

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

Draft convention on the rights of the child:
a compilation of proposed articles and amendments, and related
provisions in international instruments

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

INTRODUCTION

1. The Economic and Social Council in its resolution 1986/40 authorized a pre-sessional meeting of the Working Group on the Draft Convention on the Rights of the Child and noted the usefulness of providing the Working Group, in advance of its session, with such working documents as a compilation of all amendments and new proposals and relevant provisions of other international instruments.
2. The parenthetical references to the subject of the articles are for ease of reference only; such references are not part of the proposals before the Working Group.
3. General observations on the draft convention can be found in the prior reports of the Working Group and the various documents submitted to the Commission in connexion with its examination of the question of a convention on the rights of the child. In addition, reference may be made to the paper submitted by the Permanent Representative of Bangladesh contained in annex IV of document E/CN.4/1986/39 and to the written statement submitted by the Four Directions Council to the Commission on Human Rights at its forty-second session (E/CN.4/1986/HQD/1).
4. The Secretariat would welcome suggestions for improving this document in the future in order to make it more useful to delegates and suggestions as to further references to provisions of international instruments which might be included.

I. Substantive articles

1. Article 6 bis Additional sentences (Right to leave and return) ^{1/}

A. Proposal by Finland, Poland, the Union of Soviet Socialist Republics and the United States of America ^{2/}

-Addition of the following second sentence to paragraph 1 of article 6 bis as adopted:

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

-Addition of the following second and third sentences to paragraph 2 of article 6 bis as adopted:

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).

B. Provisions from international instruments

(i) Universal Declaration of Human Rights Article 13

2. Everyone has the right to leave any country, including his own, and to return to his country.

^{1/} See E/CN.4/1986/39, paras. 22 to 22.

^{2/} E/CN.4/1986/39, para. 25 and annex II.

(iii) International Covenant on Civil and Political Rights Article 12

....

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morale or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

(iiii) African Charter on Human and Peoples' Rights Article 12.2 -

2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.

(iv) American Convention on Human Rights Article 22

...

2. Every person has the right to leave any country freely, including his own.

3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

5. No one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it.

...

HEADEY
PRINTERS

(v) European Convention on Human Rights, Protocol 4
Article 2

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety for the maintenance of 'ordre public', for the prevention of crime, for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

Article 3

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

2. Article 9 Additional sub-paragraph (Encouraging literacy)

Proposal by the International Board on Books for Young People 3/

- Addition of the following new sub-paragraph (c), whereby the present (c) becomes (d) and the present (d) becomes (e):

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

3. Article 12 Addition of new para. 5 (Traditional practices)

A. Proposal by NGO Group 4/

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.

B. Provisions from international instruments

See, in general, the provisions of the Convention on the Elimination of All Forms of Discrimination against Women. See also the Report of the Working Group on Traditional Practices Affecting the Health of Women and Children., E/CN.4/1986/42 and Commission resolution 1986/28 on the subject.

4. Article 14 Addition of new paragraph 4 (Continuing responsibility for support)

Proposal by the Informal NGO Group 5/

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.

3/ Letter dated 15 November 1985 submitted to the Centre for Human Rights.

4/ E/CN.4/1986/39, paras. 50 and 51.

5/ Submitted to the Centre for Human Rights by a letter dated 30 October 1986

5. Article 16 Additional para. 3 (Education in national values and cultural identity)

A. Proposal by Algeria 6/

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.

B. Provisions from international instruments

a) as to national values and cultural identity

(i) Declaration of the Principles of International Cultural Co-operation Article 1

1. Each cultural has a dignity and value which must be respected and preserved.
2. Every people has the right and the duty to develop its culture.
3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind.

(ii) African Charter on Human and Peoples' Rights

Article 17

1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State

Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

...

Article 29

The individual shall also have the duty:

...

7. To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;

b) as to self-determination in cultural matters

(i) International Covenant on Economic, Social and Cultural Rights/
International Covenant on Civil and Political Rights Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development....

(ii) Declaration on the Granting of Independence to Colonial
Countries and Peoples (General Assembly resolution 1514 (XV)
of 14 December 1960)

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(iii) African Charter on Human and Peoples' Rights Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
...

6. Article 16 bis (Cultural and linguistic rights)

A. Proposal by the Four Directions Council 7/

The States 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.

B. Provisions from international instruments 8/

(i) International Covenant on Civil and Political Rights: Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

(ii) Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live Article 5 9/

1. Aliens shall enjoy in accordance with domestic law and subject to the relevant international obligations of the State in which they are present, in particular the following rights:

- ... (f) The right to retain their own language, culture and tradition;

7/ E/CN.4/1985/39, paras. 65 to 67. See also E/CN.4/1986/WG.1/WP.1

8/ Reference may also be made to the general non-discrimination clauses of international instruments.

9/ General Assembly resolution 40/144 of 13 December 1985.

(iii) Convention against Discrimination in Education Article 5

1. The States Parties to this Convention agree that:

...

(c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use of the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and

(iii) That attendance at such schools is optional.

...

(iv) Declaration on Race and Racial Prejudice Article 9

...

3. Population groups of foreign origin, particularly migrant workers and their families who contribute to the development of the host country, should benefit from appropriate measures designed to afford them security and respect for their dignity and cultural values and to facilitate their adaptation to the host environment and their professional advancement with a view to their subsequent reintegration in their country of origin and their contribution to its development; steps should be taken to make it possible for their children to be taught their mother tongue.

(iv) Final Act of the Conference on Security
and Co-operation in Europe (Helsinki, 1 August 1975)

(a) Declaration on Principles Guiding Relations Between
Participating States

VII. Respect for human rights and fundamental freedoms,
including the freedom of thought, conscience,
religion or belief

The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.

6. Co-operation in other areas

Economic and social aspects of migrant labour

The participating States... and with the following aims in view:

...
to ensure that the children of migrant workers established in the host country have access to the education usually given there, under the same conditions as the children of that country and, furthermore, to permit them to receive supplementary education in their own language, national culture, history and geography;...

7. Article 18 ter (Protection from sexual exploitation)

A. Proposals

1. Proposal by France and the Netherlands 10/

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.

2. Proposal by the Informal NGO Group 11/

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.

B. Provisions from international instruments

(i) Declaration on the Rights of the Child: Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

(ii) International Covenant on Economic, Social and Cultural Rights Article 10

...
Children and young persons should be protected from economic and social exploitation.

(iii) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery Article 1

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices,

...

(d) Any institution or practice whereby a child or young person under age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

10/ E/CH.4/1986/39, para. 9 and annex III.

11/ Submitted to the Centre for Human Rights by a letter dated 30 October 1985. See also (E/CH.4/1986/WG.1/WP.1, article 8 ter).

(iv) Convention for the Suppression of the Traffic in Persons
and of the Exploitation of the Prostitution of Others

Article 17

The Parties to the present Convention undertake, in connexion with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

...

article 20

The Parties to the present Convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

(v) African Charter on Human and Peoples' Rights: article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

8. Article 18 quater (freedom of association, right to privacy)

A. Proposal by the United States 13/

1. States Parties to the present Convention recognize the rights of the child to freedom of association with others, to peaceful assembly, and to be protected by law against arbitrary or unlawful interference with his privacy, family, home or correspondence.
2. States Parties shall respect and guarantee these rights, and shall not place any restrictions on their exercise, except as provided in paragraph 3 of this article. 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.
3. The exercise of the right to freedom of association and the right to peaceful assembly may be subject to those restrictions provided by law which are consistent with the international obligations of a State Party and which are necessary in a democratic society in the interests of national security, public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.
4. Nothing in this article shall be interpreted as limiting or otherwise affecting the authority, rights or responsibilities of a parent or other legal guardian of the child.

B. Provisions from international instruments

Reference may be made to the provisions of the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Convention on Human Rights.

13/ E/CN.4/1986/39, paras. 84 to 87 and annex II and E/CN.4/12/Add.1, para 118 and E/CN.4/1983/62, paras. 42-44. E/CN.4/1985/64, annex II

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

A. Proposal by the Informal NGO Group 13/

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.

B. Provisions from international instruments

See the references above under article 18 ter.

10. Article 21 Addition of new para. 2 (Affect on rights recognized elsewhere)

A. Proposal by Finland 14/

2. 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 derogations 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).

B. Provisions from international instruments

(i) Convention on the Elimination of All Forms of Discrimination against Women Article 2)

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

- (a) in the legislation of a State Party; or
- (b) in any other international convention, treaty or agreement in force for that State.

(ii) American Convention on Human Rights Article 29

No provision of this Convention shall be interpreted as:

- (a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
- (b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party;
- (c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- (d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

13/ Submitted to the Centre for Human Rights by a letter dated 30 October 1986

14/ Submitted to the Centre for Human Rights in March 1986

11. Article 21 bis (Aliens)

A. Proposal by the Netherlands, the United Kingdom
and the United States 15/

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.

B. Provisions of international instruments

Declaration on the Human Rights of Individuals who are
not Nationals of the Country in which They Live: Article 2

1. Nothing in this Declaration 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.

2. This Declaration shall not prejudice the enjoyment of the rights accorded by domestic law and of the rights which under international law a State is obliged to accord to aliens, even where the present Declaration does not recognize such rights or recognizes them to a lesser extent.

12. Article 21 ter (Dissemination of the principles and
provisions of the Convention)

Proposal by the Informal NGO Group 16/

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.

15/ E/CN.4/1986/39, para. 9 and annex III.

16/ Submitted to the Centre for Human Rights by a letter dated 11 December 1986.

11. Implementation Provisions (Articles 22 and 23)

A. Proposals

1. Article 22 Proposal by Poland 1/

The States Parties to the present Convention every three years shall submit reports on the implementation of the present Convention to the Economic and Social Council through the Secretary-General of the United Nations.

2. Article 23

a) Proposal by Canada 2/

1. The reports submitted by the States Parties to the present Convention under article 22 shall be considered by the Economic and Social Council.

2. To assist it in its task, the Economic and Social Council shall establish a Group of Experts entrusted with the responsibility of examining the reports submitted by the States Parties before they are considered by the Economic and Social Council. The Group of Experts shall also prepare appropriate comments on every report for transmission, through the Economic and Social Council, to the State Party concerned.

3. The members of the Group of Experts shall be elected by the Economic and Social Council from a list of candidates nominated by States Parties.

4. The Economic and Social Council shall decide on the size of the Group of Experts, its geographic composition and the periodicity of its meetings.

5. The Economic and Social Council may bring its observations and suggestions on the implementation of this Convention to the attention of the General Assembly of the United Nations.

b) Proposal by Poland 3/

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.

1/ E/CN.4/1986/39, annex III and A/C.3/40/3.

2/ E/CN.4/1986/39, annex III and E/CN.4/1986/71, annex II., and E/CN.4/1985/64, annex II

3/ E/CN.4/1986/39, annex III and A/C.3/40/3.

3. Proposals by the Informal NGO Group 4/

a) Establishment of a Committee

For the purposes of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Rights of the Child (hereinafter referred to as the Committee). The Committee shall be composed of experts of high moral standing and competence in the fields covered by the Convention. They shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilisation as well as the principal legal systems.

b) Reporting obligations of States Parties

1. The States Parties to the present Convention undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein, including information about the competent national body or bodies responsible for the implementation of these rights, the progress made in the enjoyment of those rights, and assistance they may require from the international community:

- (i) within one year of the entry into force of the present Convention for the States Parties concerned;
- (ii) thereafter as the Committee may decide, but no less frequently than every five years.

The Committee may request further information from States Parties.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Convention.

c) Procedures of the Committee

- 1. The Committee shall adopt its own rules of procedure.
- 2. The Committee shall be able to seek and receive reliably attested information from any source.
- 3. 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.
- 4. The Committee shall develop a procedure for handling situations of serious and repeated violations of the provisions of the Convention.

^{4/} Submitted to the Centre for Human Rights by letter dated 11 December 1986.

5. 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 enquiry and/or action, a concern expressed by that State Party regarding implementation, within its territory, of one or more provisions of this Convention.
6. The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

d) Reports by the Committee to the General Assembly

The Committee shall study the reports submitted by the States Parties and shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities. It may make suggestions, recommendations and general comments based on the examination of the reports and information received, and these shall be communicated to the States Parties concerned and shall be included in its annual report together with observations, if any, from the States Parties. The Committee's report shall also refer to measures taken by the international community to respond to requests for assistance by States Parties. The Secretary-General of the United Nations shall bring the Committee's report to the attention of the Commission on Human Rights.

e) Secretariat of the Committee

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.

f) 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.

L. Implementation provisions of selected international instruments

1. International Covenant on Economic, Social and Cultural Rights

(a) Provisions of the Covenant

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. 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.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant 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.

(b) Provisions of Economic and Social Council
resolution 1985/11

The Economic and Social Council,

...

Decides that:

(a) The Working Group established by Economic and Social Council decision 1978/10 and modified by Council decision 1981/158 and resolution 1982/3) shall be renamed "Committee on Economic, Social and Cultural Rights" (hereinafter referred to as "the Committee");

(b) The Committee shall have 18 members who shall be experts with recognized competence in the field of human rights, serving in their personal capacity, due consideration being given to equitable geographical distribution and to the representation of different forms of social and legal systems; to this end, 15 seats will be equally distributed among the regional groups, while the additional three seats will be allocated in accordance with the increase in the total number of States parties per regional group;

(c) The members of the Committee shall be elected by the Council by secret ballot from a list of persons nominated by States parties to the International Covenant on Economic, Social and Cultural Rights under the following conditions:

- (i) The members of the Committee shall be elected for a term of four years and shall be eligible for re-election at the end of their term, if renominated;
- (ii) One half of the membership of the Committee shall be renewed every second year, bearing in mind the need to maintain the equitable geographical distribution mentioned in subparagraph (b) above;
- (iii) The first elections shall take place during the first regular session of 1986 of the Council; immediately after the first elections, the President of the Council shall choose by lot the names of nine members whose term shall expire at the end of two years;
- (iv) The terms of office of members elected to the Committee shall begin on 1 January following their election and expire on 31 December following the election of members that are to succeed them as members of the Committee;
- (v) Subsequent elections shall take place every second year during the first regular session of the Council;

- (vi) At least four months before the date of each election to the Committee the Secretary-General shall address a written invitation to the States parties to the Covenant to submit their nominations for membership of the Committee within three months; the Secretary-General shall prepare a list of the persons thus nominated, with an indication of the States parties which have nominated them, and shall submit it to the Council no later than one month before the date of each election;
- (d) The Committee shall meet annually for a period of up to three weeks, taking into account the number of reports to be examined by the Committee, with the venue alternating between Geneva and New York;
- (e) The members of the Committee shall receive travel and subsistence expenses from United Nations resources;
- (f) The Committee shall submit to the Council a report on its activities, including a summary of its consideration of the reports submitted by States parties to the Covenant, and shall make suggestions and recommendations of a general nature on the basis of its consideration of those reports and of the reports submitted by the specialized agencies, in order to assist the Council to fulfil, in particular, its responsibilities under articles 21 and 22 of the Covenant;
- (g) The Secretary-General shall provide the Committee with summary records of its proceedings, which shall be made available to the Council at the same time as the report of the Committee; the Secretary-General shall further provide the Committee with the necessary staff and facilities for the effective performance of its functions, bearing in mind the need to give adequate publicity to its work;
- (h) The procedures and methods of work established by Council resolution 1979/4) and the other resolutions and decisions referred to in the preamble to the present resolution shall remain in force insofar as they are not superseded or modified by the present resolution;
- (i) The Council shall review the composition, organization and administrative arrangements of the Committee at its first regular session of 1990, and subsequently every five years, taking into account the principle of equitable geographical distribution of its membership.

2. International Covenant on Civil and Political Rights

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned.

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 45

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

3. International Convention on the Elimination of All
Forms of Racial Discrimination

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention (a) within one year after the entry into force of the Convention for the State concerned, and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

4. Convention on the Elimination of All Forms of Discrimination against Women

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

III. Final clauses (Articles 24 to 29)

A. Proposals by Poland ^{1/}

1. Article 24

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

2. Article 25

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

3. Article 26

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.

4. Article 27

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.

5. Article 28

As depositary 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.

6. Article 29

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.

^{1/} E/CN.4/1986/39, annex III and A/C.3/40/1.

B. Comments by the Office of Legal Affairs on the draft final clauses (doc. A/C.3/40/3) 2/

1. Article 24

(i) Some recent conventions have also included the phrase "by all States and Namibia, represented by the United Nations Council for Namibia".

(ii) The designation of a time frame and place for signature is advisable, e.g.:

"This Convention will remain open for signature until /date/ at United Nations Headquarters in New York."

2. Article 25

(1) "The present Convention is subject to ratification /acceptance or approval/ by the signatories."

The rest of the article is not needed (see below).

3. Article 26

"The present Convention is open at any time to accession by all States."

4. Article 27 (2)

As presently worded, the provision is impractical. Assuming a sixteenth State would deposit its instrument the day after the deposit of the fifteenth one, how could the Convention enter into force for that State 30 days later, while the Convention would only enter into force for the fifteen first States six months later... Furthermore, the situation would continue for five more months.

If the provision of 27 (1) is to be maintained, then 27 (2) should be reworded and that part of the phrase that reads "after the deposit of the fifteenth instrument of ratification or accession" would have to be replaced by:

"after the entry into force of the Convention".

Alternatively the time frame for entry into force could be made identical for paras. (1) and (2).

5. Article 28

It would be sufficient to include an article (preferably prior to article 25) designating the Secretary-General as depositary as follows:

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

Since the practice of the Secretary-General as depositary of international agreements generally conforms to the established custom reflected in article 77 of the Vienna Convention on the Law of Treaties, it is not necessary to specify the traditional functions of the depositary, here or in article 29.

2/ Submitted by the Office of Legal Affairs at the request of the Centre for Human Rights.

General observations

The absence of any provisions relating to the procedure for amendment, submission of reservations, settlement of disputes or denunciations is noted. Should you wish to include these we would be happy to provide assistance. (See, for example, provisions in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.)

B. Final clauses from selected international instruments

(a) International Covenant on Economic, Social and Cultural Rights

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

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

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

In respect of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

(b) International Convention on the Elimination of All
Forms of Discrimination against Women

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

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

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

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

Article 30

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

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

(c) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

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

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

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

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

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

(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

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

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.