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COMMISSION ON HUMAN RIGHTS

Forty-fifth session

SUMMARY RECORD OF THE 54th MEETING

Held at the Palais des Nations, Geneva,  
on Wednesday, 8 March 1989, at 10 a.m.

<u>Chairman:</u>	Mr. BOSSUYT	(Belgium)
later:	Mr. HELLER	(Mexico)

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The meeting was called to order at 10.20 a.m.

QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD (agenda item 13)  
(E/CN.4/1989/29 and Corr.1 and E/CN.4/1989/48; E/CN.4/1989/L.88)

1. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that the decisions to be taken under agenda item 13 would have a major long-term impact. The convention on the rights of the child prepared by the Commission's Working Group recognized the dignity and rights of all children, whom it sought to protect by facilitating their transition to adulthood. The convention also contained important measures of implementation. The 10 years of efforts by the Commission in that field were reflected in the reports of the Working Group, whose Chairman-Rapporteur, Mr. Lopatka, would personally introduce the report of the last session.

2. The drafting of the convention had been supported by the Secretary-General of the United Nations and by himself, and he had made it his own personal concern to ensure that, even during the current period of budgetary restrictions, the maximum resources available were placed at the disposal of the Working Group. He was confident that the outcome of the discussion on the draft would be fruitful.

3. Mr. LOPATKA (Chairman-Rapporteur of the Working Group on the Question of a Convention on the Rights of the Child) said that the Working Group had completed the elaboration of the draft convention on the rights of the child, which was contained in document E/CN.4/1989/29 and Corr.1. In accordance with Commission resolution 1988/75 and Economic and Social Council resolution 1988/40, the Working Group had, during its last session held from 28 November to 9 December 1988, completed the second reading of the draft. The Group had also met on 21, 22 and 23 February to adopt the report on its last session (E/CN.4/1989/48). Accordingly, the Commission could, as the General Assembly had requested in its resolution 43/112, present the draft convention to the General Assembly, through the Economic and Social Council, at its forty-fourth session.

4. The initial draft of the convention had been submitted to the Commission in 1978 by Poland. After 11 years of intensive work, the present text had been finalized thanks to the co-operation of all sides, and even the proposals which had not been included had played a useful role in the discussion. Attention should be drawn to the contributions made by UNICEF, UNESCO, ILO, the Office of the United Nations High Commissioner for Refugees, ICRC and also the numerous non-governmental organizations which had worked to promote and gain world-wide acceptance of the principle of such a convention.

5. It had been necessary to reconcile numerous differences relating to traditions, cultures, religions, levels of economic development, legal systems and, indeed, political attitudes. The proposed text represented a broad consensus on what should be the obligations of the family, society and the international community towards children. On certain issues the text could be regarded as realistic, and some people might perhaps have wished it to be more ambitious. As it stood, however, it codified and even developed the international norms applicable to children without weakening already existing obligations. Article 41 of the draft text explicitly stated that nothing in the Convention should affect "any provisions that are more conducive to the realization of the rights of the child" and that might be contained in the law

of a State party or in international law in force for that State. The draft was necessarily a compromise, which reflected not a weakness but the spirit of mutual understanding that had prevailed in the Group's work. In article 1, for example, the members of the Group had been able to reach agreement on an upper age limit for the definition of a child but not on a lower age limit, i.e. on the inclusion into, or exclusion from, that definition of children before birth. Considering the fundamental divergence of views on that issue, the Working Group had preferred not to prejudge the solution that each State party to the convention might adopt.

6. Even if not all the provisions of the text fully satisfied all States, the draft did represent a coherent and balanced whole. It would therefore be desirable, in view of the risk that a challenge of certain provisions by one State might entail the challenging of other provisions by other States, for the Commission to adopt the draft at the current stage without any modification. States wishing to make changes would have the opportunity to do so during the consideration of the text by the General Assembly.

7. The Group had unanimously agreed to take no decision with regard to the financing of the Committee on the Rights of the Child. Article 43, paragraphs 11 and 12, which contained alternative solutions, therefore remained in square brackets. The general opinion in the Group was that the matter should be referred to the General Assembly for a decision.

8. The draft convention had been devised mainly for the benefit of children living in normal conditions but also in the interests of those in extremely difficult situations, such as children living in war zones, children of refugees, children deprived of their parents, handicapped children or children who were abused. It also took into account the interests of children from minority groups and of children from developing countries where economic systems were weak. The text was the product of co-operation between countries from East and West, South and North, and the very process of its preparation had contributed to the improvement of mutual understanding in a so often controversial domain of human rights. The draft was neither too optimistic nor too pessimistic, but quite simply realistic. It was to be noted that States which for various reasons had not taken part in the elaboration of other important human rights instruments had associated themselves with the work, a fact that augured well for universal ratification of the convention. The adoption of that instrument by the General Assembly in 1989 would be the best way of celebrating the thirtieth anniversary of the Declaration of the Rights of the Child and the tenth anniversary of the International Year of the Child.

9. He wished to thank all the delegations which had taken part in the elaboration of the draft, the representatives of international organizations, in particular UNICEF, and the representatives of non-governmental organizations, which he was sure would continue to play a role in the propagation of the convention and in the promotion of its ratification. In addition, he wished to express his appreciation to the Secretariat and also to Mr. van Boven, a long-serving Director of the United Nations Division of Human Rights, to Mr. Herndl, Assistant Secretary-General and former Director of the Centre for Human Rights, and especially to Mr. Martenson, the present Under-Secretary-General for Human Rights.

10. Mrs. SAULLE (Italy) expressed her thanks to the Chairman of the Working Group, who had greatly contributed to enabling the Group to prepare a definitive draft text at its last session. She also wished to thank all the delegations which had participated in the endeavour, and the Secretariat of the United Nations and non-governmental organizations which had joined in that effort. Her delegation for its part, had tried to promote the consensus and the finalization of the draft.

11. Even if the draft text, as it stood, was able to assure a good standard of rights and quality of life for children, it was nevertheless regrettable that a consensus had not emerged on a number of proposals concerning in particular the possibility of assuring a life "as normal as possible" to disabled children. Her delegation also wished to recall its position regarding the participation of children in armed conflicts, as set out in the last report of the Working Group. It was to be hoped that the safeguard clause in article 41 of the draft would be applied in order to improve the plight of children involved in armed conflicts. Efforts aimed at eliminating discrimination against the disabled, including a revision of Additional Protocol I of 1977 to the Geneva Conventions of 1949 in connection with article 41 of the draft convention, could make it possible to improve significantly the protection of such children. Although Italian law was in some respects more favourable to children than the Working Group's draft, her delegation was ready to support that draft in order to meet the wide expectations of the international community.

12. Mr. SENE (Senegal) said that after 10 years of painstaking efforts the Working Group had succeeded, largely thanks to Mr. Lopatka, in completing the second reading of the draft convention on the rights of the child. The Group had been able not only to measure the difficulties to be overcome in building a universal legal framework, but also to test the limits of international action for the protection of children. It was a well-established fact that the value attributed to a concept depended on the end it was to serve and on the cultural context of each society. The elaboration of a legal framework for the protection of the child could not avoid that requirement. Since the proposed draft represented a careful compromise between different values, it could be expected that each provision would reflect the spirit and the letter of each State's domestic legislation. However, the purpose of the convention - as, indeed, of any international standard - was to harmonize differences and contradictions and to provide a common response to the problems of children.

13. The Working Group had also had to reflect in a single instrument a multiplicity of different standards not endorsed by all the States which had participated in the elaboration of the future convention. Regarding the protection of children in armed conflicts, for example, the attempts which had been made had not succeeded in giving full force to the humanitarian law covered by the 1977 Additional Protocols to the Geneva Conventions. However, agreement had been reached on a minimum standard as a realistic solution. Given the diversity of views on that point, as well as on a number of other matters, it had been necessary to find a "common denominator". Several years had been needed simply to agree on the concept of the child and even so there was still some uncertainty in interpreting the applicability of that concept.

14. Child protection was a moral requirement of any civilized society which went beyond whatever legal mechanisms might be provided, but there was nevertheless a need to envisage legal protection for the child. Child protection was a prerequisite for the survival of future generations and, since children were the first victims of any upheaval in human society, preventive legislation was needed to provide them with a suitable environment. It was within that perspective, and in large part thanks to the efforts of non-governmental organizations and agencies such as UNICEF, that the United Nations had been able to create a new international consciousness regarding the protection of the child and of the family as its natural environment. However, the search for the universal did not mean standardization of the child's world. That world was not the same everywhere and it was necessary to respect its specific features and the economic, social and cultural realities that were themselves a function of the needs and resources of each region, each country and each civilization.

15. His delegation had joined in the consensus which had appeared to emerge from the efforts of the Working Group because it had appreciated the fact that agreement had been reached at least on four essential principles. First, the objective of the future convention was to ensure special legal protection of children in view of their vulnerability. It was not, therefore, a matter of introducing standards that would impose a further burden on the body of international law relating to human rights. Second, all the rights and obligations set out in the future convention should be considered and applied in the interest of the child, and that interest should be determined not only in relation to the object and purpose of the convention, as stated in article 51, but also taking due account of the traditions and cultural values of each people, as stated in the twelfth preambular paragraph. That requirement should not be neglected by any legal system, since it was the basis of the legitimacy of the future convention. Third, the limitations or lacunae of the future convention could be overcome through the provisions of laws that were "more conducive to the realization of the rights of the child", as indicated in article 41 of the draft. Fourth, the difficulties involved in the realization of the rights covered by the future convention could be surmounted through an effort of international solidarity aimed at complementing national actions. In view of those principles, his delegation had not insisted on a number of elements which it regarded as fundamental but which were unfortunately absent from the draft. In deciding to join in the general agreement, it had sought to show pragmatism and avoid, as it were, opening Pandora's box.

16. It was essential to avoid stifling the hopes that had already been raised among the future generation by the drafting of the convention, even though there was of course room for improvement of the draft. As celebrations were being held for the thirtieth anniversary of the adoption of the Declaration of the Rights of the Child, Senegal hoped that 1989 would be the year of the signing of the convention. The development of the child was the best indicator of the stability of a nation. Moreover, as UNICEF stated in its 1989 report on the state of the world's children, the protection of children today was also the most profitable of all investments.

17. Mrs. ZELNER GONCALVES (Brazil) said she wished to congratulate Mr. Lopatka. He had noted that the draft convention, as adopted in second reading by the Working Group, represented a consensus between countries with different traditions and cultures. Brazil, which had already supported the draft convention adopted in first reading, thought that the revised text was considerably improved and refined. It hoped that the draft would be approved by the Commission and adopted by the General Assembly at the end of 1989, a year which would mark the thirtieth anniversary of the Declaration of the Rights of the Child and the tenth anniversary of the International Year of the Child.

18. Brazil, whose total population of some 145 million comprised nearly 60 million children, had always given priority to the protection of children's rights, and article 227 of the Brazilian Constitution itself set out the rights and needs of children, as well as the duties and responsibilities of families, the Government and society towards them. It was in that spirit that Brazil had for 10 years regularly participated in the sessions of the Working Group, where it had sought to promote a broad social and legislative consensus on the way in which children should be considered and treated.

19. Her delegation had frequently stressed the relationship that existed between the situation of children and the question of development in general. According to the UNICEF report for 1989, at least half a million young children had died in the last 12 months as a result of the slowing-down or the reversal of progress in the developing world. In other words, the report concluded, it was children who had been bearing the heaviest burden of debt and recession in the 1980s. As a developing country, Brazil would have liked the proposed text to emphasize those considerations, as well as the idea of the progressive application of the economic, social and cultural rights of children taking into consideration the difficulties of developing countries. The text should also have highlighted the vital role of international co-operation in implementing the future convention and consolidating the achievements of developing countries during the past decade in regard to the protection of children.

20. With respect to the one issue still unresolved in the present draft, namely the expenses of the Committee on the Rights of the Child, Brazil felt that the implementation mechanism provided for in the convention should be financed from United Nations resources on such conditions as the General Assembly might decide in accordance with article 43, paragraph 11, of the draft.

21. Brazil welcomed the designation of UNICEF as a focal point for the convention since that agency had actively participated in the efforts of the Working Group, inter alia by organizing a governmental meeting of Portuguese-speaking countries in Lisbon to focus on problems related to the implementation of the future convention. A tribute should also be paid to the non-governmental organizations, which had contributed greatly to the drafting of the convention and had helped to stimulate awareness of children's rights in both industrialized and developing countries. In the statement he had made at the opening of the current session, the Under-Secretary-General for Human Rights had emphasized that the convention, encompassing a wide range of basic human rights, would be a landmark in the field of standard-setting.

22. Her delegation was convinced that the final text of the convention would not constitute a mere compilation of rights but would consider all human rights from the very specific perspective of children, taking into account all their legitimate interests. The convention could make a substantial contribution to improving the situation of the 2 billion children living in the world today.

23. Mr. PALACIOS (Spain) said that the adoption of the draft convention - for which a special tribute was due to Mr. Lopatka - would contribute to reinforcing the safeguards set out in other international instruments, in particular the Declaration of the Rights of the Child adopted by the General Assembly in 1959. The right of all children to a standard and quality of life conducive to their physical, mental and social development, particularly in the event of separation of parents, could thus be better guaranteed.

24. With regard to the practice of adoption, a measure considered in Spanish law as a last solution when the child could not remain in his original environment, in accordance with the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, the Spanish Government was particularly concerned with the possible implications of that measure in cases where the child had to leave his country. His delegation considered that the measures provided in article 21 (b) could be applied only on an exceptional basis, in other words when all other possibilities of placement or adoption in the child's country of origin had been exhausted. Furthermore, the provisions of article 21 (d) should be interpreted as restrictively as possible, since any financial exchange between the parties must be strictly limited to the reimbursement of legitimate costs. That, indeed, was the understanding of Mr. Lopatka himself.

25. The question of children alleged as, accused of, or recognized as having infringed the penal law, which was the subject of article 40, deserved particular attention since the provisions contained therein meant that countries would have to ensure that their legal systems were consistent with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") adopted by the General Assembly on 29 November 1985 in its resolution 40/33. His delegation considered, moreover, that the concessions which had had to be made in the interests of consensus ought not to prevent the adoption of the draft, since the provisions of article 41 allowed each State the freedom to set higher standards in certain areas, as would be desirable for implementation of the provisions of article 38. Furthermore, at the time of ratification or accession, States could make reservations, although it would be desirable for such reservations to be kept to a minimum in order not to jeopardize the universal character of the convention.

26. His delegation approved the idea of setting up a Committee on the Rights of the Child as an independent and impartial body to examine how far States parties were complying with their obligations. In that regard, he believed that the financial question must not be an obstacle and that the work of the Committee should, therefore, be financed from the United Nations budget on such terms as might be decided by the General Assembly.

27. His delegation hoped that the Commission would be able to approve the draft text.

28. Mr. DESFOUY (Argentina) said that his delegation approved the draft convention on the rights of the child, although it considered that some articles could be drafted in more categorical terms.

29. His delegation welcomed the inclusion, in the preamble, of a paragraph which read:

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

30. His delegation also wished to stress the importance of the provisions of article 8 (concerning preservation of the child's identity), which were of particular significance for his country in view of the tragic situations it had experienced at the time of the military dictatorship. His delegation wished also, in that regard, to draw the Commission's attention to document E/CN.4/1989/66, which contained extracts from the annual report of the Inter-American Commission on Human Rights. In that context, Argentina had taken note of the statement made by the Paraguayan delegation, under agenda item 12, concerning the situation of missing Argentine children and had recently learned with satisfaction that the Supreme Court of Paraguay had taken a favourable decision in that regard.

31. His delegation particularly welcomed the provisions of article 21 of the draft, aimed at preserving as far as possible the cultural identity of the child and in particular at avoiding fraudulent adoption, which often involved trafficking in children. Concerning article 38, his delegation would have preferred an outright prohibition of the recruitment and use of children in armed conflicts and, in that regard, it hoped that the provisions of article 41 would be applied in order to guarantee effective protection consistent with the standards in force in international humanitarian law.

32. His delegation fully approved article 43 of the draft concerning the establishment of a Committee on the Rights of the Child and it welcomed in particular the final draft of paragraph 7 of that article. On the financial question, his delegation felt that the Committee should be funded from the regular budget of the United Nations and it would therefore speak, at the General Assembly, in favour of retaining the first sentence of paragraph 11, which for the time being was between square brackets.

33. Countries must now envisage prompt ratification of the future convention. In that context, the non-governmental organizations were already playing a very important role, particularly in Latin America, where they had also undertaken the elaboration of a regional instrument concerning the rights of the child to supplement the provisions of the international convention. It was to be hoped that, as in the past, UNICEF would play a leading role in that regard. At the national level, his Government attached great importance to the draft convention, which was being given due consideration in the elaboration of a new code concerning minors.



34. His Government welcomed the initiative taken by the Polish delegation more than 10 years previously. As a co-sponsor of draft resolution E/CN.4/1989/L.88, it hoped that all countries would approve the draft and that the General Assembly, at its forty-fourth session, would be able to adopt the international convention on the rights of the child.

35. Mrs. dos SANTOS PAIS (Portugal) said that the draft convention, which was largely inspired by the international instruments already adopted in the field of human rights, unequivocally proclaimed the dual principle of the child as being both entitled to basic rights and freedoms and as being the object of special protection to ensure the harmonious development of his personality and enable him to play a constructive role in society. The draft, moreover, introduced a number of innovations. For example, in the area of family placement and adoption, the principles set out in the Declaration approved in 1986 had been very closely followed and for the first time were echoed in a binding legislative instrument.

36. Her delegation attached great importance to articles 2, 3 and 4 of the draft, which concerned non-discrimination and the fundamental role that States would have to play, taking into consideration the best interests of the child, in the adoption of legislative, administrative and other measures necessary for the respect and exercise of the rights set out in the convention. At the international level, the experts of the Committee on the Rights of the Child (whose mandate was governed by innovative provisions) would play a decisive role, and the dialogue undertaken by them would be essential in co-operative efforts aimed at improving the well-being and ensuring respect of the rights of children in all countries.

37. Considering the importance of the task that would be entrusted to the Committee, her delegation felt that it would be preferable for the costs of its meetings to be met from the general budget of the United Nations. The unfortunate example of the Committee on the Elimination of Racial Discrimination was particularly instructive in that regard. It was also important that the experts appointed should enjoy complete independence and not be subject to the availability of resources, still less, even indirectly, to the political will of States. Her delegation's view was borne out by the conclusions of the meeting of chairpersons of human rights treaty bodies.

38. In the opinion of her delegation, the importance of non-participation of children in armed conflicts and their protection in such situations had not been sufficiently emphasized in the draft. Under article 38, for example, the indirect participation of children under the age of 15 years in such conflicts was not prohibited and the discretionary powers granted to States weakened the absolute character of the protection to be afforded to children. In that regard, her delegation regretted the fact that it had been impossible to set standards that were at least identical to those existing in international humanitarian law and that the definition contained in article 1 of the draft, namely that "a child means every human being below the age of 18 years" had not served as the basis for drafting article 38. None the less, States parties could be guided by the provisions of article 41, as would Portugal itself, in order to apply provisions that were more conducive to the respect of children's rights. The draft should not be considered in that regard, as well as in other respects, only as a compilation of minimum standards for the protection of children. Nor should States parties take measures aimed at restricting or undermining the application of the principles set out in the convention.

39. The Commission must now take action to ensure that the draft text could be approved by the General Assembly, if possible at its forty-fourth session.

40. Mr. RONQUIST (Sweden), speaking on behalf of the delegations of the five Nordic countries - Denmark, Finland, Iceland, Norway and Sweden - expressed those delegations' gratitude to Poland and to Professor Lopatka. He recalled that the purpose of drafting a convention on the rights of the child had been to supplement the International Bill of Human Rights, in which the rights of the child had not been taken sufficiently into consideration. Children today, in many parts of the world, were victims of hunger, armed conflicts, social injustice and economic or sexual exploitation. The Nordic countries welcomed the fact that the draft convention contained provisions aimed specifically at protecting children from certain practices and at ensuring their protection in penal matters.

41. The delegations of the Nordic countries attached particular importance to the question of the protection of children in cases of armed conflict. In that regard, they felt that the text of article 38 of the draft did not reflect the concerns expressed by a majority within the Working Group. They regretted the fact that the draft convention contained no provisions aimed at ensuring better protection than was afforded in international humanitarian law. It was therefore all the more important, in their view, that the convention should in no respect fall short of existing standards in humanitarian law. The Nordic countries welcomed those provisions aimed at making the convention widely known to adults and children, and they also attached great importance to the role assigned to UNICEF and other United Nations bodies in regard to the implementation of the convention. The importance of non-governmental organizations had also been duly recognized.

42. As far as the financing of the activities of the Committee on the Rights of the Child was concerned, the delegations of the Nordic countries felt that the experience of other bodies whose work had been financed partly or entirely by States parties gave pause for thought and they firmly believed, therefore, that the work of the Committee should be financed from the regular budget of the United Nations.

43. Concerning the reservations that some countries intended to make under certain articles, the delegations of the Nordic countries wished to emphasize that it was of the utmost importance for implementation of the convention that every State that wished to ratify the instrument should undertake a careful review of its legislation and practices regarding children's rights.

44. The delegations of the Nordic countries wished to express their appreciation to a number of non-governmental organizations for the valuable co-operation they had extended to the Working Group during the elaboration of the draft convention. Lastly, they wished to point out that the adoption of the convention by the General Assembly at its forty-fourth session would not mean that the Commission had completed its work. On the contrary, in the years to come the Commission would have to examine very closely the information provided on the protection of children's rights and co-operate fully with Governments, United Nations bodies and non-governmental organizations in the implementation of all the provisions of the convention.

45. Mr. RIETJENS (Belgium) recalled that his country had often expressed its scepticism about the elaboration of instruments aimed at establishing specific human rights for certain categories of persons. However, Belgium had encouraged the Commission to elaborate an instrument concerning the rights of the child. In its view, the convention must draw its inspiration from the Declaration of the Rights of the Child but also lay down concrete rules of law to supplement existing international law. It was in that spirit that Belgium had taken part in the work of the Group, which, under the competent and firm guidance of Professor Lopatka, had completed the draft convention now before the Commission.

46. That draft was an honourable compromise and contained a good number of highly valuable articles but it was not entirely satisfactory, especially in so far as some of its provisions, such as articles 14 and 38, represented a step backwards compared with other binding international instruments. His delegation failed to see how the convention, whose primary aim should be to afford special protection for the child, could meet that objective if it fell short of existing, universally recognized international standards. That situation would have to be remedied.

47. On the other hand, his delegation welcomed the fact that certain basic principles of the 1949 Declaration, such as the recognition of the need for special protection for the child both before and after birth, had eventually been included in the draft convention. Such a reaffirmation was necessary if all the other provisions were not to remain a dead letter.

48. At the same time, his delegation noted with satisfaction that article 11 of the draft convention required States parties to promote the conclusion of bilateral or multilateral agreements or accession to existing agreements "to combat the illicit transfer and non-return of children abroad". In that regard, Belgium welcomed the fact that in June 1988 two countries particularly concerned by the problem of children shared between parents separated by a border had concluded a bilateral convention aimed at enabling the free movement of children between those two countries and at putting an end to abductions of children between disunited couples. His delegation was convinced that those States would take the necessary follow-up measures for implementation of the convention and it remained open-minded towards any positive experience in that context.

49. Mrs. KRAMARCZYK (German Democratic Republic) said she wished first of all to pay a tribute to Professor Lopatka for the way in which over a period of 10 years he had guided the efforts of the Working Group in its task of drafting a convention on the rights of the child. Her delegation, like many others, felt that the new convention not only entailed obligations for States parties to protect children against violations of their human rights but also made it incumbent upon the parties to create conditions which would facilitate active and creative participation by children and young adults in the social and political life of their countries.

50. The wording of some articles of the draft nevertheless presented certain problems, in her delegation's view, because of the fact that some of the provisions incorporated from other legal instruments, such as the International Covenants on Human Rights, had not been properly adapted to the specific legal situation of children, and her delegation therefore could not fully subscribe to that wording. It was to be regretted, in particular, that

article 13 of the draft convention did not expressly refer, among the restrictions applicable to children's right to information, to ideas which constituted racist or fascist propaganda, the glorification of violence and terror and incitement to hatred among peoples. She reserved her delegation's right to submit the official views of the Government of the German Democratic Republic on certain articles at a later stage. Apart from those few difficulties, her country welcomed the fact that the draft convention on the rights of the child would be submitted to the General Assembly in the year of the thirtieth anniversary of the adoption of the Declaration of the Rights of the Child. Lastly, she wished to thank Poland once again for the initiative it had taken 10 years earlier.

51. Mrs. ZHANG (China) said that the adoption of the draft convention on the rights of the child after years of untiring effort, especially by the Working Group and its Chairman, would fill the existing gap in international law concerning the protection of children and would undoubtedly have a positive effect on the development of standards relating to human rights in general. The completion of the draft was also the most concrete way of celebrating the thirtieth anniversary of the Declaration of the Rights of the Child and the tenth anniversary of the International Year of the Child.

52. Her Government had always attached great importance to the well-being of children, who represented the future of mankind and the hope of society. It was implementing various programmes to provide for the moral, intellectual and physical development of children and had taken a number of measures for pregnant women in order to guarantee the healthy development of the foetus.

53. In spite of the difficulties it had encountered during its work because of the diverging legal, religious and social views between countries, the Working Group had been able to draw up a compromise text which should in principle be acceptable to all sides. It was precisely for that reason that the draft, as it now stood, was not perfect and her delegation had reservations to make on some of its provisions. It felt, for example, that the word "child" should be taken to mean children from birth to the age of 18 and that the convention should not include the foetus within its sphere of application. It was the responsibility of each different country to adopt appropriate measures regarding the foetus in accordance with its own legal system. Her Government would study further the provisions of the draft convention. However, it could already agree to the suggestion that the draft should be submitted for consideration by the Economic and Social Council and by the General Assembly.

54. Miss WALKER (United Kingdom) said that concluding work on the draft convention on the rights of the child was no mean achievement given that the document covered many complicated and sensitive subjects on which there was a considerable divergence of views, a fact that had rendered the Working Group's task extremely difficult. It was to be hoped that the consensus which had ultimately been reached on the text of the draft would be maintained so that the Commission could adopt it. Her delegation urged the Commission to submit the draft to the General Assembly as it stood, since the financing of the Committee on the Rights of the Child (see art. 43) was a matter for the General Assembly to decide. Her delegation expressed the hope that, once the convention was open for signature, as many Governments as possible would join her Government in signing and ratifying that instrument.

55. Her delegation wished to draw the Commission's attention in particular to the problem of child abduction and the distress it caused to the children and families concerned. In an effort to resolve that problem, her Government had passed two Acts in 1984 and 1985 on the question, which had enabled it to ratify, in 1986, The Hague Convention on the Civil Aspects of International Child Abduction and the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children. Her delegation hoped that those two conventions would contribute towards solving what was a major international problem and that other Governments would recognize their benefits and adhere to them. In that regard, bilateral agreements were helpful only when both parties had the will and ability to implement them, and ad hoc agreements were all too easily broken. For those reasons, her Government was in favour of concluding multilateral conventions which had the force of international law. In any event, the welfare of the child was of paramount importance and it was on that principle that her Government's position, as already explained to the Commission by Sir Geoffrey Howe, Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom, was founded. Her delegation wished to thank once again Mr. Adam Lopatka, the Working Group and the Secretariat.

56. Mrs. AVELINE (France) said that her country, which had taken an active part from the very beginning in the meetings of the Working Group of the Commission, presided over by Mr. Lopatka, entrusted with the elaboration of a convention on the rights of the child, warmly welcomed the completion of the second reading of the text after 10 years of work, even though it would have liked to see the text go further on some points. The draft represented a coherent instrument of protection both because it reaffirmed the fundamental rights guaranteed in the two Covenants, rightly including a reference to the civil rights of children, and because of the specific provisions it contained, which her delegation regarded as essential. France hoped that the draft would be adopted by the General Assembly at its next session and it would co-operate actively in the work of the Committee on the Rights of the Child appointed to monitor implementation of the convention.

57. France was particularly concerned by the distressing question of children from separated mixed couples who were abducted by one of the parents. It had addressed that complex problem by trying, on the one hand, to protect the legitimate interests and feelings of children and their mothers and, on the other hand, to address the problem in a spirit of co-operation and confidence. It had therefore concluded with Algeria, which also had the same concerns, the Convention of 21 June 1988 permit the settlement of future disputes. To deal with existing disputes, a joint commission (a most interesting feature of the Convention) had been set up. That commission had already met on seven occasions since August 1988 and had given opinions making it possible to settle a large number of outstanding cases. By the end of February 1989, 31 children in all had been reunited with their mothers. Attention should also be drawn to the "deterrent" effect of that convention since, following its signature, only two new cases had been reported to the French authorities. The cases pending had not all been settled, of course, and many difficulties remained, especially procedural ones. It was to be hoped that the new contacts made with mothers who had come in a delegation to Geneva on 27 February to explain their situation would permit a better understanding of what needed to be done to facilitate implementation of the Convention of 21 June. The work carried out by Algeria and France in that area might also help other countries in resolving similar disputes.

58. Mr. HOLMES (Canada) said that, in his delegation's view, the approval by the General Assembly and the eventual entry into force of the convention on the rights of the child would represent important steps in the development of international standards for the promotion and protection of basic human rights. While the new convention would not immediately relieve all the suffering inflicted on children throughout the world, it at least had the merit of offering a sufficiently flexible basis on which it would be possible to develop more satisfactory means of addressing and resolving the problems relating to children's rights. The Committee on the Rights of the Child to be set up under the convention would be required to play a unique and important role since because of the hybrid nature of the convention, which combined civil and political rights with those of an economic, social and cultural nature, it could draw extensively upon the deliberations and views of other implementing bodies and thus would be able to devote more of its efforts to the establishment of co-operative relations with States, intergovernmental bodies and non-governmental organizations. To achieve that objective, it was essential that the Committee should be composed of experts in some of the most important areas covered by the convention, such as the treatment of juvenile delinquents or child labour laws, and that those experts should be independent, thus avoiding any politicization of their work, something that would be absolutely inadmissible. All the suggestions made regarding how the Committee should function would be for naught until the vital question of financing for the Committee had been resolved. The view of his delegation was that the United Nations itself should be responsible for the financing of the Committee given the obvious importance that must be attached to the effective functioning of bodies established to enhance the protection of human rights. That form of financing should, moreover, be extended to all implementing bodies.

59. His delegation wished to pay a tribute to all those without whom there would have been no convention on the rights of the child: first of all, the Government of Poland, which had initiated the endeavour; then Mr. Lopatka, Chairman-Rapporteur of the Working Group, for his devotion, which had been recognized in December 1988 when he had received the United Nations prize for human rights; and, lastly, all the States and United Nations bodies, in particular UNICEF, and all the non-governmental organizations which had participated in and actively contributed to the drafting of the convention.

60. In conclusion, his delegation urged all States, all regional organizations and all intergovernmental and non-governmental bodies to support the convention on the rights of the child and to assist the United Nations system in continuing its task of protecting and promoting the rights of the child throughout the world.

61. Mr. BENHIMA (Morocco) said that children were the heart and arteries of all societies, and every society attached special importance to them as it placed in children all its hopes for a better future. Morocco was especially conscious of that fact since children below the age of 15 years represented 42.1 per cent of his country's population. The Government of Morocco therefore considered that its overriding duty was to provide for the education, nutrition, social welfare and training of young people, a goal which called for the adoption of a well-defined policy to meet the needs of mothers and children. For that reason, priority was given to children in all social programmes implemented by the Government and all legislative texts, such as the Labour Code and the Penal Code, contained provisions aimed at

protecting children - in accordance with the principles set out in the international human rights instruments and in the conventions of the International Labour Organisation - against all practices which might threaten their physical and mental development. Social welfare included the availability of free primary education and vocational training, as well as the provision of special services to disabled, abandoned or orphaned children through social centres.

62. Morocco therefore welcomed the fact that after so many years of effort the Working Group had been able to complete the second reading of the draft convention on the rights of the child under the able chairmanship of Professor Lopatka and thanks to the assistance provided by the Centre for Human Rights, which had done everything possible to facilitate that task, and by other bodies and agencies, in particular UNICEF, as well as by various non-governmental organizations.

63. It was difficult to elaborate fundamental texts on the rights of the child since those rights varied between legal systems and religious and family traditions. In Muslim society, the place of the child was defined according to precise criteria. For that reason, Morocco had closely followed the elaboration of the draft convention and had in particular feared the negative effects of provisions which might not take into account the sacred nature of the family and of tradition in Muslim society.

64. Fortunately, the text presented by the Working Group was a balanced one. It should be recalled that it had been adopted in the Working Group by consensus, thus signifying that concessions had been made on all sides. The text attached due importance to children's economic, social and cultural rights and to health care, education, culture and other essential safeguards.

65. Looking to the future, good international co-operation would be necessary to ensure that the convention afforded children the desired protection. The proposed text rightly provided for a procedure of monitoring by a committee of experts. It also provided that States parties should undertake to submit periodic reports on implementation of the convention. The draft also referred to the assistance which the committee of experts would receive from UNICEF in its work.

66. The financial questions, however, still had to be resolved. His delegation believed that the expenses of the committee of experts should be met from the regular budget of the United Nations. Lastly, he hoped that the draft convention, once transmitted by the Economic and Social Council to the General Assembly, would be adopted as soon as possible.

67. Mr. TAYLHARDAT (Venezuela) said it was symbolic that the discussion on the draft convention on the rights of the child coincided with International Women's Day. In many parts of the world, the situation of children was critical in many respects. The adoption of a convention aimed at protecting their rights was therefore of particular importance, and in that regard his delegation wished to express its gratitude to the Working Group and to its Chairman-Rapporteur, Mr. Lopatka. He also wished to pay a tribute to Mr. Lopatka's country of origin, Poland, and to UNICEF for the role played by that organization in the protection of children's rights.

68. The Working Group entrusted with the task of elaborating the draft convention had pursued its work for 10 years, greatly accelerating the pace of its activities towards the end of that period. It had thus been able to complete the task allotted to it by the General Assembly, and the draft should now be adopted at the next session of the Assembly. It was important to underline the difficulties with which the Working Group had had to contend. Even now, some gaps remained in its text and it would be desirable for States to make further efforts to fill those gaps before its adoption by the General Assembly.

69. The draft resolution on the question (E/CN.4/1989/L.88) called upon the Commission on Human Rights to "adopt" the draft convention on the rights of the child. He was not certain whether that was the role of the Commission: the General Assembly had simply requested the Commission to complete the convention and transmit the text to it. The adoption of the text was a matter for the Assembly, which had included an item in its agenda for that purpose. Nevertheless, his delegation would not oppose the adoption of draft resolution E/CN.4/1989/L.88 by consensus.

70. Mr. BELSEY (World Health Organization) said that his organization was proud to join with the other specialized agencies, the non-governmental organizations and the many representatives who had expressed their support for the draft convention on the rights of the child (E/CN.4/1989/29). In a sense that text complemented the definition in the Constitution of WHO that health was a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The convention would contribute to strengthening the inherent rights of children to enjoy the benefits of national health programmes.

71. Article 24 of the draft underlined the importance of primary health care, information, technologies and programmes for mothers and children. It summarized the conclusions from the vast body of scientific evidence linking the health of children to their access to health services, to the knowledge and actions of parents, to the health of the mother and to the need for family planning. Other articles also gave expression to the direct health needs of children - especially article 23, which set out the rights of disabled children - and WHO particularly noted paragraph 4 of that article, which especially concerned WHO. His organization was also attributed a special role in article 24, paragraph 4, in facilitating the exchange of information and in strengthening national health capacities.

72. Children in vulnerable and difficult situations had special health needs. In the case of street children, for example, the creative energies of normal development were diverted to harmful behaviour (drug abuse, prostitution or other criminal activity). Impaired growth also resulted when children worked at too young an age. In those areas WHO had programme activities and technical materials that member States and non-governmental organizations could draw upon in giving effect to the convention on the rights of the child. From that point of view, it felt that articles 9 and 18 of the draft convention, which related to circumstances affecting the growth and development of children, article 32 on child labour, article 33 on substance abuse and article 34 on sexual exploitation were of particular importance. WHO also expressed its support for those articles of the text dealing with education and information, especially articles 28 and 29.



73. The prospects of a healthy transition to adulthood were better in societies that made a commitment to social justice and provided for an appropriate distribution of resources for health and social development. In that regard, bearing in mind, the effects of urbanization, economic crises and natural or man-made disasters, WHO saw the adoption of the draft convention as being an essential component of the strategies of health for all by the year 2000. It was ready to co-operate with member States, United Nations bodies and non-governmental organizations in implementing the convention once it had been adopted by the General Assembly.

74. Mr. JAEGER (Federal Republic of Germany) said that, following the establishment of the Working Group in 1979, the elaboration of the convention on the rights of the child had begun slowly without attracting much public attention. In the past few years, however, the situation had changed, at least in the Federal Republic of Germany. He wished to express his thanks to the Working Group, and in particular to its Chairman-Rapporteur, Mr. Lopatka.

75. It was self-evident that children should enjoy the rights which applied to all human beings. In formulating those rights, however, an exception had to be made in the case of children, particularly as the process of growing up today was a more complex one than ever before. In many parts of the world, that process was taking place in a dramatic situation; he was thinking in particular of the children mobilized by Iran, those condemned to die of hunger or those who did not even live to the day of their birth for having become the victims of adult interference.

76. On the latter question, he noted that the draft convention, as it now stood, no longer gave the impression of abandoning the principle enshrined in the 1959 Declaration of the Rights of the Child, under which the child must be protected even prior to its birth. Bearing in mind the provision of article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, which stated that a treaty should be interpreted in good faith and in the light of its object and purpose, the ninth preambular paragraph of the draft appeared as a great success. It was the first time that the right to life of the unborn child had been recognized in an international convention. That provision, it should be noted, was in conformity with article 1 of the Basic Law of the Federal Republic of Germany and with the long-standing tradition of that country dating back to the Prussian laws of 1794 (Preussisches Allgemeines Landrecht), which stipulated that: "the general rights of humanity also apply to children unborn, even prior to the moment of their conception".

77. Article 2, paragraph 1 of the draft convention prohibited any discrimination against a child born out of wedlock. That was also in harmony with the objective of his Government, which desired within the limits of the possible to grant equal opportunities to all children, whether born in or out of wedlock.

78. At the same time, his delegation felt that the wording of article 5, dealing with the responsibilities, rights and duties of parents, was too vague. Account should have been taken of possible conflicts between the rights of children and those of parents. Conflicts of that kind could arise, for example, over giving children access to presentations of the electronic media, a matter which would be covered by article 13.

79. His country generally welcomed the provision regarding family reunification contained in article 10. It was particularly satisfied that paragraph 2 of that article affirmed the right of the child and that of its parents to leave any country, including their own, and to return to their own country. The Federal Republic of Germany, in its human rights policy, had always given emphasis to family reunification and freedom of movement. However, the application of article 10 should not undermine legislation concerning aliens. The Federal Republic of Germany was not an immigration country and reserved the right to take its own decisions concerning the reunification of families of aliens living in its territory. In conclusion, he hoped that the convention on the rights of the child would be adopted and enter into force in the near future and he gave an assurance that his country would do its utmost to ensure its implementation.

80. Mr. PERERA (Sri Lanka) said he also wished to stress the symbolic nature of the fact that the discussion on the draft convention on the rights of the child coincided with the celebration of International Women's Day. The rights of children were already covered in international instruments such as the Universal Declaration and the two Covenants, as well as in resolutions of the General Assembly. The advantage of the draft convention presented by the Working Group was that a whole body of rights were now consolidated in a single document. Some aspects might require further clarification, however, in so far as disabled children, health, nutrition, etc. were concerned.

81. The proposed draft (E/CN.4/1989/29) took due account of several basic concepts. First of all, there was the notion of the best interest of the child. That was a well-known concept which had long been recognized by Sri Lanka; in particular, its courts were guided by the best interests of the child in cases involving the granting of custody, even if that meant departing from certain traditional notions which emphasized the rights of the father. At the same time, the draft also took due account of the various traditions of countries and peoples, as well as of the ethical, religious, cultural and linguistic context. From that point of view, the text was well balanced. It also took into consideration the interests of developing countries and the need for international co-operation. Some ideas, however, had been over-emphasized: in his delegation's view, there was no need to enter into questions of litigation or to adopt provisions which duplicated other texts.

82. A seminar on the rights of the child had recently been held in Sri Lanka with the co-operation of UNICEF and with the participation of jurists, doctors and child health workers. Sri Lanka had long-established laws for the protection of children, particularly in the area of education, where certain measures dated back to the 1940s. Since that time, child protection had been further enhanced in the country and in the field of education, for example, Sri Lanka went beyond the provisions of the draft convention since secondary as well as primary education was free and compulsory and higher education, although not compulsory, was also free. In conclusion, he was convinced that the adoption of the draft convention would enhance the legal status of the child throughout the world.

The meeting rose at 1.05 p.m.