measures to secure the best interests of the child who is the subject of intercountry adoption. States parties shall ensure that placements are made under the supervision of competent authorities providing the same safeguards and standards that are applied in domestic adoption. Except in extraordinary circumstances, the legal validity of the adoption should be assured in the countries involved. States parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral or multilateral agreements."

86. Several speakers found this version acceptable, but one speaker said he could accept only the first and fourth sentences of the text. The representative of Australia suggested that in the second sentence the words "by any appropriate party" should be inserted before the word "placements". The representative of the United States proposed that in the third sentence the words "Except in extraordinary circumstances" should be replaced by the words "The competent authorities shall make every possible effort to ensure" and that the words "should be assured" should be deleted. The delegation of Argentina proposed as a compromise that in the second sentence the words "under the supervision of competent authorities" should be replaced by the words "by authorized agencies or appropriate persons under the adequate supervision of competent authorities". The representative of the United States suggested the introduction, in the second sentence, of the word "exclusively" before the words "domestic adoption". The delegation of Argentina agreed to keep the word "domestic" before the word "adoption" as long as in the Spanish version of the text the words "domestic adoption" would read "adopciones de carácter interno". The Working Group agreed to the proposal of the Argentine delegation.

87. The Working Group adopted by consensus paragraph 2 of article 11, as revised, which read as follows:

"The States Parties to the present Convention shall take all appropriate measures to secure the best interests of the child who is the subject of intercountry adoption. States Parties shall ensure that placements are made by authorized agencies or appropriate persons under the adequate supervision of competent authorities, providing the same safeguards and standards that are applied in exclusively domestic adoptions. The competent authorities shall make every possible effort to ensure the legal validity of the adoption in the countries involved. States Parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral or multilateral agreements."

86. A lengthy debate took place on a proposal concerning confidentiality of adoption records submitted by the delegation of the United States. This proposal read as follows:

"The States Parties to the present Convention shall take all appropriate legislative and administrative measures to safeguard the confidentiality of adoption records and shall permit access to such records only by judicial order in accordance with applicable law and procedures."

89. Although it was agreed that confidentiality in respect of family and civil status is on the whole desirable for the sake of family privacy, it was felt that the need to safeguard confidentiality of adoption records might lead to implementation difficulties in many countries. The appropriateness of mentioning confidentiality of adoption records within the framework of the Convention was repeatedly questioned, several delegations expressing the opinion that this question had no direct bearing on the rights of the child.

90. The representative of the United States considered that the principle of confidentiality could be maintained. He suggested that in his proposal the words "where appropriate" should appear between the word "measures" and the words "to safeguard" that the words "all appropriate" should be deleted, that the word "judicial" should be replaced by the word "an" and that the word "order" should be followed by the words "issued by competent authorities". Since these amendments were not accepted by the Working Group, the representative of the United States said that he would submit a revised version of his proposal. The Working Group postponed its consideration of this question.

Article 11 bis

91. The delegation of Denmark had submitted in 1981 a proposed new paragraph 4 to be incorporated to article 11 of the revised Polish draft, which was as follows:

~~"The refugee child, whether unaccompanied or in company with his family, guardian or relatives, needs special protection and assistance. The States parties to the present Convention undertake to assist the refugee child in every possible way and also undertake to, as soon as possible, investigate whether the child has a family or other close relations, and recognize the right of the refugee child to be reunited with his guardians or relatives. In cases where no close relatives have been found the child shall, if possible, be placed within his own cultural and linguistic group. The best interest of the child shall in every case be the guiding principle."~~

This proposal was reintroduced with slight amendments - namely, the inclusion of the word "parents" before the word "relatives" at the end of the second sentence of the proposed Danish text and the placement of the word "guardians" at the very end of the sentence - at the Working Group's 1982 session. Some non-governmental organizations suggested to amend the introductory sentence of the above-mentioned provision as contained in document E/CN.4/1982/WG.1/WP.1 and noted hereunder:

"Without prejudice to the application of other relevant provisions of this Convention, the States Parties to the present Convention recognize that the refugee child, whether unaccompanied or accompanied by his family, guardian or relatives, and present in the territory of States parties, needs special protection and assistance."

92. Many speakers welcomed the initiative of the Danish delegation to introduce a text concerning refugee children and expressed their strong support for including a provision dealing specifically with protection and assistance to refugee children indicating at the same time that the subject of refugee children should be approached by the Working Group in a purely humanitarian spirit. Some speakers also suggested that it might be useful to appoint a working party to redraft the Danish proposal.

93. Further to the Chairman's request that a revised text be prepared by the delegations of Denmark and India and the observer of the Office of the United Nations High Commissioner for Refugees, the representative of Denmark submitted a text that read as follows:

"The States Parties to the present Convention recognize that a refugee child, whether unaccompanied or in company with his parents, guardians or relatives, needs special protection and assistance. The refugee child shall be assisted in every possible way. Every effort shall be made to trace the parents or other close relations of the unaccompanied refugee child and to ensure his reunification with his family. In cases where no close relatives have been found the child shall, if possible, be placed within his own cultural and linguistic group."

94. During an exchange of views, some speakers felt that the provision should contain a definition of the refugee child, that emphasis should be placed on the principle of family unity as well as on protection of two different categories of refugee children (those already accorded refugee status and those who found themselves in a transitional state), that protection should not be considered less important than assistance, that proper acknowledgement should be made of the importance of the catalytic and co-ordinating role in refugee protection of public and private international organizations, that States should not be obligated to bear costs of tracing family members in every case or to guarantee their admission for residence, and that assimilation of refugees into the general community should be considered as an alternative to placement within their own cultural and linguistic group. Several speakers, therefore, submitted amendments to the above-mentioned text.

95. The representative of Australia proposed the replacement in the first sentence of the words "recognize that" by the words "shall ensure that"; he also proposed that the words "needs special protection and assistance" at the end of the first sentence and the whole of the second sentence should be replaced by "receives adequate protection and assistance in the enjoyment of the rights contained in this Convention". The Australian proposal was supported by several delegations.

96. The representative of the Philippines proposed that the verb "has" in the fourth sentence should be changed to "have". The delegation of India proposed that the words "if possible" in the fourth sentence should be changed to "where appropriate", while the delgation of the United States suggested the addition of the words "and in the best interests of the child" to the words "where appropriate". The representative of the Byelorussian Soviet Socialist Republic suggested that the word "group" at the end of the fourth sentence should be replaced by the word "environment".

97. The Chairman requested that a new draft be prepared by the aforementioned working party. The draft read as follows:

"The States Parties to the present Convention shall ensure that a child who is considered a refugee under the relevant international instruments accepted by

the parties concerned or under the national legislation of the state of refuge or state of residence, whether unaccompanied or in company with his parents, guardians or relatives, receives adequate protection and assistance in the enjoyment of the rights contained in the Convention. The States Parties undertake to co-operate with the Office of the United Nations High Commissioner for Refugees in the exercise of its function of ensuring protection and assistance to such a child. Every effort shall be made to trace the parents or other close relatives of the unaccompanied refugee child and to ensure his reunification with his family. In cases where no close relatives have been found, the child shall, where appropriate and in his best interests, be placed within his own cultural and linguistic environment."

The Working Group's attention was drawn to the introduction in that text of the concept of refugee as taken from article 73 of section III of Protocol I additional to the Geneva Conventions of 12 August 1949.

98. The observer of the Office of the United Nations High Commissioner for Refugees proposed the addition in the second sentence of the words "and other international organizations" after the words "United Nations High Commissioner for Refugees", and the delegation of Canada suggested the addition of the words "and non-governmental agencies". The representative of the Philippines proposed that the words "where appropriate" in the fourth sentence should be replaced by the words "unless otherwise decided by competent authorities", while the observer of the Office of the United Nations High Commissioner for Refugees also suggested the deletion of the words "and in his best interests" in the fourth sentence.

99. The Working Party, consisting of the delegations of Denmark, India and the United States and the observer of the Office of the United Nations High Commissioner for Refugees, then produced a compromise text which was presented by the Danish delegation for consideration by the Working Group. The text read as follows:

"The States Parties to the present Convention shall take appropriate measures to ensure that a child who is seeking refugee status or who enjoys refugee status 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. In view of the important functions performed in refugee protection and assistance matters by the Office of the United Nations High Commissioner for Refugees 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."

100. The following amendments were proposed to the above-mentioned text. The representative of the Byelorussian Soviet Socialist Republic made a proposal to replace the word "seeking" in the first sentence by the word "receiving" and to

replace the words "seeking refugee status or who enjoys refugee status" by the words "a refugee or who is a de facto refugee as distinct from the second category of refugee who has legal status". The delegation of Canada proposed that the phrase "who is seeking refugee status or who enjoys" should be replaced by "whose status as a refugee is undetermined or who has". Also in the same sentence, the observer of the Office of the United Nations High Commissioner for Refugees proposed that the word "enjoys" should be replaced by the words "has been granted", while the delegation of Australia proposed that the phrase "enjoys refugee status" should be replaced by "has been recognized as a refugee". The representative of France proposed the addition at the end of the first sentence of the words "to which the said States are parties".

101. The representative of the Byelorussian Soviet Socialist Republic proposed the deletion from the second sentence of the words from "In view of ..." to the words "intergovernmental and non-governmental organizations" (the sentence would then begin with the words "The States parties") and the replacement of the word "these" after the words "efforts by" by the words "competent governmental and intergovernmental", or the deletion of the words "the Office of the United Nations High Commissioner for Refugees and other". The representative of the United States proposed either the addition in the second sentence after the words "the Office of the United Nations High Commissioner for Refugees" of the words "the International Committee of the Red Cross" or the deletion of the words "the Office of the United Nations High Commissioner for Refugees and other" and the addition after the words "non-governmental organizations" of the words "such as the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the International Committee of the Red Cross".

102. The representative of the Union of Soviet Socialist Republics suggested the addition in the second sentence of the concept that it was first and foremost duty of the States parties to create favourable conditions for the repatriation of refugee children. The representative of Australia, echoing the concern of some delegations that in the application of the principle of family unity and for obvious humanitarian reasons every effort should be made to ensure the reunification of separated refugee families, proposed the insertion of the following sentence between the second and third sentence of the text: "On the basis of such information and in the child's best interests, States parties shall endeavour to ensure reunification of the child with his family."; that proposal was withdrawn at a later stage of the proceedings.

103. Discussion centred on whether the final text should mention the Office of the United Nations High Commissioner for Refugees. Many delegations spoke on the subject stressing the unique mandate and the significant work performed by the Office while some of them indicated that they would have liked to include the mention of the Office if reference to a specific agency would have been the practice followed in the elaboration of the articles of the Convention already adopted by the Commission on Human Rights. Some speakers were extremely reluctant to delete the reference to the Office. The representative of the Byelorussian Soviet Socialist Republic suggested as a compromise that the reference to the Office should be deleted and that the record should clearly indicate that his proposed deletion was in no way intended to undermine or belittle the important work done by that organization. The members of the Working Group accepted the deletion under discussion in the spirit of compromise.

104. In that connection, the delegation of Senegal proposed that the reference to the Office of the United Nations High Commissioner for Refugees should be replaced by the reference to the United Nations. This proposal was accepted by the Working Group.

105. The Working Group adopted by consensus the provision under consideration as amended:

"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."

The Working Group considered that the provision just adopted should form the subject of a separate article.

Article 12

106. Article 12 of the revised Polish draft was as follows:

"1. The States Parties to the present Convention recognize the right of a mentally or physically disabled child to special protection and care, appropriate to his condition and the circumstances of his parents or guardians, and undertake to extend adequate assistance to any such child.

"2. A disabled child shall grow up and receive education in conditions possibly most similar to those provided to all other children, aiming at social integration of such a child."

The representative of the Union of Soviet Socialist Republics supported this draft article.

107. The representative of Australia reintroduced the following proposal submitted by his delegation the previous year:

"Replace 'undertake to' with 'shall' in paragraph 1 of article 12.

"Replace paragraph 2 with:

"A disabled child shall grow up and receive education in conditions designed to achieve the fullest possible social integration of the child. The special educational needs of the disabled child shall be met free of charge and aids and appliances shall be provided to ensure equal opportunity and access to institutions."

108. The Polish delegation submitted the following amended text as contained in document A/C.3/36/6:

"1. The States Parties to the present Convention recognize the right of a mentally or physically disabled child to special protection and care, commensurate with his condition and those of his parents or guardians, and shall extend appropriate assistance to such a child.

"2. A disabled child shall grow up and receive education in conditions designed to achieve his fullest possible social integration. His special educational needs shall be cared for free of charge; aids and appliances shall be provided to ensure equal opportunity and access to the care services and facilities for which he is eligible."

The representative of the Union of Soviet Socialist Republics supported this draft article.

109. A proposal was introduced by the representative of Canada which read as follows:

"1. The States Parties to the present Convention recognize the right of a mentally or physically disabled child to special protection and care, and shall extend assistance, appropriate to his condition and the circumstances of his parents or guardians, which will ensure him the right to enjoy a decent life, as normal and full as possible, and which will enable him to become as self-reliant as possible.

"2. The States Parties to the present Convention shall take appropriate measures to ensure that a disabled child shall grow up and receive education, health care services and preparation for employment in conditions designed to achieve the child's fullest possible social integration. The disabled child's special education needs shall be provided for free of charge and, wherever possible, these needs shall be accommodated within the same educational institutions attended by other children.

"3. The provisions of article 6 (2) of this Convention shall apply to the disabled child in the same way as to any other child and shall apply, in addition, to the child of disabled parents."

110. An amendment was introduced by the delegation of the United Kingdom to include a direct reference to the families of handicapped children in the belief that it was necessary for both the family and the handicapped child to receive advice and support. This amendment read:

"1. The States Parties to the present Convention recognize the right of mentally or physically handicapped children and their families to receive practical advice and support and the provision of a wide range of services to enable them to remain together and for handicapped children to live as independent and normal a life as possible in their community.

"2. A handicapped child shall grow up and receive education appropriate to his special needs in conditions and circumstances as similar as possible to those provided to all other children, aiming at education and social integration".

111. A proposal for article 12 was also submitted by the International Labour Organisation which read:

"With a view to ensuring the disabled child's preparation for employment, appropriate prevocational training and guidance shall be provided within and/or outside the school setting."

112. Several non-governmental organizations submitted the following text, as contained in document E/CN.4/1982/WG.1/WP.1, based on the special situation of handicapped parents who were able to continue to care for their children:

"Particular consideration shall be given to handicapped parents who, with special training, can still continue to care for their children. In all such cases the interest of the child shall always be the guiding principle."

113. During the discussion that ensued the representative of Australia, after withdrawing his proposal in favour of the Canadian proposal, suggested that emphasis should be placed at the beginning of the article on the right which was to be protected, the fundamental principle that the Working Group wanted to enshrine in the Convention. He therefore suggested that the words "to enjoy a decent life, as normal and full as possible, and to become as self-reliant as possible, and" should be placed in the first paragraph of the Canadian proposal after the words "physically disabled child", and the deletion at the end of the paragraph of the words "to enjoy a decent life, as normal and full as possible, and which will enable him to become as self-reliant as possible". The sentence would therefore end with the words "such a right" instead of "the right".

114. The delegation of Argentina suggested the insertion in the paragraph under discussion of the words "and his family" between the words "physically disabled child" and the words proposed by the representative of Australia.

115. The Polish representative, on behalf of the delegations of Australia, Canada, Poland, the United Kingdom and the United States, proposed the following text for the first sentence of paragraph 1 of article 12:

"The States Parties to the present Convention recognize that a mentally or physically disabled child should enjoy a full and decent life in conditions which ensure his dignity, promote his self-reliance, and facilitate his active participation in the community."

This text was adopted by the Working Group.

116. At its final meeting on 5 March 1982, the Working Group adopted its report by consensus.

117. At the close of its series of meetings, the Working Group expressed the view that its work constituted an important contribution to the next phase of the elaboration of the draft Convention on the rights of the child. The representative of the Union of Soviet Socialist Republics, supported by the representative of the Byelorussian SSR, stated that the report of the Chairman-Rapporteur did not fully reflect the situation that had prevailed in the Working Group with respect to those members who had favoured the elaboration of the draft Convention and those who had done everything in order to hamper the work and even to prevent the elaboration of this important international instrument. The other delegations disagreed with this statement.

Other provisions of the draft Convention

118. In addition to the proposed amendments to the draft Convention set forth in paragraphs 25, 60 and 88 above, the Working Group had before it the following proposal submitted by the representative of the United States which was not discussed by the Group for lack of time, to add the following articles:

"Article 6 bis

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

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

"Article 6 ter

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

"Article 7 bis

"1. The States Parties to the present Convention shall ensure that the child has the right to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

"2. The States Parties to the present Convention shall ensure that no child is subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

"3. The States Parties to the present Convention shall ensure that the child's freedom to manifest his 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. The States Parties to the present Convention shall ensure that the child has:

(a) the freedom to worship or assemble with others in connection with his religion or belief;

(b) the freedom to make, to acquire and to use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

(c) the freedom to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of his religion or belief; and

(d) the freedom to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

"Article 8 bis

"1. The States Parties to the present Convention shall take all appropriate legislative and administrative measures to protect the child from all forms of physical or mental injury or abuse, general neglect or negligent treatment, sexual abuse or exploitation, or maltreatment caused by the child's parent(s), legal guardian(s), or any other person responsible for the child's welfare under circumstances which indicate that the child's welfare is harmed or threatened.

"2. Principles for dealing with the problem (e.g., mandatory reporting requirements, thorough investigation of reported cases, follow-up physical and mental health care, etc.)."

The Working Group also had before it a proposal submitted by the delegation of China which was not discussed by the Group for lack of time, and that read as follows:

"Add the following words to article 12 [of the revised Polish draft as contained in document A/C.3/36/6]:

'(d) preventing and prohibiting the child from using drugs.'"

Annex

Draft Convention on the Rights of the Child

The States Parties to the Convention

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

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

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

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

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

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

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

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

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

Have agreed as follows:

Article 1

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

Article 2

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

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

Article 3

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

2. In all judicial or administrative proceedings affecting a child that is capable of forming his own views, an opportunity shall be provided for the views of the child to be heard, either directly or indirectly through a representative, as a party to the proceedings, and those views shall be taken into consideration by the competent authorities, in a manner consistent with the procedures followed in the State Party for the application of its legislation.

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

4. The States Parties to the present Convention shall ensure competent supervision of officials and personnel of institutions directly responsible for the care of children.

Article 4

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

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

Article 5

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

Article 6 */

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

Article 7

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

Article 8

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

*/ Adopted by the Working Group in 1982.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.
4. The institutions, services and facilities referred to in paragraphs 2 and 3 of this article shall conform with the standards established by competent authorities, particularly in the areas of safety, health, and in the number and suitability of their staff.

Article 10 */

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

Article 11 */

1. The States Parties to the present Convention shall undertake measures, where appropriate, to facilitate the process of adoption of the child. Adoption of a child shall be authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if required, the appropriate persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.
2. The States Parties to the present Convention shall take all appropriate measures to secure the best interests of the child who is the subject of inter-country adoption. States Parties shall ensure that placements are made by authorized agencies or appropriate persons under the adequate supervision of competent authorities, providing the same safeguards and standards that are applied in exclusively domestic adoptions. The competent authorities shall make every possible effort to ensure the legal validity of the adoption in the countries involved. States Parties shall endeavour, where appropriate, to promote these objectives by entering into bilateral or multilateral agreements.

Article 11 bis */

The States Parties to the present Convention shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the

*/ Idem.

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

Article 12

The States Parties to the present Convention recognize that a mentally or physically disabled child should enjoy a full and decent life in conditions which ensure his dignity, promote his self-reliance, and facilitate his active participation in the community.

D.

REPORT OF THE INFORMAL OPEN-ENDED WORKING GROUP SET UP BY THE
COMMISSION TO CONSIDER THE DRAFTING OF A DECLARATION ON THE
RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC, RELIGIOUS AND
LINGUISTIC MINORITIES

I. Introduction

A. Establishment of the Working Group

1. At its 4th meeting of 3 February 1982, the Commission established an open-ended Working Group to consider the drafting of a Declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities. The Group held meetings on 15, 16, 23 February and 4 March 1982. At its first meeting, the Group elected Mr. Toševski (Yugoslavia) as its Chairman-Rapporteur. The Working Group had before it the following documentation:

- (i) The report of the Working Group at the thirty-seventh session of the Commission on the rights of persons belonging to national, ethnic, religious and linguistic minorities (E/CN.4/L.1579) as reproduced in paragraph 406 of the Commission's report on that session (E/CN.4/1475);
- (ii) A note by the Secretary-General incorporating all provisions relevant to the rights of minorities as contained in international instruments (E/CN.4/Sub.2/L.735);
- (iii) The revised draft Declaration on minorities (E/CN.4/Sub.2/L.734).

B. Background information

2. The Commission established an informal working group at its thirty-fourth session in 1977, following Sub-Commission resolution 5 (XXX) of 31 August 1977 which recommended that the Commission consider drafting a Declaration on the rights of minorities within the framework of the principles set forth in article 27 of the International Covenant on Civil and Political Rights. At each subsequent session of the Commission an informal, open-ended working group has been established to continue consideration of the drafting of a Declaration.

3. At the Commission's thirty-fourth session a draft Declaration was proposed by Yugoslavia (E/CN.4/L.1367/Rev.1) which was intended to serve as a starting point for an exchange of views. Subsequently, in resolution 37 (XXXVI) adopted at its thirty-sixth session in 1980, the Commission requested the Chairman-Rapporteur of the Working Group, Mr. Toševski, to prepare a revised and consolidated text of the draft Declaration, which was placed before the Commission, in document E/CN.4/Sub.2/L.734 at its thirty-seventh session in 1981.
4. Another important document which continues to be of assistance to the Working Group is a note by the Secretary-General on the provisions of international instruments relevant to the problem of the rights of minorities (E/CN.4/Sub.2/L.735).
5. Following Commission resolutions 14 (XXXIV) of 6 March 1978 and 21 (XXXV) of 14 March 1979, a report containing comments from Governments on the question of the rights of minorities was submitted to the Commission at its thirty-sixth session in document E/CN.4/1298 and Add.1-10.
6. A more detailed description of the progress of this subject through the Commission is contained in the report of the Working Group at the thirty-seventh session of the Commission (E/CN.4/L.1579, paras. 2-9).

II. Issues discussed

7. The revised draft Declaration (E/CN.4/Sub.2/L.734), prepared by the Chairman-Rapporteur of the Working Group established at the Commission's thirty-sixth session, formed the basis of the discussions of the Group. The Group continued the task of a first reading of the draft. It adopted provisionally the preamble of a draft Declaration and began consideration of article 1 of the operative part (see Annex).

Seventh preambular paragraph

8. This paragraph appeared originally as the sixth preambular paragraph in the revised draft Declaration. 1/ It read as follows:

"Considering that the protection and promotion of the rights of minorities and of their members contribute to the political and social stability of States in which they live".

1/ E/CN.4/Sub.2/L.734.

9. In the ensuing debate this paragraph was agreed upon by the Group with minor amendments. It was observed that a formula had been agreed upon at the previous session whereby the words 'rights of minorities' would be replaced by the words 'rights of persons belonging to minorities'. Acceptance of that formula rendered the words 'and of their members' superfluous. It was further observed that the formula "[national or], ethnic, religious or linguistic minorities' should be used to follow the wording in the title of the draft Declaration in accordance with the agreement reached on that point at the thirty-seventh session.

10. It was also suggested that the word 'promotion' should come before 'protection' in the first line of the paragraph in order to follow the usual order used in similar human rights instruments.

11. The point was made that the fifth and sixth preambular paragraphs referred to the international aspects of the subject of minorities and that the paragraph under discussion referred to the national aspects of the subject, particularly to the contribution made by minorities to the political stability of their States. Following a discussion on this point, it was agreed that the paragraph under discussion should be placed immediately after the fourth preambular paragraph, and would thus become a new fifth preambular paragraph, making the fifth and sixth paragraphs adopted at the thirty-seventh session the new sixth and seventh preambular paragraphs respectively.

12. The question was raised whether in view of the adoption by the General Assembly at its thirty-sixth session of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, provision should continue to be made in the draft Declaration for "religious minorities". It was argued that the Declaration adopted by the Assembly encompassed more than religious freedoms and intolerance, but it did not refer specifically to the role of minorities in that context. It was suggested that in the future work on the draft Declaration, a reference to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief should be included in the third preambular paragraph of the draft Declaration on minorities.

13. The seventh preambular paragraph was adopted as revised. It reads as follows:

"Considering that the promotion and protection of the rights of persons belonging to [national or] ethnic, religious or linguistic minorities contribute to the political and social stability of States in which they live,"

Eighth preambular paragraph

14. This paragraph appeared originally as the seventh preambular paragraph in the revised draft Declaration. 2/ It read as follows:

"Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Committee on the Elimination of Racial Discrimination, and the Committee on Human Rights, on securing and promoting the rights of minorities,"

15. This paragraph was agreed upon by the Group with minor amendments. It was suggested that the concluding words of the paragraph, "securing and promoting the rights of minorities" should be replaced by the words "promoting and protecting the rights of minorities".

16. It was observed that the inclusion in this paragraph of the Committee on the Elimination of Racial Discrimination and the Committee on Human Rights might be discriminatory or incomplete as both those Committees, and others, had been established by international human rights instruments after the establishment of the Commission on Human Rights and the Sub-Commission. Therefore, it was proposed that the following wording should replace the mention of the two Committees: "as well as the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments".

17. A proposal was made that the work of the World Conference to Combat Racism and Racial Discrimination should be included in the paragraph. It was suggested that this point could be mentioned either in a separate paragraph or be included in the tenth preambular paragraph.

18. The eighth preambular paragraph was adopted as revised. It reads as follows:

"Bearing in mind the work done so far within the United Nations system, in particular the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities as well as the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments on promoting and protecting the rights of persons belonging to [national or] ethnic, religious or linguistic minorities,"

Ninth preambular paragraph

19. This paragraph appeared originally as the eighth preambular paragraph in the revised draft Declaration. ^{3/} It read as follows:

"Recognizing the need to ensure even more effective implementation of the existing instruments of international law relating to the rights of national, ethnic, linguistic and religious minorities,"

20. In the following debate this paragraph was agreed upon by the Group with minor amendments. It was suggested that the words "instruments of international law" should be replaced by the words "international human rights instruments", since the latter phrase could cover both United Nations instruments pertaining to human rights and to other instruments adopted by the international community which also relate to human rights.

21. The point was raised as to whether this paragraph should be deleted as its content was already covered by the third preambular paragraph, which lists various international instruments. Other international instruments are also referred to in the eighth preambular paragraph which has already been adopted.

22. In any event it was also proposed that if the paragraph remained, the word "existing" should be deleted thus allowing for the inclusion of instruments adopted in the future. It was also suggested that perhaps the third and ninth preambular paragraphs could be merged.

23. The suggestion was made that after "right of" the words "persons belonging to" should be added in square brackets, and that the word "or" should be added to "national" and both words enclosed in square brackets. In the debate on these suggestions, attention was drawn to the fact that "persons belonging to" had been placed in square brackets in the third and fifth preambular paragraphs adopted last year, but brackets had not been used around these words in either of the two paragraphs adopted during the Group's meetings this session. The Group was reminded that in paragraph 15 of the report of the Working Group at the thirty-seventh session of the Commission, ^{4/} a decision on the inclusion of the words "persons belonging to", whether within square brackets or not, had been deferred to a final reading of the text. The paragraph as adopted by the Group did not contain square brackets around "persons belonging to", in keeping with the two paragraphs already adopted by the Group at this session.

24. The ninth preambular paragraph was adopted as revised. It reads as follows:

"Recognizing the need to ensure even more effective implementation of international human rights instruments relating to the rights of persons belonging to [national or] ethnic, religious or linguistic minorities,"

Tenth preambular paragraph

25. This paragraph appeared originally as the ninth preambular paragraph in the revised draft Declaration. ^{5/} It read as follows:

"Bearing in mind the need for further efforts to ensure and promote the rights of national, ethnic, linguistic and religious minorities as well as the recommendations of the World Conference to Combat Racism and Racial Discrimination (Geneva, 1978) on this matter,"

26. The proposal was made to delete part of this paragraph, since its meaning was included in the recommendations of the World Conference to Combat Racism and Racial Discrimination, and simply make a reference to the Declaration and the Programme of Action adopted by the World Conference.

^{4/} E/CN.4/L.1579.

^{5/} Ibid.

27. A further proposal was made to delete the paragraph entirely because the draft Declaration will be an instrument of lasting significance and reference to conferences held at a specific point in time would not be meaningful in the future. The point was made, however, that perhaps the ideas contained in the recommendations of the World Conference could be incorporated into the draft Declaration in either the preambular or operative parts.
28. A compromise between partial and entire deletion was proposed to the effect that the paragraph could be replaced by one which made a general reference to the need to prevent or eliminate all forms of discrimination or intolerance against minorities. Furthermore, such a paragraph would form the necessary bridges between the preambular and the operative parts of the draft Declaration.
29. The debate on the tenth preambular paragraph concluded with the Group agreeing to the deletion of the paragraph as a whole.
30. Discussion on the preamble of the draft Declaration closed with agreement on the sentence leading into the operative part of the draft Declaration, which reads as follows:

"Proclaims this Declaration on the Rights of Persons Belonging to [National or Ethnic, Religious or Linguistic Minorities:]"

Article 1

31. This article, as it appears in the revised draft Declaration, 6/ reads as follows:

"National, ethnic, linguistic and religious minorities (hereinafter referred to as minorities) have the rights to existence, to respect for and promotion of their own national, ethnic, linguistic, religious and other characteristics and to enjoyment of equality in relation to the rest of the population of the state in which they live."

32. The debate which followed began with a reminder to the Group that the article should begin with the same wording and order of the title as it appeared in the annex to the report of the Working Group at the thirty-seventh session. 7/

33. A proposal was made regarding the wording of article 27 of the International Covenant on Civil and Political Rights. It was proposed that the words in article 1 from "to respect for" to "other characteristics" should be deleted and replaced with the wording of article 27, i.e. "to enjoy their own culture, to profess and practise their own religion, or to use their own language".

6/ Ibid.

7/ E/CN.4/L.1579.

34. The suggestion was made that article 1 should conclude with the words "the rest of the population of the state in which such minorities exist", which would be in keeping with article 27 and also with the fourth preambular paragraph of the draft Declaration.

35. A question was raised as to whether the use of the words "rights to existence" would bring a new right into an international instrument. The view was expressed that a reference to the right to existence of minorities could lead to undesirable interpretations. A further suggestion was made to the effect that the right "to existence" should be replaced by the "right to life", or the "right to live". It was also pointed out that the right to existence has two meanings: the right to life as members of a group, and the right of the group to exist collectively.

36. The use of the term "equal rights" would, it was proposed, be more correct than the word "equality" used in article 1 of the draft Declaration.

37. It was observed that without denying the importance of article 27 of the Covenant the Group was not bound by that article. Rather, the draft Declaration should go beyond the contents of article 27, without contradicting it. Furthermore, article 1 of the draft Declaration referred to the relationship of minorities to the larger population in which they live, which article 27 did not. Another view was expressed to the effect that the Group should not attempt to exceed article 27 but should, rather, try to broaden its scope.

38. In an attempt to combine the various points already discussed it was suggested that the Group might consider including six specific rights in article 1. The first right could be the right to "life, liberty and security of Person", as contained in article 3 of the Universal Declaration. The second right might be expressed in a formulation which includes respect for national, ethnic, religious or linguistic characteristics. The third right could be borrowed from article 26 of the Covenant which declares that all persons are "equal before the law". The fourth, fifth and sixth rights of minorities set forth in article 1 could be taken from article 27 of the Covenant, namely the rights to enjoy their own culture, to profess and practise their own religion, and to use their own language. Support was also expressed for the wording already suggested regarding the States "in which such minorities exist".

39. It was observed that the meaning behind article 3, paragraph 1 of the draft Declaration was the same as article 1. The suggestion was made, therefore, that perhaps they should be merged, which would bring together all the relevant rights of minorities.

40. The debate on article 1 closed without any specific conclusions having been reached. The request was made for Governments to provide, through the Commission, concrete proposals for a re-formulation of article 1 of the draft Declaration, taking into consideration the various suggestions made by the Group.

41. Finally, it was noted by the Group that agreement on a definition of the term "minorities" had not yet been reached.

ANNEX

Text of that part of the draft declaration on which preliminary agreement has been reached so far

Draft Declaration on the rights of persons belonging to [national or] ethnic, religious or linguistic minorities

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in its Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

[Reaffirming] [Reiterating] [Declaring] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles [concerning the rights of] [persons belonging to] [minorities] which form the basis of the Charter of the United Nations, the Universal Declaration on Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide and the International Convention on the Elimination of All Forms of Racial Discrimination as well as other relevant international instruments [that have been adopted at the universal or regional level and those concluded between individual States members of the United Nations],

Inspired by [Based on] the provisions of Article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to [national or] ethnic, religious or linguistic minorities contribute to the political and social stability of States in which they live,

Confirming that friendly relations and co-operation among States, which take place in the spirit of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, contribute to international peace and security and to the creation of more favourable conditions for the realization and promotion of human rights, including the rights of [persons belonging to] [national or], ethnic, linguistic and religious minorities,

Emphasizing that the constant promotion and realization of the rights of persons belonging to minorities, as an integral part of the development of society as a whole and within the constitutional framework would in turn contribute to the strengthening of friendship and co-operation among peoples and States,

Bearing in mind the work done so far within the United Nations system, in particular the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities as well as the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments on promoting and protecting the rights of persons belonging to [national or] ethnic, religious or linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments relating to the rights of persons belonging to [national or] ethnic, religious or linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to [National or] Ethnic, Religious or Linguistic Minorities: