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QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

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

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INTRODUCTION

1. The Commission on Human Rights decided, at its forty-second session, by resolution 1986/59, to continue its work on the elaboration of the draft convention on the rights of the child as a matter of the highest priority, and requested the Economic and Social Council to authorize a one-week session of an open-ended working group prior to the forty-third session of the Commission, with a view to completing the work on the draft Convention. The Council so decided by its resolution 1986/40 of 23 May 1986.

2. The Working Group held 11 meetings from 26 to 30 January 1987 and on 6 March 1987. It adopted articles 6 bis, additional sentences to paragraphs 1 and 2; 9, new subparagraph (C); 10, additional sentence to paragraph 2; 12 bis, paragraph 3; 16, paragraph 1, subparagraph (d); 16 bis; 18 ter; 18 quater; 18 quinto; and 21 ter. The annex to this report contains proposals by delegations of States, other than those appearing in the body of the report not yet considered by the Working Group. By a note verbale of 30 January 1987, the Permanent Mission of Morocco asked that their observations on the draft Convention be brought to the attention of the Working Group; those observations were contained in E/CN.4/1987/WG.1/WP.35.

Elections

3. At the first meeting of the pre-sessional Working Group, on 26 January 1987, Mr. Adam Lopatka (Poland) was elected Chairman-Rapporteur by acclamation.

Question of new proposals

4. A number of delegations noted that at each session a number of new proposals for articles or amendments were submitted to the Working Group and expressed concern that the Group would not be able to complete its work in due time. Suggestions were made that a deadline be set for the submission of new proposals.

Participation

5. The meetings of the Working Group, which were open to all members of the Commission on Human Rights, were attended by representatives of the following States; Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, China, Colombia, Cyprus, France, German Democratic Republic, Germany, Federal Republic of, India, Iraq, Italy, Japan, Mexico, Norway, Pakistan, Peru, Senegal, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

6. The following States, non-members of the Commission on Human Rights, were represented by observers at the meetings of the Working Group: Canada, Denmark, Finland, Holy See, Iran, Islamic Republic of, Morocco, Netherlands, New Zealand, Poland, Sweden, Switzerland and Yemen Arab Republic.

7. The International Labour Organisation, the United Nations Children's Fund and the United Nations High Commissioner for Refugees were represented at the Working Group by observers.

8. The following non-governmental organizations sent observers to the Working Group: Amnesty International, Anti-Slavery Society for the Protection of Human Rights, Associated Country Women of the World, Baha'i International Community, Defence for Children International, Four Directions Council, Human Rights Internet, International Abolitionist Federation, International Association of Democratic Lawyers, International Association of Juvenile and Family Court Magistrates, International Catholic Child Bureau, International Committee of the Red Cross, International Commission of Jurists, International Council of Jewish Women, International Council of Women, International Council on Social Welfare, International Federation of Women in Legal Careers, International Federation of Women Lawyers, International Movement ATD-Fourth World, International Movement for Fraternal Union among Races and Peoples, Rädda Barnen International, Save the Children Fund Alliance, World Association for the School as an Instrument of Peace, World Organization for Early Childhood Education, Zonta International.

I. Provisions adopted by the Working Group at its 1987 session

A. Article 6 bis, additional sentences to paragraphs 1 and 2

9. The Working Group had before it the following text of a joint proposal made by the delegations of Finland, Poland, the USSR and the United States for an addition of a second sentence to paragraph 1 and of a second and third sentence to paragraph 2 of article 6 bis:

Second sentence of paragraph 1

"States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned."

Second and third sentences of paragraph 2

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

Second sentence of paragraph 1

10. When discussing the proposal for a second sentence to paragraph 1 of article 6 bis, the representative of Senegal was of the view that this proposal had no significance in an international convention, since it was obvious that the submission of the request by a child or his parents to enter or leave a State Party for the purpose of family reunification should entail no adverse consequences for the persons concerned. He felt that paragraph 1 of article 6 bis, by imposing an obligation upon States, already covered the concerns expressed in the proposal. The representative of the United States explained that the proposal in its entirety reflected a humanitarian concern, that family unity and reunification were basic rights that should be included in the draft Convention, and urged the Working Group to adopt the proposal.

11. The delegation of the Netherlands, supported by the observer for Finland, proposed the deletion of the words "of itself", while the representative of the United Kingdom was of the view that the reason for inclusion of the words "of itself" was justified in certain circumstances, when adverse consequences could arise after States Parties had dealt with requests for family reunification in a positive, humane and expeditious manner, or after family reunification had taken place. The representative of Austria, supporting this view, agreed to these additional words.

12. The observer for Finland considered that in the phrase "shall of itself entail no adverse consequences for the person(s) concerned", the words "person(s) concerned" should be clarified. He proposed instead the following wording: "shall entail no adverse consequences for the applicants and for the members of their families". The delegation of the Netherlands favoured the proposal put forward by the observer for Finland, proposal which also met with the acceptance of the representative of the United States.

13. The Working Group then proceeded to adopt by consensus the following additional sentence to paragraph 1 of article 6 bis:

"States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family."

Second and third sentences of paragraph 2

14. The observer for Finland put forward a revised proposal to the one submitted by the delegations of Finland, Poland, the USSR and the United States of America, which read as follows:

"2. A child shall have the right to maintain [save in exceptional circumstances] personal relations and direct contacts with both parents also where the child and his or her parents live in different States. Toward that end, States Parties shall respect the right of the child and his or her parents to enter or leave their territory temporarily and, where appropriate, on a regular basis. States Parties shall also take all necessary steps to promote and ensure the effective exercise of this right and to secure the fulfilment of any conditions to which the exercise of this right may be subject.

3. The implementation of the obligations under this article [by States Parties] shall be subjected only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others [and are consistent with the other rights recognized in the present Convention]."

15. The observer for Finland was of the view that the wording in the revised proposal that he had submitted was more appropriate, and would allow more flexibility in the interpretation of the article so as to ensure the child's right to maintain personal relations and direct contacts with both parents in those cases in which the child and his parents each lived in different States.

16. The proposal by the observer for Finland met with some reservations, and the Working Group agreed that the text submitted by the delegations of Finland, Poland, the USSR and the United States be taken as the basis for discussion.

17. The representative of Japan proposed that the word "return" be replaced by the word "enter", in order to allow the entry of a child born outside his or her own country, and the observer for Finland agreed with the proposal. The representative of France proposed the wording "respect the right that the child and his parents have to leave any country", instead of "respect the right of the child and his parents to leave any country". The representative of the German Democratic Republic proposed the addition of the words "and in accordance with the obligation of States Parties under article 6, paragraph 2" after the words "towards that end"; with regard to the proposal by the Japanese delegation, he was in agreement with it and the representative of Australia shared his view.

18. The delegations of the Netherlands and the United Kingdom expressed their interest in the revised proposal by the observer for Finland. The observer for the Netherlands also said that he would join a consensus with regard to the adoption of the additional sentences to paragraph 2 of article 6 bis, with the understanding that at the appropriate time the Working Group would discuss some elements of the revised proposal submitted by the observer for Finland. The delegation of Finland stated that it would join the consensus on the basis of the proposal under consideration by the Working Group, and with the suggested amendment by the delegation of Japan; the observer for Finland added that his delegation was reserving the right to come back to the matters raised in his proposal at least during the second reading, and voiced his hope that delegations would then accept some of the wording contained in his revised proposal.

19. The representative of the USSR questioned the appropriateness of having the text at the end of the proposal which was between parentheses added to the proposal. The Chairman suggested the deletion of the parentheses. The representative of the United States proposed to delete the word "to" before the words "their own country", as well as the parenthesis at the end of the proposal, and to replace the word "is" in the penultimate line by the word "are". The delegation of Senegal wished to delete the words "Toward that end," at the beginning of the proposal, but this suggestion did not meet with the approval of other members of the Working Group. The delegation of Poland supported the proposal as amended by the delegations of Japan and the United States.

20. The Working Group then adopted the following additional sentences to paragraph 2 of article 6 bis:

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

B. Article 9, new subparagraph (c)

21. For the consideration of this article, the Working Group had before it a proposal submitted by the International Board on Books for Young People, for a new subparagraph (c), whereby the present (c) becomes (d) and the present (d) becomes (e), which read:

"Encourage, at all levels, literacy and the reading habit through children's book production and dissemination, as well as the habit of storytelling."

22. The representative of Austria was in agreement with the basic idea of the proposal submitted by that non-governmental organization and suggested that it should be put forward in legal terms. Accordingly, he submitted the following proposal:

"Encourage the production and dissemination of children's books."

23. The delegations of France, Italy and the Netherlands supported the above-mentioned proposal and the Working Group adopted it by consensus.

C. Article 10, additional sentence to paragraph 2

24. The representative of Austria proposed that an additional sentence be added to paragraph 2 of article 10 to read: "When considering the best interests of the child, particular regard shall be paid to the child's ethnic, religious or linguistic origin.". The wording "the best interest of" was subsequently amended by the delegations of Austria and the Netherlands to read instead "alternative family care for".

25. The observer for Canada was in favour of this proposal, but suggested that the word "particular" be replaced by "due". The observer for Finland supported the Canadian amendment. The representative of the United Kingdom proposed the addition of the following phrase between the words "shall be paid" and "to the child's ethnic": "the desirability of continuity in a child's upbringing and", as well as the replacement of the word "origin" by "background" at the end of the sentence. The representative of the Soviet Union proposed the addition of the following sentence: "In all cases, a decision on this issue shall be taken with due regard for the best interests of the child.".

26. While the representative of Italy supported the Soviet proposal, the delegation of the Netherlands found difficulty in accepting it, but the impasse was surmounted by a compromise proposal put forward by the representative of the United States, namely to add "and the best interest of the child" after the phrase "alternative family care for the child". He explained that although those placing a child in alternative family care should consider factors of continuity in the child's upbringing and background, the best interests of the child should always be the primary concern. This proposal met with the approval of the delegations of Australia, Norway, the USSR and Yemen. The delegation of the USSR expressed its concern that the provision as a whole, and as thus far amended, could pose difficulties in situations such as war, when parentless children often cannot feasibly be returned to families of the same ethnic, religious or linguistic background also wished to introduce the wording "where possible," after the

words "shall be paid". This proposal was not entirely satisfactory to the Finnish delegation which suggested an amendment to read: "States Parties shall, where appropriate, have due regard to the child's ethnic, religious or linguistic background".

27. Following a statement by the Four Directions Council and some further exchanges of views, the delegations of Finland and the USSR withdrew their proposals, and the Working Group proceeded to adopt the following additional sentence to paragraph 2 of article 10:

"When considering alternative family care for the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background."

D. Article 12 bis, paragraph 3

28. The Working Group decided to consider a proposal by the Informal NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child, which read:

"The States Parties to the present Convention shall seek to eradicate traditional practices harmful to the health of children and shall take all appropriate action including necessary legislative, administrative, social and educational measures to ensure that children are not subjected to such practices."

29. The representative of the United Kingdom said that the concept of traditional practices might possibly be interpreted more widely than the authors intended, and that the wording of the proposal should be tightened up to make it clear what was intended exactly. He also wondered whether the reference to "traditional practices harmful to the health of children" meant female circumcision. The delegation of Senegal counselled prudence when dealing with issues that entailed differences in cultural values, and emphasized the dangers of forcing practices into clandestinity if they were prohibited by State legislation.

30. The observer for Canada said that, while the comments of the representative of Senegal should be taken very seriously, she wondered whether some of his concerns and those of the United Kingdom delegation might be met by the following changes to the tabled proposal: to add "seriously" before "harmful", "by all appropriate means" after "seek", so as to indicate that concerns other than legislation are acceptable, and "including female circumcision" after "traditional practices" to give some clear content to the draft article. The representative of Australia supported the inclusion of such an article, and suggested the addition of the words "physical or mental" before "health of children". He also proposed that the provision under discussion be incorporated in article 12 bis, dealing with health, of the draft Convention.

31. The representative of Senegal made a new proposal which read as follows:

"The States Parties to the present Convention shall seek, as far as possible, to take effective and appropriate measures to combat traditional practices that affect the health of children."

32. The Canadian delegation proposed to change the word "affect" to "seriously harm", while the representative of the Netherlands felt that the obligations undertaken by States were too weak and, accordingly, the wording "seek" ought to be replaced by a more forceful language; he also expressed his wish that this new provision being considered by the Working Group be a new paragraph 3 of article 12 bis, and that the existing paragraph 3 be renumbered 4.

33. The representative of Senegal said he thought that the word "affect" should remain in the text, while the delegation of Australia considered that, for the sake of clarity, the phrase "traditional practices that affect the health of children" should read "traditional practices adversely affecting the health of children"; the representative of the Netherlands agreed with this proposal. The delegation of the United States then put forward another proposal that came at the end of the paragraph: the phrase "to combat traditional practices that affect the health of children" should be replaced by "to eliminate traditional practices which seriously and adversely affect the health of children".

34. After some debate on the meaning of the French and English words "affectants" and "affecting" or "affect", as qualified by the adverbs "adversely" or "seriously" proposed by the Australian and American delegations respectively, and the position of the representative of Senegal that the word "affect" should not be qualified, the delegation of France proposed that the phrase "traditional practices prejudicial to the health of children" be used, and that met with the approval of the representative of Senegal. The representative of Italy, referring to the recommendations of the 1985 Nairobi World Conference of the United Nations Decade for Women concerning this problem, noted that female circumcision was practised on children without their consent, often in unsanitary circumstances and caused great suffering. She recognized the importance of plurality of cultures but nevertheless appealed for changes in attitudes which would eliminate this problem.

35. The delegations of both the United Kingdom and the United States suggested that the concept of female circumcision be added at the end of the proposal. Their two proposals read respectively "in particular, female circumcision" and "including, for example, female circumcision". The representative of the United States explained that the amendment was designed to ensure that the Group would explicitly address the traditional practice of greatest concern and would give greater content to the phrase "traditional practices"; in addition, he argued that adding this phrase would demonstrate that the practices to be abolished were those of a serious nature.

36. The representative of the International Movement for Fraternal Union Among Races and Peoples did not believe that a specific reference should be made to female circumcision since there were other "traditional practices" which were also harmful such as preferential care, including feeding for male children.

37. The representative of Senegal read an amended proposal, as follows:

"The States Parties to the present Convention shall seek to take all effective and appropriate measures with a view to abolishing traditional practices that affect the health of children."

The Canadian delegation accepted the proposal put forward by the representative of Senegal, and stated that it was its understanding that the term traditional practices included all those practices outlined in the 1986 report of the Working Group on Traditional Practices affecting the Health of Women and Children (E/CN.4/1986/42). The delegations of Japan, Sweden and Venezuela associated themselves with the Canadian delegation's understanding of the term traditional practices.

38. The Netherlands delegation accepted the Senegalese proposal, provided that the United States proposal concerning the practice of female circumcision were added to it, but the representative of Senegal once again stated his objection to such a wording being introduced into the text of the provision. The Finnish delegation accepted the proposal by the delegation of Senegal, on the understanding that the interpretation of health was a very broad one.

39. The delegations of Italy, Japan, Mexico, the Netherlands, Norway and Sweden said they were able to accept the amended proposal read out by the representative of Senegal, and the Working Group proceeded to adopt it by consensus in the following form:

"The States Parties to the present Convention shall seek to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

E. Article 16, additional subparagraph (d) to paragraph 1

40. At the Working Group's 1985 session, the delegation of Algeria proposed the following text for a new paragraph 3 to article 16:

"Children should be educated in a social climate imbued with the national values and the cultural identity of the children, with respect for civilizations different from their own and for the rights of peoples. In no case may children of countries still under colonial domination and foreign occupation or racist régimes be deprived of their cultural and national identity."

41. That proposal was supported by the representatives of Argentina, China and Venezuela. The delegations of the Netherlands and the United Kingdom, although they had no problems with the second sentence of the proposal, requested clarification of the first sentence and, in particular, of the concept of cultural identity embodied in it. The observer for Canada thought that the emphasis on national values could clash with article 16 bis that attempted to maintain heritage of children of ethnic minorities; she also sought clarification of the way in which that proposal fitted in with article 16, paragraph 1, subparagraph (b).

42. The observer for Canada further noted that she found the term "the child's cultural identity and national values" ambiguous as to whether it was the child's, the State's or the parents' identity and national values that were to be considered, and said that in a multicultural State that was not easily answered. She also sought clarification of what "rights of peoples" were referred to, other than the "right to self-determination" which, as one of the fundamental rights expressed in the International Covenant on Civil and Political Rights, was already encompassed by the reference to "all human rights and fundamental freedoms" in article 16, paragraph 1, subparagraph (a).

43. The representative of France stated that the drafting of the proposal posed certain problems, in particular its reference to a social climate. He thought it would be preferable to say that children should be educated with respect for their cultural identity, national values and civilizations different from their own, and for the rights of peoples. The representative of the USSR considered the ideas of which the proposal was imbued as being very important and suggested that, in the first sentence of the proposal, the word "identity" be replaced by the word "traditions", and that in the second sentence "their cultural and national identity" should read "their own culture and national traditions".

44. The Chairman asked the delegation of Algeria to give the Working Group an amended version of its proposal, which then read thus:

"Children should be educated with respect for their cultural identity, for their national values, for civilizations different from their own and for the right of peoples. In no case may they be deprived thereof by colonial domination or foreign occupation."

45. The representatives of Argentina, China, Cyprus, Iraq and Venezuela supported the amended proposal put forward by the delegation of Algeria. The representative of the United States thought that it was unclear that the proposal advanced the spirit of the Convention on the rights of the child, while the representative of Austria had some difficulties with the concept of rights of peoples and would therefore prefer not to have it included in the text of the provision. An exchange of views followed touching upon, among other things, the imprecision of the wording and whether the proposal did not repeat or contradict the (adopted) provisions of article 16 or certain other provisions of the draft Convention.

46. The representative of Cyprus declared that in no case might the child be deprived of the education referred to in the first sentence of the Algerian proposal, when his or her country was still under colonial domination or foreign occupation. He also suggested the replacement of "the rights of peoples" by "the human rights and fundamental freedoms", a suggestion which was endorsed by the Canadian delegation.

47. The delegation of Senegal proposed that the words "with respect" at the beginning of the first sentence should be replaced by "within a framework of respect". Since he found the language of the proposal still ambiguous, the representative of Australia proposed as a possible solution the insertion immediately after the words "cultural identity" of the following: "and values, the values of the nation in which they live, for civilizations different from their own".

48. The representative of Cyprus then proposed that the part of the Australian amendment reading "... the values of the nation in which they live" should read instead "the values of the nation to which they belong", but the Canadian delegation indicated its preference for the terms "country/nation in which a child lives". The delegation of the United Kingdom said it would prefer to insert the word "own" between the words "respect for their" and "cultural identity".

49. Taking into account the views expressed by the Group in the course of the discussion, the representative of Australia read out the following text:

"The education of children should take place in a framework of respect for the child's own cultural identity and values, for the national values of the country in which the child is living, for civilizations different from its own, and for human rights and fundamental freedoms. In no case may they be deprived of this by colonial domination or foreign occupation."

50. The representative of Australia pointed out the ambiguity of the word "this" in the second sentence of the proposal he had just read. The Chairman proposed - in order to remove the ambiguity - that the word "this" be replaced by the words "such an education", a proposal which met with the support of the representative of the United Kingdom.

51. The delegation of the United States indicated that it was unable to join a consensus on the second sentence of the Algerian proposal, since the rights enumerated in the Convention were for children living in States with various political systems, and not only in those under "colonial domination or foreign occupation". Moreover, the proposed language was superfluous from a legal point of view, because the States parties, by ratifying or acceding to the Convention, were already agreeing not to deprive children of the rights contained therein.

52. With regard to the first sentence, the representative of the Netherlands suggested that the proposal under consideration by the Working Group should be subparagraph (d) of paragraph 1 of article 16, and that it should start with the words "The development", instead of "The education of children should take place in a framework". The delegations of Australia and the USSR fully accepted the proposal put forward by the representative of the Netherlands.

53. The representative of Algeria stated that she could accept the adoption of the first sentence provided that the second sentence was adopted, dealing with the education of children living under foreign occupation or colonial domination. The Working Group then proceeded to adopt the first sentence of the proposal under its consideration, namely:

"The development of respect for the child's own cultural identity and values, for the national values of the country in which the child is living, for civilizations different from its own, and for human rights and fundamental freedoms."

The Chairman stated that the discussion on the proposal put forward by the delegation of Algeria was terminated.

F. Article 16 bis

54. For the consideration of this article, the Working Group had before it a proposal submitted by the delegation of Norway, which read:

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

The representative of Australia expressed his wish that a proposal by the Four Directions Council also be taken into consideration by the Group. That proposal read:

"The State Parties to the present Convention recognize the special needs of children belonging to indigenous populations, which include the right of the child:

(a) To have, learn, and, if he chooses, adopt the culture and language of his parents;

(b) To enjoy his family of birth and, if alternate family care or adoption is provided, to care or adopt in an otherwise suitable family or community of the same culture wherever possible;

(c) To be educated, at least at the primary level, and to the extent practicable within national resources; in the language of his parents as well as an official language of the State."

55. The delegation of Norway felt that the rights being proposed should be extended to include children belonging to both indigenous and minority groups, while the representative of Italy emphasized the need, in those countries with ethnic minorities, to respect their culture and the use of their own language inside their group. The observer for Finland stressed the importance for a child to enjoy the right of education in its own language, expressing his wish that such a principle appear in the draft Convention.

56. The Chairman believed that the two proposals resembled one another: the Norwegian proposal being the broader one and the Four Directions Council proposal the richer one. He suggested that those proposals be combined at a later stage by a working party consisting of Australia, Norway and the Four Directions Council. The representative of Venezuela said that the subject of that provision was of interest to her, in particular subparagraph (b) relating to cultural factors in foster care and adoption, since it addressed a legitimate need of children belonging to groups different from the majority. She requested therefore that it be specifically considered by the working party.

57. The delegations of Australia, Austria, the German Democratic Republic, the Netherlands, Poland and Sweden expressed their preference for the Norwegian proposal, which was more general and closer to existing law. The observer for Canada noted that the matter of minorities and indigenous populations was of great interest to her delegation and that there was considerable activity on those issues in her country. She called the attention of the Working Group to the fact that there were two working groups of the Commission already examining these questions: one on indigenous populations and the other on minorities, and it might be more appropriate therefore to use the Norwegian proposal, which was based on article 27 of the International Covenant on Civil and Political Rights, and not stray too far from already approved texts and impinge upon discussions going on elsewhere.

58. The delegations of India, Japan, Mexico and the United States expressed concern over the provisions in both proposals which seemed to impose a duty on States to educate children in indigenous or minority languages. The delegation of Norway consequently agreed to delete the words "and to be trained in" from its proposal.

59. The representative of the United States indicated his preference for the phrase "members of its minority or indigenous population" to read instead "members of their group". The delegation of the United Kingdom supported that proposal, but suggested that the word "its" be used instead of "their", which in its turn found the support of the representatives of Italy and Japan. The delegation of the Netherlands also approved the British proposal and, in connection with the phrase reading "a child belonging to such a population", stated its preference for "a child belonging to such minorities or populations".

60. With regard to subparagraph (b) of the proposal submitted by the Four Directions Council, the delegations of Austria and Canada considered that the questions of adoption and education should not be dealt with within the framework of article 16 bis but should be considered during the second reading of the draft Convention (Austrian delegation) or in the context of other articles (Canadian delegation). The representative of Venezuela was unable to agree with the positions adopted by the Austrian and Canadian delegations.

61. Following the Chairman's request that a compromise text be elaborated by a working party consisting of Australia, Norway and the Four Directions Council, which was joined by Finland, the representatives of Norway and the Four Directions Council submitted a text that read as follows:

"1. The States Parties to the present Convention shall take all appropriate measures to preserve and enhance the linguistic, cultural and religious heritage of children belonging to indigenous populations or ethnic, linguistic or religious minorities.

2. In particular States Parties shall, where the best interests of the child render foster care or adoption necessary, avoid where possible the removal of children from their own group or community."

62. The delegations of the Netherlands, the United Kingdom and the United States indicated their preference for having as paragraph 1 the original Norwegian proposal, as already amended by the Working Group, and paragraph 2 contained in the joint proposal.

63. The representative of Austria was in favour of the original Norwegian proposal, and, concerning paragraph 2 of the joint proposal, considered that in the second reading of the draft Convention it might be transferred to provisions dealing with adoption and foster care. The representatives of Argentina and France likewise stated their preference for the original Norwegian proposal.

64. The observer for Canada suggested that paragraph 2 of the joint proposal should be considered in connection with the article dealing with adoption. As currently worded, however, it suggested greater rights for the children of minorities and indigenous populations than for the children of a majority. With respect to paragraph 1, she said that, while she could accept it, the comments of other delegations suggested that it might be difficult for the Group to adopt wording that departed too much from article 27 of the International Covenant on Civil and Political Rights.

65. The representative of Venezuela reiterated her belief that paragraph 2 of the joint Norwegian-Four Directions Council proposal should be retained in article 16 bis. The delegation of the United Kingdom, feeling that the tone of paragraph 2 of the aforementioned joint proposal was too negative, suggested an alternative formula for paragraph 2 which read: "States Parties to the present Convention shall, as far as possible and where it is in the best interests of the child, seek to ensure that placements are found within the child's ethnic, religious or linguistic community.", and proposed that this should be an additional paragraph to article 10 of the draft Convention.

66. The delegation of the Netherlands thought that the British proposal went too far, but the delegations of Austria and Venezuela accepted its basic idea concerning the incorporation into article 10 of the draft Convention of a provision entailing adoption and foster care. The delegation of Norway, as a co-sponsor, indicated its readiness to have paragraph 2 moved to article 10. The representative of the Four Directions Council fully accepted the British proposal provided the words "is in" were replaced by the phrase "it does not otherwise conflict with"; a proposal that met with some reservations on the part of the delegation of the Netherlands.

67. The representative of Brazil proposed that the first word "The" of paragraph 1 of the proposal submitted by Norway and the Four Directions Council be replaced by: "Recognizing the special needs of children belonging to ethnic, religious or linguistic communities,". The delegation of the United Kingdom said that it did not agree with the amendments put forward by the representatives of Brazil and the Four Directions Council.

68. After some further exchange of views, the Chairman considered that the Working Group's preference was for the original Norwegian proposal. The representative of Norway then read out his original proposal as amended, namely:

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

69. The delegations of Australia, Canada, the German Democratic Republic, India, Mexico and the United States accepted the text as read out by the representative of Norway, and the Working Group proceeded to adopt it by consensus as article 16 bis.

70. The delegation of the United States joined the consensus on the basis of its understanding that future States Parties would be expressing a general intention not to interfere with the existing rights of minorities or indigenous populations to enjoy their culture, practice their religion, or use their own language among themselves, and would not be undertaking to provide State resources toward these ends.

G. Article 18 ter, 18 quater and 18 quinto

71. At its 1987 session the Working Group had before it the following proposals in this connection:

Article 16 ter (Protection from sexual exploitation)

A submission by the delegations of France and the Netherlands.

"The States Parties to this Convention undertake to protect the child against all forms of exploitation, particularly sexual exploitation, as well as against all degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child."

A submission by the Informal NGO Ad Hoc Group for the Drafting of the Convention.

"The States Parties to the present Convention shall ensure that the child is protected from all forms of sexual exploitation. To this end, they agree to take all legislative, administrative, social and educational measures to prevent, in particular:

- (i) child prostitution, and
- (ii) the use of children in pornographic performances and materials. Such measures shall provide for appropriate sanctions or penalties to be applied to persons who by any means cause the child to engage in the above practices."

Article 18 quinto (Prevention of sale or traffic of children)

A submission by the Informal NGO Ad Hoc Group for the Drafting of the Convention.

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

72. The delegations of Mexico, Senegal, Venezuela, the ILO and the Informal NGO Ad Hoc Group expressed the view that there was a need for two separate articles, one protecting the child from sexual exploitation and another protecting the child specifically from sale or traffic. The problem of the sale or traffic of children was wider in scope than that of sexual exploitation and children were subjected to sale or traffic for many reasons: economic exploitation, sexual exploitation and sexual abuse, as well as for reasons of adoption or labour. Traffic or sale of children had international ramifications and required bilateral and multilateral measures for the protection of the child.

73. The Chairman, supported by the delegations of Australia and the United States, proposed one article with two subparagraphs, one dealing with sexual exploitation and degrading treatment and the other with sale and traffic of children. Attention was called to article 8 bis which contained measures protecting the child against maltreatment, including sexual abuse by those having care of the child.

74. The following revised version of article 18 ter was submitted by the delegations of Canada and the United States:

"1. States Parties undertake to protect the child against exploitation, including sexual exploitation and sexual abuse.

2. To this end, States Parties shall, in particular,

(a) prohibit

(i) abduction of children and selling or trafficking in children;

(ii) the use and participation of children for the purpose of prostitution, pornography and any other unlawful sexual activity;

(b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article."

In this regard, the representative of France was of the view that article 18 ter as originally proposed by the delegations of France and the Netherlands was wider in scope; the main purpose of that proposal was to protect the child against all abuses of the child's moral, spiritual, mental and physical integrity. He suggested that that proposal be retained and that specific paragraphs on exploitation for sexual or pornographic purposes or for the purpose of prostitution be added. Several delegations (Mexico, Senegal, USSR and Venezuela) continued to support a separate article on trafficking for other than sexual purposes. The representative of the USSR pointed to the already adopted article on economic exploitation (article 18) and supported the French and Dutch proposal. The representative of Norway proposed that a specific reference be made to the commercial distribution and sale of child pornography which was an important aspect of sexual exploitation. The representative of the United Kingdom found that the terms "degrading treatment" and "acts prejudicial to the moral, spiritual, mental or physical integrity of the child" were too vague and more precise meanings would have to be given to them.

75. The representative of Senegal proposed adding article 18 quinto as a third paragraph to the revised article 18 ter and to reformulate the whole provision as follows:

"1. States Parties undertake to protect the child against sexual exploitation and sexual abuse.

2. To this end, States Parties shall in particular,

(a) prohibit the use and participation of children in prostitution, pornography and any other unlawful sexual activity;

(b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.

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

The observer for Finland expressed his preference for the original proposal for article 18 ter which was wider in scope.

76. The Chairman, in light of the debate made the following proposal for article 18 ter:

- "1. States Parties undertake to protect the child against all forms of social exploitation.
2. To this end, States Parties shall in particular,
 - (a) prohibit the use and participation of children in prostitution, pornography and any other unlawful sexual activity;
 - (b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article.
3. The States Parties to the present Convention shall take all appropriate national, bilateral and multilateral measures to prevent the sale or traffic of children in any form."

77. The delegation of Brazil also made the following proposal:

- "1. States Parties undertake to protect the child against all forms of social exploitation, including sexual exploitation and sexual abuse.
2. To this end, States Parties shall in particular,
 - (a) prohibit, including for purposes of prostitution, pornography and any other unlawful sexual activity;
 - (i) the abduction of children and selling or trafficking in children;
 - (ii) the use and participation of children in any such form of social exploitation.
 - (b) take all appropriate measures, including penalties or other sanctions to ensure effective enforcement of this article."

The representative of France pointed to the vagueness of the words "social exploitation". It was too restrictive, wider protection had to be given to the child. He proposed the following revision of paragraph 1 of the Chairman's draft:

"The States Parties to this Convention shall take all appropriate measures to protect the child against all forms of social exploitation as well as all forms of degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child."

Paragraphs 2 and 3 would remain unchanged.

78. The representative of Venezuela stated that there should be a logical progression in the consideration of forms of exploitation: economic exploitation was dealt with already in article 18, and article 18 bis dealt with protection from narcotic and psychotropic substances, article 18 ter

should deal with protection from sexual exploitation, 18 quater with prohibition of the sale or traffic of children and 18 quinto with protection against all other forms of exploitation.

79. As the Working Group reached no consensus on this article, the Chairman invited the delegations of Brazil, France, the Netherlands, the United States and Venezuela to hold informal consultations with a view to working out a common text. Following these consultations three draft articles (articles A, B and C) were submitted. The Chairman suggested that the Working Group begin its discussion with draft article B (future 18 quater).

Article 18 quater (draft article B)

80. The text of this draft article read as follows:

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

The delegations of Austria and Finland referred to the inclusion of the word "abduction" in addition to the reference to sale or traffic of children. The term "abduction" was a broad notion, and dealt with delicate and controversial matters and difficulties would arise with regard to the use of penalties and sanctions to prohibit child abduction. The word abduction had already a specific meaning in international treaties, and the term would not be appropriate in the context of the draft articles being discussed.

81. The representative of Venezuela felt that attention should be paid to the phenomenon of child disappearance. She was of the view that the already adopted article 6 ter referred to the abduction of the child by one parent and she emphasized that the proposed article B was aimed at covering all kinds of child abduction, in any forms and for any purposes dealing with profit. The representatives of the United States and the International Commission of Jurists pointed out that already adopted article 6 ter only applied to international abduction and not to abduction within one country. The observer for the Netherlands stated that he hesitated to keep the word "abduction" which was not qualified for the problem of abductions within a family. He further stated that more experience was needed in implementing international instruments on child abduction. He proposed to leave it in article B, with the understanding that one might go back to the already adopted article 6 ter, if necessary.

82. With regard to the words "in any form or for any purpose", the representative of the United Kingdom was of the view that these words did not add any new element and proposed that article B be ended with the word "children", and that the word "abduction" be retained. The representative of the United States agreed that article B should end with the word "children". It was proposed that the wording would be inverted to read "for any purpose or in any form". The observer for the Netherlands proposed to retain provisionally the words "national, bilateral and multilateral" in article B and that at the second reading, to consider those words in relation to article 5.

83. The Working Group then adopted the following article 18 quater as follows:

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

Article 18 ter (draft article A)

84. The text of this draft article read as follows:

"1. The States Parties to the present Convention undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes the States Parties shall in particular prohibit:

- (a) the abduction or sale of children and trafficking in children;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.

2. States Parties to the present Convention shall take all appropriate national, bilateral and multilateral measures, including penalties or other sanctions, to ensure the effective enforcement of this article."

85. The representative of Norway expressed doubts about the use of the term "exploitative use" in the text and proposed the deletion of the words "exploitative" in subparagraphs (b) and (c), and suggested the use of the words "child prostitution" to be utilized instead. He further underlined the need to combat the use of children in pornographic performances and materials, the printing and sale of pornographic photography and materials having become an industry. He proposed the inclusion of a new subparagraph (d) reading "the distribution and sale of child pornography". The representative of China proposed the deletion of the word "unlawful" from subparagraph (b) since there could be no exploitative use of children in sexual practices which was not unlawful.

86. The observer for the Netherlands was of the view that the words "exploitative use" and "unlawful" were necessary since the draft Convention was dealing with persons up to 18 years of age; not all sexual practices were unlawful. He added that the matters dealt with in subparagraph (a) had already been covered in article B and that that subparagraph should be deleted as well as paragraph 2. Further, he proposed that the words "take all appropriate national, bilateral and multilateral measures" be introduced in the second sentence of the article under consideration and that the word "prohibit" be changed to "prevent". The observer for Canada agreed with the text of the second sentence but did not wish to delete subparagraph (a). The representatives of Australia (the Australian delegation had supported the Dutch proposal) and the United Kingdom raised the problem of sexual majority, which in their countries was fixed at the age of 16 years. Attention was drawn to the already adopted article 1 which included persons up to the age of 18 in the protection afforded by the Convention; the draft Convention could not declare unlawful sexual practices between husband and wife under the age of 18.

87. The delegations of Japan and the United States agreed that subparagraph (a) was superfluous. The representatives of the United States proposed the following language for a new subparagraph (a):

"the inducement or coercion of a child to engage in any unlawful sexual activity."

He explained that this language would provide content to the term "sexual abuse", a serious problem that the draft Convention needed to address separately from "sexual exploitation", which had a more commercial connotation. The delegation of Yemen agreed with the deletion of subparagraph (a) and proposed subparagraph (b) to read as follows: "all forms of using of children in sexual practices". This proposal did not meet with the agreement of the Dutch delegation. The representative of Australia supported the proposal submitted by the United States delegations, expressed his disagreement with the use of the word "exploitative", and made a proposal for subparagraph (b) to read "the use of children in prostitution". The delegation of China and the USSR also found it difficult to accept the inclusion of the word "unlawful". The representative of the USSR said that one could hardly imagine that children's sexual practices could be lawful. He therefore proposed the deletion of the word "unlawful" from the text proposed by the delegation of the United States. He was further of the view that the draft Convention should be firm with respect to the prohibition of the exploitation of children in the production of pornographic materials, and strongly favoured the inclusion of a subparagraph (d) on this issue as proposed by the delegation of Norway.

88. The delegations of France and the Netherlands were of the view that the purpose of article A was not to regulate the sexual life of children but rather to combat the sexual exploitation of children on the basis of concrete examples. Therefore the word "exploitative" was indispensable. The observer for the Netherlands proposed that, in subparagraph (b), the phrase "other unlawful sexual practices" should read instead "sexual practices that are prejudicial to the child". With respect to the proposal to add a subparagraph (d), he noted, along with other delegations that the problem of distribution and sale of child pornographic materials was already dealt with under subparagraph (c). The representative of the USSR, in view of the explanation given concerning the age of a child under the draft Convention agreed to the inclusion of the word "unlawful".

89. There was a further exchange of views within the Working Group. Towards the end of the debate, the representative of Norway, with regard to the proposed inclusion of subparagraph (d) stated that it was their view that the "distribution and sale of child pornography" should be covered by the Convention. It was evident, however, that while no delegation had opposed the substance of the proposal, a majority were of the view that the prevention of those activities was already covered in the text of the article. In light of that, and in a spirit of compromise, the Norwegian delegation was ready to withdraw their proposal. The Working Group proceeded to adopt the following text:

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

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

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

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

Since the members of the Working Group were ready to join the consensus on the article under discussion, the delegation of China did not insist on deletion of the word "unlawful" on the basis of the understanding that exploitative use of children in sexual practices is not lawful no matter what form it takes.

Article 18 quinto (draft article C)

90. The text of this draft article C read as follows:

"The States Parties to the present Convention shall protect the child against all other forms of exploitation as well as all degrading treatment and all acts prejudicial to the moral, spiritual, mental or physical integrity of the child."

In introducing draft article C, the representative of France deleted the words "as well as all degrading treatment" because the matter was already covered by article 19, paragraph 2 (a), under which States Parties would be obliged to protect the child from all degrading treatment whether the child was in custody or not. During the debate, some delegations hesitated on the necessity of having such a text as proposed in article C. The representative of the United States explained that his delegation had joined with the delegations of France, the Netherlands and Venezuela in proposing article C in its original form only to ensure that the proposal would be discussed by the Working Group. He indicated that he was willing to join a consensus on the language: "all other forms of exploitation" despite the breadth of that language, in order to ensure that children received full protection from exploitation. However, he could not agree to the additional language regarding protection of the "moral, spiritual, mental or physical integrity" of the child because that language had no substantive legal meaning in the United States and several other legal systems, and therefore could not be enforced.

91. The observer for Canada remarked that article 10 of the International Covenant on Economic, Social and Cultural Rights dealt with economic and social exploitation. She was of the view that if the draft Convention contained articles explicitly dealing with economic and sexual exploitation but not one on social exploitation, it would be a step backwards with regard to the Covenant. She suggested one article dealing with all forms of social exploitation. The representative of France was of the view that article C was necessary. The already adopted article 18 on economic exploitation specifically mentioned qualifications relating to the moral, mental, spiritual and physical development of the child. It was necessary to preserve the physical integrity of the child, even when no economic exploitation was involved. The observer for the Netherlands pointed out the necessity to protect children against all other forms of exploitation. He therefore proposed the following text:

"The States Parties to the present Convention shall protect the child against all other forms of exploitation."

92. The representative of France, supported by the representative of Brazil, proposed the addition of the words "prejudicial to the moral, spiritual, mental or physical integrity of the child". As there was no consensus, the Chairman suggested the following draft:

"The States Parties to the present Convention shall protect the child against all other forms of exploitation prejudicial to the child".

The Chairman's proposed text was approved by the delegations of Finland, the Netherlands and the United States. Other delegations were of the view that simple reference to the concept of exploitation was not sufficient, and stressed the need to have an article dealing with the integrity of the child in every aspect: moral, spiritual, mental and physical. The representative of France stated that the concept of exploitation had to be qualified by its context: economic, drug abuse, sexual, and by its effects: prejudicial to the moral, spiritual, mental and physical integrity of the child; it was more than prejudicial to the physical integrity of the child. The delegations of Italy and the Holy See agreed that protection should be given against all forms of exploitation of the child. The observer for Finland remarked that there were some forms of exploitation which were not prohibited and indicated that he found difficulty with the wording suggested by the representative of France because the notion of integrity was not clear. He proposed the prohibition of all forms of exploitation without any listing. The representative of France proposed the use of the words "all the forms of exploitation that may be prejudicial to any aspect of the child's integrity", which met with the support of the delegations of the Holy See and Italy.

93. The representative of the United States was still of the view that it was difficult to create legal enforcement obligations upon States about the general aspect of the integrity of the child, and that the concept of a child's integrity was not a familiar one. The words "prejudicial to any aspect of the child's integrity" were not familiar to the legislation of his country. The delegations of Australia and Finland said that they could accept the proposal by the French delegation, provided that the words "that may be" were deleted from it. The representative of the Informal NGO Ad Hoc Group mentioned that the proclamation of Teheran (International Conference on Human Rights, Teheran, 13 May 1968) had used the terms "physical, mental, social and spiritual welfare". The representative of the United States noted further that the notion of the welfare of the child was included in other human rights instruments; he proposed, accordingly, the use of the words "prejudicial to any aspect of the child's welfare", instead of the word "integrity". The observer for the Holy See agreed with the proposal to replace the word "integrity" by the word "welfare".

94. The representative of the USSR observed that exploitation was harmful to the interests of the child, and that the selection of terms such as moral, spiritual, mental or physical did not cover all aspects of the interests of the child which needed to be protected from exploitation. The child was brought up in a society; being an active member of the society, he had a wide range of social interests that needed to be promoted. Therefore, he indicated his preference for a general, overall, approach and a broad wording that would allow for protection from any kind of exploitation. The representative of the United States of America repeated his proposal to the effect of using the words: "prejudicial to any aspect of the child's welfare", which met with the support of the delegations of France and the USSR.

95. The Working Group then adopted the following text:

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

H. Article 21 ter

96. The Working Group considered a text, which was supported by the delegation of Norway, for an article 21 ter submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention. The text read as follows:

"The States Parties to the present Convention undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike, using forms, terminology and language (including local languages) accessible to them."

97. The representative of Norway proposed that, in the above-mentioned text, the phrase ", using forms, terminology and language (including local languages) accessible to them." should be deleted. The proposal was accepted.

98. The representative of Australia strongly supported the incorporation of such a provision into the draft Convention, and was joined in this opinion by the delegations of Austria and Canada. These delegations, together with the representatives of the Netherlands and the United States, agreed with the representative of Norway, however, that the provision should end with the words "to adults and children alike".

99. The Working Group proceeded to adopt by consensus the following provision:

"The States Parties to the present Convention undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."

II. Proposals discussed by the Working Group and pending for further consideration by the Group

A. Article 5 bis

100. The Working Group had before it the following proposal by the delegations of Australia and the United States for an article 5 bis:

"To help the child enjoy the rights enumerated in this Convention, States Parties undertake to protect the family as the natural and fundamental unit of society. Parents or legal guardians shall enjoy the primary rights and responsibilities for the care, upbringing and development of the child, having due regard for the importance of allowing the child to develop the skills and knowledge required for an independent adulthood."

101. The representative of the United States explained that his country attached great importance to the family as the natural and fundamental group unit of society. He explained that the family should be explicitly protected, with language similar to that contained in paragraph 1 of articles 10 and 23,

respectively, of the International Covenants on Economic, Social and Cultural Rights, and Civil and Political Rights, and that such protection should be included in the draft Convention. The United States representative requested that the article under consideration by the Group be included early in the draft Convention as article 5 bis, in order to emphasize its importance and relationship to all the other rights contained in the draft Convention.

102. During the debate, the attention of the Working Group was drawn to the possible overlap of the proposal with the already existing articles in the draft Convention and in the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

103. Some delegations specifically drew the attention of the Working Group to the fact that the proposal did not introduce any new element, as compared to paragraph 3 of article 7 bis of the draft Convention.

104. The delegation of Canada indicated that it would support such a provision - already included in articles 7 bis and 15 - to the extent that the proposed article 5 bis would deal with the parental responsibility in the exercise of its rights over the child, with due regard for the evolving capacities of the child and for the child's need to mature into an independent adulthood. However, the observer for Canada concluded that as the concept was already included in the aforementioned articles 7 bis and 15, it would be possible that on the second reading of the draft Convention, a generally applicable article could be developed from the - by that time - adopted limited provisions. The delegation of Finland agreed with the suggestions made by the observer for Canada.

105. The observer for the Netherlands suggested that the latter part of the proposal by the American and Australian delegations be combined with paragraph 3 of article 7 bis in the following manner:

"The States Parties to the present Convention shall respect the rights and duties of the parents and, where applicable, legal guardians, to provide direction to the child in the exercise of his rights enumerated in this Convention in a manner consistent with the evolving capacities of the child, having due regard for the importance of allowing the child to develop the skills and knowledge required for an independent adulthood."

106. The observer for Canada supported the revised proposal put forward by the delegation of the Netherlands. However, with respect to that part of the original proposal, which was based on the protection given to the family under article 23 of the International Covenant on Civil and Political Rights, the Canadian delegation had expressed concern that because article 23 was intended to protect the family from the State, incorporation of such a provision in a convention on the rights of the child must also ensure that the rights of the child would not be left solely to the wishes of the family, without any protection whatsoever from the State; in other words, in protecting the family from the State, the family must not be given arbitrary control over the child. Any protection from the State given to the family must be equally balanced with the protection of the child within the family.

107. The representative of Austria, while agreeing with the insertion of a separate article along those lines strongly supported the first sentence of the original proposal feeling that, although it appeared in the Covenants, it would be regrettable if it did not also appear in the draft Convention.

108. The Chairman then suggested keeping the first sentence, as it appeared in the original proposal, with the following modifications: to add the words "to the present Convention" between "States Parties" and "undertake" and the words "and assist" between "protect" and "the family". The delegations of Austria and the United States were amenable to the insertion of the above-mentioned words as proposed by the Chairman.

109. The representative of Australia said that the revised proposal by the delegation of the Netherlands was a good one and therefore should be included in the draft Convention, and that during the second reading, references that would appear to be a duplication of already existing texts of the draft Convention would be struck out. In addition, he proposed to introduce the words "within the family" between "to provide" and "direction to the child".

110. After some further exchange of views and after listening to the opinion put forward by the delegation of Finland to the effect that the discussions on this question should be postponed until the second reading of the draft Convention, the Chairman proceeded to adjourn the debate with the request that a new proposal for an article 5 bis be prepared.

B. Article 7 ter

111. The Working Group had before it the following revised proposal, submitted by the delegation of the United States, of a text that had been put forward by the representative of the United States during the Working Group's 1986 session:

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

2. States Parties recognize the right of the child not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

3. The exercise of the rights to freedom of expression, association and peaceful assembly shall be subject only to those restrictions which are provided by law and which are necessary in a democratic society in the interests of national security, public order ('ordre public'), the protection of public health and morals or the protection of the rights and freedoms of others.

4. In no case shall a child be subjected to incarceration or other confinement for the legitimate exercise of these rights or other rights recognized in this Convention.

5. This article shall not be interpreted as affecting the lawful rights and duties of parents or legal guardians, which should be exercised in a manner consistent with the evolving capacities of the child."

112. The representative of the United States said that the protection of children's civil and political rights was of fundamental importance to his country, particularly because the "child", as defined in the draft Convention, included adolescents who had often acquired the skills needed to participate fully and effectively in society. He noted that the draft Convention already protected certain other fundamental rights, including the right to freedom of

religion. He also explained that the rights in the draft article were universally accepted and were contained in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

113. The Chairman suggested that the proposal submitted by the representative of the United States could carry the number 7 ter, and this suggestion met with the agreement of the American delegation.

114. A lengthy discussion ensued dealing with the merits of such a proposal. During this general discussion, some delegations made observations concerning different aspects of the proposal. For example, the representative of the United Kingdom said, inter alia, that already existent international instruments dealt with certain parts of the proposal, and suggested that the language in which the draft article was worded called for some clarification. The delegation of Australia, although generally supporting the proposal, raised some questions remarking among other things that there appeared to be confusion about the freedoms of association and expression and that of privacy, as well as that the proposal made no provision whatsoever for the evolving sense of responsibility of children.

115. The delegation of Norway, in supporting the American proposal, shared the concern of the Australian delegation that there was a need for a general provision dealing with the evolving capacities of the child. The observer for Canada indicated her support for the proposal put forward by the United States representative and her wish that the principle set out in paragraph 5 of draft article 7 ter be dealt with in a comprehensive manner in a general article. The representative of Argentina, although in general favourable to the draft article, voiced the same concerns as other delegations regarding its paragraph 5, and found that there was much to be clarified in the proposal being considered by the Working Group.

116. The representative of the USSR indicated that he was not in a position to support draft article 7 ter as it stood, and considered that the draft Convention should deal with new issues and not reproduce provisions already existing in international instruments. He raised the question as to why the proposal focused on certain civil and political rights and bypassed others, suggesting to break down the proposed article and proceed to separate the civil from the political rights in an approach that would not be selective, yet fully consistent with the provisions of the International Covenant on Civil and Political Rights.

117. The Chinese delegation was not in a position to accept the United States proposal. It was of the opinion that the freedoms of association, peaceful assembly and privacy could not be enjoyed by children in the same way as they are enjoyed by adults because the intellect of a child was not as developed as that of an adult, and therefore a child could only engage in activities commensurate with its intellect. The observer for Sweden indicated her support for the text tabled by the delegation of the United States, but called for a separate article on the evolving capacities of the child.

118. The Chairman voiced his hope that the representative of the United States would propose a revised text for article 7 ter and that in doing so would take into account the Working Group's observations. The delegation of the United States accepted the Chairman's suggestion to consider the comments made by other delegations and to resubmit article 7 ter for consideration by the Working Group at its 1988 session. It stated that in doing so, it was its understanding that the proposal would be considered early in the Working Group's deliberations.

C. Article 14, new paragraph 4

119. The representative of Australia indicated his interest in a proposal put forward by the Informal NGO Ad Hoc Group for the Drafting of the Convention for an additional paragraph to article 14, which was as follows:

"The States Parties to the present Convention recognize that the responsibilities of the parents or legal guardians, including that of providing appropriate support to the child, continue even when the child is living apart from them, unless a decision to the contrary has been made by a competent body."

120. The observer for the Netherlands pointed out that enough attention had been given in article 14, already adopted, to the question of the responsibility of the parent(s) or others responsible for the child to secure - within their abilities and financial capabilities - the living conditions necessary for the child's development. The representative of the United Kingdom supported this view - which was shared by the Canadian delegation - and observed that the problem related to the child only up to the age of 16, because in some national legislations, the child could be married at that age.

121. The representative of Venezuela attached importance to the above-mentioned proposal and suggested replacing the words "is living apart from them" with "even when the child is not under their guardianship". The representative of China, in referring to the word "guardians", said that according to Chinese law, the obligation to provide the child with the required assistance did not necessarily include economic maintenance.

122. The representative of France indicated that he could accept the proposal for an additional paragraph, but had two drafting problems relating to the words "legal guardians" and "responsibilities", and consequently wished to delete the word "legal" and to put instead of the word "responsibilities" the words "rights and obligations". The delegation of Senegal agreed with the deletion of the word "legal" and the representative of Italy said that she was unable to accept the terminology "legal guardians" and "responsibilities". The delegation of Morocco also objected to the inclusion in the proposal of the words "legal guardians".

123. The representative of Australia proposed adding the following sentence to paragraph 2 of article 14:

"This responsibility continues to apply even when parents are living apart from the child."

124. The representative of Iraq said that the text submitted by the NGO Ad Hoc Group did not seem to pursue any specific aim and stated his preference for an additional sentence to paragraph 2 of article 14, which read as follows:

"This responsibility is maintained even if the child lives apart from his parents".

125. The representative of Italy, supported by the delegation of Poland, proposed adding to paragraph 2 of article 14 the following phrase:

", even when the child is living apart from them, unless a decision to the contrary has been made by a competent body."

The representative of Venezuela proposed the following text:

"The States Parties to the present Convention recognize that the responsibilities of parents or tutors, in keeping with the different national legislations, continue even when the child is not under their guardianship, unless a decision to the contrary has been made by a competent body."

126. The observer for Finland considered that the whole idea of the proposal under consideration should be stated in a completely different way and suggested that the following considerations should be included in such a provision: (1) States Parties to the present Convention should undertake efforts to ensure the recovery of maintenance from abroad; and (2) States Parties should promote bilateral, multilateral or other agreements to ensure the recovery of maintenance. His proposal was supported by the delegations of the Netherlands and Norway. The latter delegation requested that the observer for Finland prepare a new proposal.

127. The representative of the USSR said that the proposal under consideration by the Working Group had drawn the Group into a difficult field. The concept of guardianship greatly differed from country to country and, accordingly, this matter should be sorted out in the context of national legislation. Among other things, the representative of the USSR also said that the practice of concluding bilateral or multilateral agreements for maintenance should be addressed, and asked the Finnish delegation to take into account what he had just said in drafting the proposal. The representative of the United Kingdom felt a great deal of sympathy for what the representative of the USSR had said.

128. The delegation of Canada, referring to the proposal made by the delegation of Finland, proposed in its turn adding to paragraph 2 of article 14, after the word "development", the following words: ", provided that such responsibility does not cease to exist by reason only of the fact that the person responsible for the child is living separately from the child".

129. The Chairman said that there was no consensus and that unless the delegation of Finland found it necessary to propose a new text on the question of continuing responsibility for support, the discussion concerning that matter was terminated.

D. Article 21, addition of a new paragraph

130. The Working Group had before it the following proposal, put forward by the delegation of Finland, for a paragraph 2 to article 21:

"Nothing in the present Convention may be interpreted as implying for any State Party to the present Convention any right to impose any restriction upon or derogation from any of the fundamental human rights recognized or existing in that State Party by virtue of law, conventions, treaties, agreements, regulations or customs on the pretext that the present Convention does not recognize such rights or that it recognizes them to a lesser extent (or that such restrictions or derogations would be necessary for the realization of the rights of the child)."

131. The observer for Finland orally amended the proposal by deleting the words in parenthesis "or that such restrictions or derogations would be necessary for the realization of the rights of the child", at the end of the paragraph.

132. Following a brief exchange of views between the delegations of Finland and the United States as to the reasoning behind and justification for such a provision, no decision was taken by the Working Group on the proposal, and the observer for Finland suggested that it be considered at the second reading of the draft Convention.

E. Article 21 bis

133. The Working Group had before it a proposal for an article 21 bis which was submitted at its 1986 session by the delegations of the Netherlands, the United Kingdom and the United States, and which read as follows:

"Nothing in this Convention shall be interpreted as legitimizing any alien's illegal entry into and presence in a State, nor shall any provision be interpreted as restricting the right of any State to promulgate laws and regulations concerning the entry of aliens and the terms and conditions of their stay, or to establish differences between nationals and aliens. However, such laws and regulations shall not be incompatible with the international legal obligations of that State, including those in the field of human rights."

134. The representative of the United Kingdom stated that his delegation would continue to have difficulties with some of the articles already adopted unless such a provision as the above-mentioned one concerning aliens would now be included in the draft Convention. For example, paragraphs 1 and 2 of article 2 caused difficulties in relation to his country's nationality law, paragraph 1 of article 6 was not compatible with United Kingdom immigration legislation, and articles 3, paragraph 1, 4, paragraph 1, 6, paragraphs 2 and 3, 6 bis, paragraphs 2 and 3, and 8, paragraphs 1 and 2, all posed problems as well in relation to United Kingdom immigration law. Certain of those provisions were difficult or even impossible to reconcile with his country's law and practice: in common with other States, British legislation did not allow unrestricted entry into the country.

135. The representative of Senegal questioned the appropriateness of such a proposal, and his doubts were shared by the delegations of Algeria, Argentina, Mexico and Venezuela. The representative of Venezuela referred in particular to the question of adoption and said that if she had the certainty that in cases of adoption such a provision would not hurt the child, she would accept it, but as it stood she was not in a position to do so. In addition, the observer for Finland voiced his doubts as to the relevance, importance and significance of the whole proposal.

136. The representative of the United States indicated that, while his preference was for the full text, as originally submitted, in a spirit of compromise he proposed to shorten the proposal in the following way:

"Nothing in this Convention shall be interpreted as legitimizing any alien's illegal entry into and presence in a State."

This proposal was supported by the representative of the United Kingdom.

137. This abridged version did not meet with the full approval of the delegations of Canada and the Netherlands, while the observer for Finland objected to the inclusion of the proposed article either in its full or abridged version. However, the delegation of the Netherlands held the opinion that the provision under consideration by the Working Group was very relevant to several articles of the draft Convention.

138. The Chairman proposed to put an end to the discussion for lack of a consensus and indicated that if the co-authors of the proposal would elaborate a more acceptable text, in that case the Working Group would resume its discussion on the subject. At a later meeting and in connection with the adoption by the Group of article 6 bis, the representative of the United Kingdom and on behalf of the United States and the Netherlands, stated that they would be presenting a revised proposal for article 21 bis to the next session of the Working Group. The delegations of the Netherlands, United Kingdom and United States considered that an article on the lines of article 21 bis was essential to a balanced convention, and this view was supported by the delegation of the Federal Republic of Germany.

F. Articles 22 and 23, relating to implementation

139. For the consideration of these articles, the Working Group had before it a revised proposal for article 22 submitted by the observer for Poland, which read:

- "1. The States Parties to the present Convention undertake to submit, at least every four years, reports on the implementation of the present Convention to the Secretary-General of the United Nations.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency, it will not be necessary for any State Party to reproduce that information, but a precise reference will suffice.
4. The first such report will be submitted within one year after the entry into force of the present Convention for the State concerned."

The Working Group also had before it the following proposal by Poland for article 23.

- "1. Reports submitted by the States Parties to the present Convention under article 22 shall be considered by the Economic and Social Council, which may bring its observations and suggestions to the attention of the State Party concerned and of the General Assembly of the United Nations. The Council may also request a State Party to submit additional reports on specific issues relating to this Convention.
2. To assist it in its task, the Economic and Social Council shall establish a Group of Governmental Experts entrusted with the responsibility of examining the reports submitted by States Parties.
3. The Economic and Social Council shall decide on the size of the Governmental Group of Experts, its equitable geographical composition and the periodicity of its meetings."

140. The representative of Sweden tabled two proposals: one together with the delegation of Canada for article 22 concerning the establishment of an implementation body, and another for article 23 regarding the reporting system. Those proposals were as follows:

Article 22

"1. Within six months after entry into force of the Convention a Committee of Experts shall be established to examine the progress made by States Parties in achieving the realization of the obligations undertaken by States Parties in the present Convention.

2. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by the States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation to the different forms of civilization as well as the principal legal system.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election shall be held no later than six months after the date of entry into force of the present Convention and thereafter every second year. The elections shall be held at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the term of five of the members elected at the first election shall expire at the end of two years. Immediately after the first election the names of these five members shall be chosen by lot by the Chairman of the meeting at which the election takes place.

6. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

7. If a member of the Committee dies or resigns or for any other cause can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for elections to and the effective performance of the functions of the Committee.

10. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties."

Article 23

"1. The States Parties shall, not later than 20 months after the entry into force of the present Convention for States Parties concerned, and thereafter every fourth year or at such longer intervals as the Committee may decide, submit, through the Secretary-General of the United Nations, reports to the Committee on the compliance with their obligations under the present Convention, including relevant legislation. Such reports may among other things indicate factors and difficulties affecting the degree of fulfilment of such obligations.

2. The States Parties shall fulfil their reporting obligations in stages to be established by the Committee within nine months after the entry into force of the Convention.

3. The Committee shall consider reports submitted to it under p.1.

4. The Committee may request further information from the States Parties relating to their obligations, and shall prepare such observations as it may deem appropriate for transmission to the States Parties concerned.

5. The Committee may decide that a State Party, which has completed a full reporting cycle covering all its substantive obligations under the Convention, may limit its further reporting to changes (legal, administrative and in practice) affecting its obligations, and to such questions relating to the obligations of the State Party concerned, which may have been indicated by the Committee.

6. The Committee may make arrangements with the specialized agencies of the United Nations and with non-governmental organizations in consultative status with the Economic and Social Council in order to receive their views on the observance of the provisions of the Convention falling within the scope of their respective activities.

7. States Parties may submit to the Committee their own comments to any observations concerning them by the Committee or by agencies or non-governmental organizations mentioned in paragraph 6.

8. Reports on the activities of the Committee shall be submitted to the General Assembly biennially. They shall include any observations made under paragraphs 4 and 6 and any comments under paragraph 7.

9. The States Parties shall keep their reports available to national non-governmental organizations. The Committee shall encourage the distribution of information on the Convention and its implementation by the States Parties."

141. The observer for Canada submitted the following revised proposal for article 23:

"1. States Parties to the present Convention undertake to submit to the Group of Experts reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights;

(a) within three years of the entry into force of the Convention for the States Parties concerned;

(b) thereafter every five years.

2. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

3. Reports made under this article may indicate factors and difficulties affecting the degree of fulfilment of the obligations under the present Convention.

4. The Group of Experts shall study the reports submitted by the States Parties and shall submit its report and such general comments as it may consider appropriate through the Economic and Social Council to the General Assembly.

5. Copies of the report and comments of the Group of Experts shall be sent to the States Parties and to any specialized agencies having competence in a manner referred to in a report.

6. The States Parties may submit to the Group of Experts observations on any comments that may be made in accordance with paragraph 4.

7. Specialized agencies may submit observations or comments made in a report that they receive in accordance with paragraph 5.

8. The Group of Experts may invite specialized agencies to assist in the implementation of the Convention and, for that purpose, may

(a) invite specialized agencies to submit reports on matters within their jurisdiction;

(b) to participate as observers, if they agree, in meetings of the Group of Experts considering matters within the jurisdiction."

142. The representative of the United States submitted for consideration by the Group a proposal for an article 23 bis to read:

"1. Where a State Party is constituted as a federal State, the national Government of such State Party shall undertake appropriate measures to implement the provisions of this Convention in so far as it exercises legislative and judicial jurisdiction over the subject matter thereof. In so far as the subject matter of the provisions of this Convention falls within the jurisdiction of the constituent units of the federal State, the national Government shall take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfilment of this Convention."

143. In addition, proposals were submitted by the Informal NGO Ad Hoc Group for the Drafting of the Convention and by the Four Directions Council, as contained in documents E/CN.4/1987/WG.1/WP.2 and E/CN.4/1987/WG.1/WP.15, respectively.

144. The representative of Sweden reminded the Working Group, *inter alia*, of the enormous strain affecting the reporting system of international human rights instruments in recent years, as well as of the problems facing some committees charged with the control of their implementation, which had a significant backlog in their consideration of country reports. In order not to add to the burden of both the reporting States and the implementation bodies, her delegation was proposing a reporting system which, although similar in some respects to what was contained in already existing international instruments, had some new elements to offer which, in her view, would help to facilitate the implementation process of the draft Convention and make it more efficient. One of those elements was the introduction of reporting by stages, whereby reporting States would be able to concentrate on a certain number of articles at a time and be able therefore to submit more concise and succinct reports.

145. The observer for Canada noted that the main issues to be addressed in the implementation provisions were the establishment of a committee - with its corresponding composition, elections and mandate - the periodicity and content of reports of the States Parties and the role of the specialized agencies. Regarding the composition of the Committee, she considered it important that the one to be established should be a committee of experts serving in their personal capacities. While fully appreciating the concerns with respect to the increasing burden of reports, she said that ways might be considered to lessen that burden, provided the monitoring of the Convention was not weakened thereby. The observer for Canada also thought that the question of the number of States Parties necessary for the Convention to enter into force might be left to be considered under the final clauses of the draft Convention.

146. The delegation of Denmark supported the Swedish proposal regarding the reporting system, and the representative of the Netherlands favoured the establishment of a separate committee or group of experts. The delegation of Belgium expressed its concern at the proliferation of committees and would be more inclined to entrust the task of monitoring the implementation of the Convention to existing committees. The representative of Belgium, supported by the representative of Australia, considered that the Committees charged with monitoring compliance with the Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights could look at the relevant country reports, according to whether the reports touched upon economic, social and cultural rights or civil and political ones.

147. The Belgian delegation also accepted - as did the representative of Italy - the proposal submitted by the International Movement ATD-Fourth World that the following paragraph 2 be added to the proposal for article 22 originally made by the delegation of Poland. "The periodic reports on the implementation of the present Convention shall pay special attention to the least protected children". The delegation of the Holy See joined those of Belgium and Italy in their support for the proposal submitted by that non-governmental organization.

148. The delegation of Venezuela expressed its preference for a monitoring committee consisting of specialists of the highest level, all the expenditure involved being covered from United Nations financial resources, and not by contributions from States Parties. The delegation of the United Kingdom stated its preference for a committee consisting of experts - not more than 15 in number - in the field of children's rights; with reference to the financial implications of monitoring compliance with the future Convention, it

indicated its preferences in the following order: (1) voluntary funding, (2) assessed funding by States Parties, and (3) assessed funding by the United Nations regular budget.

149. The representatives of Austria and Norway said that they would like to see a separate independent committee established under the Convention and, in order not to be overloaded, States Parties might submit reports in stages; the representative of Norway also thought it necessary that close consideration be given to the role of the specialized agencies.

150. The representative of Argentina referred to two proposals, namely the one put forward by the Canadian and Swedish delegations and that submitted by the delegation of Poland. He considered that the proposal presented by the Polish delegation was closer to the current situation in establishing a group of governmental experts to assist the Economic and Social Council in its task of considering the reports submitted by the States Parties, while the Canadian-Swedish proposal was geared more towards the future when some States would have ratified the Convention and then a committee of experts, such as the one proposed by Canada and Sweden, would be more appropriate.

151. The delegation of Japan expressed its preference for a separate Committee, and indicated that the frequency of submitting reports should not be so often as every three or four years and the expenses incurred by that Committee should be paid from the financial resources of the United Nations.

152. The United States delegation joined the delegations of Sweden and the United Kingdom in supporting a staggered system of reporting to whatever Committee or Group of Experts was established under the Convention. He emphasized that the United Nations specialized agencies should provide factual and technical assistance to the Committee, but should not become involved in judging or monitoring the implementation of the Convention or condition their assistance to States on their implementation of the Convention. The representative of Sweden agreed with the comments by the delegation of the United States relating to the specialized agencies. Finally, the representative of the United States stated his understanding that his country would only support the funding of the Committee and its activities by States Parties and not from the general funds of the United Nations. In that regard, he indicated that the most appropriate funding mechanism for implementation of the Convention was that contained in article 18 (5) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the human rights Convention most recently considered and approved by the Commission on Human Rights.

153. The representative of France said that he was in favour of a monitoring mechanism, provided it was not too burdensome, and suggested that the States Parties might submit periodic reports every five years. He indicated his preference - considering the proliferation of monitoring organs - for the committees controlling the implementation of the two Covenants being those that would control the implementation of the new Convention.

154. In view of the concern of the members of the Working Group about the proliferation of committees and budget restrictions, the representative of Senegal expressed the opinion that inspiration might be drawn from monitoring mechanisms set up by other bodies. In that connection, he referred to the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers and its methods of work, which would, in his

delegation's view, answer the need for effectiveness. Such a committee might be composed of experts from the World Health Organization and the United Nations Children's Fund, as well as of legal advisers and other experts, as required. His delegation also considered that any implementation mechanism to be set up should take account of the specific features of the particular category of subjects to be protected by the Convention. In its view, the rights of the child required more extensive knowledge of the nature and of all aspects of the problems of children in general.

155. The Chairman suggested the formation of a working party consisting of the delegations of Canada, Poland, Sweden and the Informal NGO Ad Hoc Group on the Drafting of the Convention, to furnish the Working Group with a composite text on the implementation provisions, taking into account the views expressed by the Group during the discussion of the question. The consolidated text for article 22 was as follows:

"1. For the purpose of [monitoring the implementation of the provisions of the present Convention] [examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention] there shall be established a Committee on the Rights of the Child (hereinafter referred to as The Committee).

2. The Committee shall consist of [10-12-15] experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by the States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation to the different forms of civilization as well as the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of the States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. The term of [] of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these [] members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or for any other cause can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

11. [With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from the United Nations resources on such terms and conditions as the Assembly may decide.] or

[States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.]

The composite text for article 23 read:

"1. States Parties to the present Convention undertake to submit to the [Committee, through the Secretary-General of the United Nations] [Secretary-General of the United Nations, for consideration by the Committee,] reports [on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights] [on the compliance with their obligations under the present Convention] [including information about the competent national body or bodies responsible for the implementation of those rights] [and assistance they may require from the international community]:

(a) within two years of the entry into force of the Convention for the States Parties concerned

[(b) thereafter every five years [or at such longer intervals as the Committee may decide]]

[(b) thereafter, after having submitted an initial report, covering all their substantive obligations under the Convention, every four years or at such longer intervals as the Committee may decide. Such reports shall be submitted in stages to be established by the Committee within nine months after the entry into force of the Convention.]

The Committee may request further information from States Parties [and shall prepare such observations as it may deem appropriate for transmission to the States Parties concerned].

2. Reports made under this article [may] [shall] indicate factors and difficulties [if any] affecting the degree of fulfilment of the obligations under the present Convention [and shall make reference to the measures being taken to extend the rights covered by the Convention to the most disadvantaged children].

3. [Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Convention, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.]

[4. The Committee may decide that a State Party, which has completed a full reporting cycle covering all its substantive obligations under the Convention may limit its further reporting to changes (legal, administrative and in practice) affecting its obligations, [and] to [such] questions relating to the obligations of the State Party concerned, which may have been indicated by the Committee [and to continuing factors and difficulties, if any, affecting implementation of the Convention].

The following three articles may be merged into one article:

5. The Committee may invite the specialized agencies of the United Nations to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities.

6. The Committee may make arrangements with the specialized agencies of the United Nations and with non-governmental organizations in consultative status with the Economic and Social Council in order to receive their views on the implementation of the Convention in areas falling within the scope of their respective activities.

7. The specialized agencies of the United Nations and other international organizations may submit reports to the Committee on the implementation of the present Convention in areas falling within the scope of their activities.

8. States Parties may submit to the Committee their own comments to any observations concerning them by the Committee or by agencies or non-governmental organizations mentioned in paragraph [].

9. Reports on the activities of the Committee shall be submitted to the General Assembly [annually] [biennially]. They shall include any observations made under paragraphs [] and 6 and any comments under paragraph [].

10. The States Parties shall keep their reports widely available to the public.

[11. The Committee may, when it considers it appropriate, initiate a study on specific issues relating to one or more articles of the Convention and their implementation.

12. At the request of a State Party, the Committee shall, if it considers it appropriate, appoint an individual, group or body to assist the State Party in resolving, through inquiry and/or action, a concern expressed by that State Party regarding implementation, within its territory, of one or more provisions of this Convention.]"

The Working Party regretted that it did not have time to consider the following proposals on international co-operation:

"[1. In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by this Convention, the Committee shall transmit to the United Nations Children's Fund (UNICEF), as the designated lead agency on children, the reports of the States Parties, drawing UNICEF's attention to requests for technical assistance, as well as the Committee's suggestions, recommendations and general comments on States Parties' reports along with States Parties' observations.

2. UNICEF shall collaborate with the specialized agencies and organs of the United Nations and non-governmental organizations to establish and carry out programmes of action to further the implementation of the rights guaranteed by the Convention, giving special attention to requests for assistance submitted by States.

3. The specialized agencies shall keep UNICEF fully informed of measures they have taken either in response to States Parties' requests or within their programmes of action to further the full realization of rights guaranteed by the Convention, and shall bear in mind the importance of responding to States Parties' requests.

4. The States Parties to the present Convention agree that international action for the achievement of the rights recognized in the present Convention includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

5. Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention.]"

156. On the issue of financing the implementation of the Convention, the delegation of the United States proposed the following text, as an alternative to the provisions on funding set forth in the joint Canadian, Polish, Swedish and non-governmental organizations proposed article 22:

"[12. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 10 of this Article.]"

III. Other proposals

A. New unnumbered article, rehabilitation of exploited children

157. The delegation of Norway submitted the following draft article concerning the rehabilitation of children victims of exploitation, to follow the articles on exploitation already adopted by the Working Group:

"The States Parties to the present Convention shall take all appropriate measures to facilitate the physical, psychological and social rehabilitation of children who have been victims of exploitation or abuse of any kind."

158. This draft article, which originated in a proposal by the Informal NGO Ad Hoc Group on the Drafting of the Convention, was supported by the representative of Venezuela who expressed the hope that it would be considered by the Group.

B. Article 15

159. The representative of the United States indicated that, as part of his Government's general study of the draft Convention, the United States administration was considering some of the existing language in article 15 on the right to education, and might introduce an amendment to that article for consideration by the Working Group at an appropriate time.

C. Article 20

160. The delegations of both Sweden and Switzerland urged the Working Group to re-open the discussion on article 20 - adopted by the Group in 1986 - dealing with the protection and care of children affected by an armed conflict, in order to ensure better protection for them.

161. The delegation of Switzerland - which was the first to address the Working Group on the question - drew the Group's attention to resolution IX on protection of children in armed conflicts adopted by the Twenty-fifth International Conference of the Red Cross in October 1986, in operative paragraph 7 of which the Conference expressed its support for the work being done by the Commission regarding the drafting of a convention on the rights of the child, and stressed "That the protection accorded by the new Convention should be at least the same as that accorded by the Geneva Conventions and the two Additional Protocols".

162. The observer for Switzerland thought that article 20 failed to preserve the essential headway that had been made in international humanitarian law, and indicated that what was at stake was safeguarding the essential achievements of the various provisions of the Geneva Conventions of 1949 and their Additional Protocols of 1977, which applied to children in armed conflicts. He appealed to the Working Group not to allow those existing rights to be weakened and the special protection given to children under armed conflicts by the Geneva Conventions and their Additional Protocols to be lessened. Accordingly, he suggested that the Working Group should reconsider the question at its next session, or at the latest during the second reading of the draft Convention.

163. The Chairman reminded the observer for Switzerland that article 20 had been adopted the previous year with the participation of the delegations of Switzerland and of the International Committee of the Red Cross, and regretted that the ideas currently being expressed by the observer for Switzerland had not been put forward on the occasion of the adoption of that article by the Working Group.

164. The observer for Sweden said that her delegation had some questions concerning certain articles that had been adopted such as numbers 2, 4, 19 and especially article 20 which, she hoped, would be dealt with during the second reading of the draft Convention. With respect to article 20, she regarded it as being only a first step in the work on the protection of children in times of war, and therefore thought that it would be of great value to take a new look at the article during the next session of the Working Group or, at the latest, during the second reading of the draft Convention, with particular reference to paragraph 2 concerning recruitment into the armed forces. The Chairman reminded the observer for Sweden, also, that her delegation had been present the previous year during the discussion of article 20 by the Group.

165. The observer for the Netherlands was in agreement with the remarks made by the previous speakers to the effect that article 20 should be reviewed at a later stage, for the protection given to children in armed conflicts should at least be the same as that which they enjoyed under the Geneva Conventions and their Additional Protocols. He also pointed out the links that existed between article 1 and article 20 of the draft Convention, and suggested that the Working Group should also review article 1. The representative of Venezuela agreed with the remarks on article 20 that had been made by previous speakers.

Annex

Proposals by delegations of States, other than those
appearing in parts II and III of the report, not yet
considered by the Working Group

Article 1 bis

(Proposal by the Netherlands and Austria)

"The States Parties to the present Convention shall not provide any discrimination, in particular on the ground of sex, in establishing the age of majority."

Article 14

(Proposal by Finland)

The States Parties to the present Convention undertake to ensure the effective recovery of maintenance from abroad to the child. To this end, States Parties shall promote the conclusion of multilateral or bilateral agreements and the making of any other arrangements relating to the recovery of maintenance.

Article 16, paragraph 1, new subparagraph (e)

(Proposal by the USSR)

"education in the spirit of the inadmissibility of propaganda of war and of any advocacy of national or racial hatred that constitutes incitement to discrimination, hostility or violence;"

Article 24

(Proposal by Poland)

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

Article 25

(Proposal by Poland)

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

Article 26

(Proposal by Poland)

"The present Convention shall remain open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations."

Article 27

(Proposal by Poland)

"1. The present Convention shall enter into force six months after the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession."

Article 28

(Proposal by Poland)

"As depository of the present Convention, the Secretary-General of the United Nations shall inform all States of:

(a) Signatures, ratifications and accessions under articles 24, 25 and 26;

(b) The date of the entry into force of the present Convention under article 27."

Article 29

(Proposal by Poland)

"The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States."

Article 30

(Proposal by Sweden)

"1. Reservations shall not be permitted except to Article [1, 2, 5, 9, 11, 12, 12 bis, 13, 14, 15, 16, and 17.] Such reservations must not be incompatible with the object and purpose of this Convention.

2. No reservation to a provision of this Convention shall affect any obligation undertaken in another international treaty in effect for the concerned State Party."