

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
LIMITED

E/CN.4/L.1468
12 March 1979

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Thirty-fifth session
Agenda item 13

QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Report of the Working Group

Chairman-Rapporteur: Mr. Adam Lopatka (Poland)

1. The open-ended working group held meetings on 14, 20, 21, 22 and 26 February and 2 March 1979. At its first meeting, Mr. Adam Lopatka (Poland) was elected Chairman-Rapporteur by acclamation.
2. The working group had before it the Secretary-General's report on the Question of a Convention on the Rights of the Child (E/CN.4/1524 and Corr. 1 and Add. 1-4). It also had before it the report of the thirty-fourth session of the Commission on Human Rights (E/CN.4/1292), which contained the text of the draft Convention on the Rights of the Child, as included in resolution 20 (XXXIV) of the Commission, and working papers containing amendments to the preamble and articles of the draft convention presented by Canada, France, Federal Republic of Germany, Norway, Poland, Sweden, the United Kingdom, and the United States of America.
3. The representative of Sweden stressed that as the Swedish authorities had not prepared any specific drafting proposals before the current session, any comments or proposals put forward by Sweden in the working group must be regarded as preliminary as far as the exact wording was concerned.
4. During the general discussion it was suggested by some representatives that consideration of the proposal to draft a convention on the rights of the child should take account of the results of the activities which were taking place during 1979 in connexion with the International Year of the Child, and at that time people dealing with children's welfare and their rights and legal experts could apply their experience to make the draft convention more useful and up-to-date. However, other representatives expressed support for the idea of proceeding with the discussion and formulation of the convention immediately.

5. A number of delegations emphasized that it would not be appropriate merely to incorporate the provisions of the Declaration of the Rights of the Child ^{1/} which was drafted twenty years ago, in the convention, but that the convention must be drafted precisely and with due regard for the current problems confronting children. Those delegations emphasized that it was more important to prepare a comprehensive convention than to conclude a convention quickly. Some delegations expressed deep conviction that the draft presented by the delegation of Poland was a good and solid basis for elaboration of the convention at the current session of the Commission and appealed to all delegations to be constructive and co-operative.
6. Several representatives stated that in the drafting of the convention, consideration should be given to such matters as: the right to life of the unborn child; the question of abortion; the question of children born out of wedlock; the family and the child; the question of children in territories under foreign occupation and of children living under an apartheid régime; racial discrimination; ill-treatment of children, the age of criminal responsibility of children; child labour; the protection of foster children; the right of the child to receive a religious education; family reunification; the rights of students to peaceful assembly, to travel and to access to information; the right of the child to be consulted in proceedings affecting his or her welfare. The convention should refer to the need to respect the rights of children of missing persons, refugees, hostages and migrant workers. Attention should also be given to the status of children in developing countries suffering from malnutrition, hunger or poverty.
7. At the third meeting of the working group, a non-governmental organization brought to the attention of the group a document (E/CN.4/NGO/250) dealing with, inter alia, some recent developments in science and technology affecting the rights of the child.
8. Some views were expressed as to the procedure to be followed when the text of the draft convention was discussed. It was felt that the comments submitted by Governments and international and other organizations were a most valuable contribution. The representative of the Federal Republic of Germany stated that a distinction should be drawn between the regulations on the rights of the individual and those which might be the subject of an undertaking on the part of States, as indicated in his Government's comments contained in the report of the Secretary-General. Other representatives pointed out that the Declaration of the Rights of the Child constituted a natural starting point in the working group's endeavours to draft a convention, and should be used as a guide for the group's discussions.
9. A number of representatives expressed a preference for the title as contained in the draft convention while others felt that the convention should deal with children as a group and that this aspect ought to be emphasized by using the term "children" throughout the convention, so there would be no discrimination between sexes. The working group decided to adopt the present title of the draft convention on the understanding that it might later decide to change it.

^{1/} See General Assembly resolution 1386 (XIV).

First preambular paragraph

10. At the fourth meeting, the working group considered the first preambular paragraph of the draft convention. One representative said that the first preambular paragraph should incorporate some of the provisions of the United Nations Charter.

11. The representative of the United States of America proposed that the phrase "in the equal rights of men and women", taken from the second preambular paragraph of the Charter, should be inserted in this paragraph between the words "person" and "and have determined". Other representatives considered the proposal unnecessary, the reference to the dignity and worth of the human person in the original text being sufficient; they preferred the text as it stood.

12. The representative of Australia proposed that the words "to promote economic and social progress and development as well as universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion", which reflected a similar provision of article 55 of the Charter, should be added after the words "have determined" in the first preambular paragraph.

13. Several delegations, expressing their support for the paragraph as it stood, considered the wording to be sufficiently precise and that any additions to it might overburden the text. The amendment put forward by Australia was withdrawn in the light of these comments.

14. The discussion concerning the first preambular paragraph continued at the fifth meeting of the working group. Some representatives were of the opinion that the text of the first preambular paragraph should be retained as it appeared in the draft convention. The first preambular paragraph of the draft convention was finally adopted without change, as follows:

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

15. The representative of Canada proposed at the sixth meeting that the first preambular paragraph of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights should also be the first preambular paragraph of the convention on the rights of the child. This paragraph read as follows:

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

16. The working group accepted the proposal submitted by Canada.

Second preambular paragraph

17. The working group proceeded to consider the second preambular paragraph of the draft convention. During the discussion of this paragraph, the reference in the preamble to international instruments was questioned by some representatives and it was suggested that references should be limited to the United Nations Charter. One representative stated that it would be appropriate to make special mention of certain articles of the Universal Declaration of Human Rights, where specific reference was made to children, namely articles 25 and 26.

18. It was understood that the phrase "religion, political or other opinion, national or social origin, property, ...", in the second preambular paragraph, was also intended to prevent discrimination against children on account of the political opinions, religious beliefs or property of their parents or relatives.

19. A number of representatives were in favour of adopting the second preambular paragraph as it stood, considering that it was appropriate to refer to previous international instruments which were all relevant. It was therefore agreed to adopt the paragraph under discussion in its original form.

20. The second preambular paragraph, as adopted by the working group, read as follows:

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

Other provisions of the draft convention

21. At the sixth meeting, the representatives of France and the Federal Republic of Germany reminded the working group of the recommendations of their Governments contained in the report of the Secretary-General concerning the desirability of convening a group of experts to draw up the convention.

22. The representative of Poland proposed a text for insertion after the second preambular paragraph of the draft convention which would stress the importance of the family as the basic unit of society and the natural environment for the growth and well-being of children. Taking into account comments made by various delegations, he submitted a new text which was adopted by the working group at its seventh meeting. The text, as adopted, read as follows:

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

One representative stated that he did not oppose the substance of the provision but questioned whether the convention would in fact address the issue of family protection and said that the preambular phrase might have to be re-examined in the light of the operative portion of the convention.

23. In addition, the working group had before it the following amendments which were not discussed by the working group owing to lack of time:

(a) A proposal of the representative of the United States of America for a new preambular paragraph 3 which read as follows:

"Recognizing that these rights derive from the inherent dignity of the human person,".

(b) A new preambular paragraph submitted by the representative of the United Kingdom, for insertion after the second preambular paragraph of the draft convention, which read as follows:

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

(c) A revised draft proposal submitted by the representative of Sweden, for insertion in the preamble of new paragraphs before the last preambular paragraph of the draft convention, which read as follows:

"Aware that children have inherent rights and needs of their own,

"Also aware of the changing role and structure of the family in many parts of the world,

"Recognizing that the conditions for children have changed considerably in many countries since the time of the adoption of the United Nations Declaration on the Rights of the Child, entailing some improvements but also creating new problems for children, partly due to the environmental situation and to increased migration,

"Acknowledging that these developments necessitate the elaboration of new special safeguards and of concrete obligations for States,".

(d) Amendments to articles II and IX of the draft convention proposed by the representatives of Norway and Sweden which read as follows:

Article II

Add the following:

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

Article IX

Add the following:

"A child may never, under any circumstances be subject to torture or cruel, inhuman or degrading treatment, or threats thereof, for the purpose of obtaining from the child, the parents or any other person, information, confessions or acts, or for any other purpose."

"The child shall, under no circumstances be subject to imprisonment, humiliation or discrimination because of any act committed or any opinion expressed by the child's parents, relatives or any other person."

(e) An amendment proposed by the representatives of France and the Federal Republic of Germany to the text of the draft convention, which read:

The following provisions of the draft convention should not be included in the convention itself but set out in the preamble or in an annexed recommendation of a pedagogical nature:

Article II,

Article VI (first sentence),

Article VII (paragraph 2, from "The best interests" to "guidance"),

Article VIII,

Article X (second sentence).
