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# 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 22, 25, 26, 27, 28 and 29 February and 7 March 1980. At its first meeting, Mr. Adam Lopatka (Poland) was elected Chairman-Rapporteur by acclamation. The Working Group adopted this report at its last meeting, held on 7 March 1980. By consensus decision of the Working Group, that meeting was chaired by Mr. Andrzej Olszówka (Poland).

2. The Working Group had before it the text of a draft Convention on the Rights of the Child annexed to Commission resolution 20 (XXXIV) of 8 March 1978 and the report of the Secretary-General on the views, observations and suggestions on the question submitted by Member States, competent specialized agencies, regional intergovernmental organizations and non-governmental organizations (E/CN.4/1324 and Corr.1 and Add.1-5). In addition, the Working Group had before it the text of a revised draft Convention submitted by Poland on 5 October 1979 (E/CN.4/1349). The Working Group also had before it a number of Sub-Commission documents relating to the exploitation of child labour which the Sub-Commission, by operative paragraph 4 of resolution 7 B (XXXII), had recommended be taken into account in drafting the appropriate articles of the Convention (E/CN.4/Sub.2/433; E/CN.4/Sub.2/434; E/CN.4/Sub.2/SR.835 and 836). Two non-governmental organizations in consultative status also submitted written statements for consideration by the Commission (E/CN.4/NGO/265 and 276).

3. At its first meeting, following the proposal of the Chairman, the Working Group took up the revised draft Convention contained in document E/CN.4/1349, which incorporated the four preambular paragraphs adopted by the Working Group the previous year, as its basic working document.

4. In the course of the general discussion at that meeting, some representatives suggested that the term "child" should be clearly defined, and perhaps replaced by a more precise term with greater juridical significance, such as "minor", before proceeding with the adoption of further paragraphs. It was also pointed out that, at the previous session, the Working Group had adopted the title of the Convention on the understanding that it might later decide to change it. However, other representatives expressed support for the idea of proceeding with the discussion and formulation of the rest of the preamble immediately. It was therefore decided to potspone the discussion of the definition until the Working Group considered article 1 of the draft Convention.

Fifth preambular paragraph

5. At its second meeting, the Working Group began its consideration of the rest of the preamble.

6. The representative of the Holy See, in accordance with other delegations, suggested that the text of the fifth preambular paragraph should be amended by inserting the words, taken from the Declaration of the Rights of the Child, "before as well as after birth" after the words "particular care and assistance". A number of delegations argued in support of the amendment on the grounds that their national legislation contained provisions protecting the rights of the unborn child from the time of conception. They stated that the purpose of the amendment was not to preclude the possibility of abortion, since many countries had adopted legislation providing for abortion in certain cases, such as a threat to the health of the mother. Some delegations referred to the fact that the Declaration of the Rights of the Child of 1959 contained the sentence proposed.

7. Other delegations, however, opposed the amendment. In their view, this preambular paragraph should be indisputably neutral on issues such as abortion. They stated that the definition of "child" should be contained in article 1 and that nothing in the Preamble should prejudge or slant the definition formulated in article 1.

8. Some representatives appealed to the proponents of the amendment not to insist on it at that stage, and to accept the text contained in the draft on the understanding that the Working Group could revert to it at a later stage. The representative of Ireland suggested that the amendment could be inserted in the text in square brackets and the Working Group could make a final decision after having discussed article 1. The representative of the Holy See expressed agreement with the proposed solution, which was supported by a number of other delegations. The fifth preambular paragraph was therefore adopted with the proposed amendment in square brackets, on the understanding that the final language would be agreed upon after the adoption of article 1.

9. Subsequently, at the third meeting, the representative of Greece suggested that the words "physical and mental" before the word "development" at the beginning of the paragraph should be deleted since they were already contained later on in the paragraph. It was decided that the Working Group should consider this proposal when it came back to this paragraph to decide on its final formulation.

10. Debate on the amendment proposed by the Holy See was resumed at the fourth meeting, after adoption of article 1. Several delegations argued that the text inserted in square brackets should be deleted in order to ensure the neutrality of the preamble. One representative expressed the view that, since article 1 had been adopted with a neutral wording, the Convention should not appear to give a different interpretation in the preamble. It was also stated that since national legislation differed greatly on the question of abortion, the Convention could be widely ratified only if it did not take sides on the issue.

11. Other delegations, speaking in support of the amendment, stated that, in their view, the wording was sufficiently neutral since it did not specify the length of the period before birth which was covered. They again argued that all national legislations included provisions for the protection of the child before birth. One delegation considered that the proposal could be extended to cover legal protection in view of the fact that most legislations protected, for example, the inheritance rights of children who had not even yet been born.

12. A number of representatives expressed the view that, if agreement could not be reached at the current session, discussion should proceed on the rest of the Convention in the hope that the group might achieve a consensus after further consultations. One delegate pointed out that a compromise might be possible on the basis of the fact that all delegations agreed that some kind of protection and assistance before birth was necessary: in his view, the disagreement lay in the precise definition of what kind of protection and assistance should be specified in the Convention.

13. The observer of the International Union for Child Welfare, supported by some delegations, suggested that, since the seventh preambular paragraph of document E/CN.4/1349 made reference to the Declaration on the Rights of the Child of 1959, the Holy See amendment could be deleted on the understanding that the Declaration (including its third preambular paragraph containing a wording similar to the proposed amendment) remained in force under the proposed Convention. Other delegations, however, opposed returning to the original text.

14. At the same meeting, the Working Group decided on a further postponement of the issue until an acceptable compromise could be found.

15. At the fifth meeting of the Working Group, the Chairman announced that a compromise text had been elaborated following consultation. The new text would amend the beginning of the paragraph to read:

"Recognizing that, as stated in the Declaration on the Rights of the Child, the child due to the needs of his physical and mental development ...".

The rest of the original preambular paragraph would remain, without the insertion in square brackets proposed by the Holy See.

16. Further discussion ensued, in the course of which the delegate of Australia proposed that the reference to the Declaration on the Rights of the Child be made more specific by adding the words "adopted in 1959".

17. The delegate of the United States proposed that the words "as stated in" be changed to "as indicated in"; that a semi-colon be inserted after the words "moral and social development" and that the words "as well as legal protection" be changed to read "and also requires legal protection".

18. Some delegations objected to the amendment proposed by the United States, indicating that they needed time to reflect on its legal significance. Others were not satisfied by that delegation's explanation that the amendment was necessary in order to ensure the complete neutrality of the text, and expressed concern that the draft Convention would be slanted in favour of legalizing abortion. They re-emphasized their contention that the draft Convention should ensure protection for children both before and after birth. In reply, the delegate of the United States argued that any attempt to institutionalize a particular point of view on abortion in the draft Convention would make the Convention unacceptable from the outset to countries espousing a different point of view. Accordingly, he insisted that the draft Convention must be worded in such a manner that neither proponents nor opponents of abortion can find legal support for their respective positions in the draft Convention.

19. After further discussion, a compromise text was adopted which read as follows:

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

Sixth preambular paragraph

20. At the second meeting of the Working Group, the representative of the Netherlands proposed that the word "happiness" be inserted immediately before the words "love and understanding" at the end of the paragraph.

21. The Working Group then adopted the sixth preambular paragraph with the proposed amendment.

Seventh preambular paragraph

22. The Working Group adopted the seventh preambular paragraph without changes at its second meeting.

Eighth preambular paragraph

23. At the second meeting of the Working Group, the representative of the Netherlands proposed to insert the word "individual" before the word "freedom" in the last part of the paragraph.

24. Some delegations, however, opposed the amendment on the grounds that it detracted from the notion of freedom contained in the text. One representative stated that the text could be approved as it stood, on the understanding that the Working Group could return to it at a later stage if it was felt that the concept of individual freedom was not sufficiently covered by other articles of the draft Convention.

25. The eighth preambular paragraph was then adopted without changes on the above-mentioned understanding.

New preambular paragraph

26. At the third meeting, the representative of the United Kingdom reproposed a new preambular paragraph which had been submitted by his delegation the year before but had not been considered owing to lack of time. The new paragraph, which he suggested should be inserted between the third and fourth preambular paragraphs of the new draft, read as follows:

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

27. Several delegations expressed support for this proposal. Some delegations pointed out that they did not oppose the insertion of the new paragraph although, in their view, it was somewhat repetitious of preambular paragraph five. The new paragraph was therefore adopted for insertion into the preamble as proposed. Subsequently, one delegation observed that the order of the paragraphs in the preamble could be rearranged at a later stage for the sake of logical consistency.

Article 1

28. At its third meeting, the Working Group considered Article 1 of the draft Convention. There was considerable debate concerning the initial and terminal points which define the concept of child, as contained in the Article.

29. Some delegates opposed the idea that childhood begins at the moment of birth, as stated in the draft article, and indicated that this is contrary to the legislation of many countries. They argued that the concept should be extended to include the entire period from the moment of conception. Other delegates asserted that the attempt to establish a beginning point should be abandoned and that wording should be adopted which was compatible with the wide variety of domestic legislation on this subject.

30. The representative of Morocco proposed that the words "from the moment of his birth" should be deleted from the article in order to solve the difficulty. Several delegations supported the proposed amendment.

31. The first part of the article was therefore adopted with the amendment proposed by Morocco.

32. Concerning the terminal point of the concept of child as defined in the article, some delegates pointed out that the age of 18 appeared to be quite late in light of some national legislations and that a lower age limit should be recommended. It was suggested that, since the General Assembly had set the age limit at 15 in connexion with the International Year of the Child, the same position should be adopted in the draft Convention. It was also pointed out that 14 was the age of the end of compulsory education in many countries, and the legal marriage age for girls in many parts of the world. In this view, setting the age limit at 14 would also establish a clear distinction between the concept of minor and that of child, since the former was protected under many national legislations while the latter was not.

33. Other delegates, however, opposed the lowering of the age limit to 15 because their domestic legislation embodied protective measures for children beyond that age, and they believed that the draft Convention should apply to as large an age group as possible. They argued in favour of retaining the wording of the draft article which, in any event, is qualified by the reference to national legislation.

34. The observer for the International Union for Child Welfare, a non-governmental organization in consultative status, suggested that reference to an upper age limit could be eliminated by amending the text of the article to read:

> "According to the present Convention a child is every human being who has not attained the age of majority in conformity with the law of his state".

35. A number of delegations, however, opposed the idea of making the definition depend on the concept of majority age, since this varied widely between countries and also within national legislations, according to whether the civil, penal, political or other aspects of majority were at issue. Others, while not opposing this formulation, pointed out that the original text took care of the objections raised by making reference to national legislation.

36. At the fourth meeting of the Working Group, the second part of Article 1 was adopted in its original version. One representative recalled that he had expressed reservations concerning the specifying of the age of 18 in Article 1 and said that his delegation might consider it necessary to refer again to this matter, including in the plenary of the Commission. Another delegation reserved its position on the number "18", stating that a person at that age is not a child.

Article 2

37. At the fourth meeting, the Working Group considered Article 2 (1) of the draft Convention. The representative of the United States of America proposed that the wording of the article should be amended to read:

> "1. In accordance with the laws or practices of each Contracting State, the child shall have the right from his birth to acquire a name and a nationality."

He pointed out that the proposed amendment would bring the draft Convention in line with Article 24 of the International Covenant on Civil and Political Rights and would help to prevent difficulties under the immigration and nationality laws of various States. In particular, he maintained that the amendment would avoid any implication that the draft Convention would automatically entitle stateless children entering the territory of a State party to the nationality of that State.

38. Some delegations opposed the amendment on humanitarian grounds, in order to provide protection for stateless children. It was also argued that the wording of article 2 (1) was of a general nature, while the second paragraph would include more specific provisions.

39. On the suggestion of the Chairman, the Working Group adopted the following compromise text:

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

40. At the fifth meeting, the delegation of Australia submitted the following amendment to Article 2 (2):

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

41. The representative of Australia explained that the first part of his amendment was meant to remove the implication in the original draft that the principle in question was not already contained in most national legislations; the second, and most important, part was aimed at bringing the draft Convention as close as possible to the general principles of the Convention on the Reduction of Statelessness of 1961.

42. Discussion on the proposed amendment began at the fifth meeting of the Working Group. Some delegations expressed their opposition on the grounds that the law of their countries did not provide for automatic granting of nationality to children of foreign parents born there.

43. The Working Group, however, was unable to continue consideration of Article 2 (2) because of lack of time.

Other provisions of the draft Convention

44. 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 by the representative of Australia to amend Article 3 as follows:

> "Replace Article 3 (2) by:
>
> "The States parties to the present Convention undertake to ensure the child such protection and care as is necessary for his well-being, taking into account the rights and responsibilities of his parents and the stage of the child's development towards full responsibility and, to this end, shall take all necessary legislative and administrative measures.
>
> "Replace Article 3 (3) by:
>
> "The States parties to the present Convention shall ensure competent supervision of persons and institutions directly responsible for the care of children."

(b) A proposal submitted by the delegation of the United States of America to replace Article 3 by the following:

"Article 3

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

"2. In all judicial or administrative proceedings affecting a child that has reached the age of reason, an opportunity for the views of the child to be heard as an independent party to the proceedings shall be provided, and those views shall be taken into consideration by the competent authorities.

"3. Each State party to this Convention shall support special organs which shall observe and make appropriate recommendations to persons and institutions directly responsible for the care of children.

"4. The States parties to this Convention undertake, through passage of appropriate legislation, to ensure such protection and care for the child as his status requires."

(c) A proposal by the representative of Australia to amend Article 4 as follows:

"Delete Article 4 (2).

"Insert new Article 4 bis:

"The States parties to the present Convention shall take all appropriate measures, individually or jointly within the framework of international co-operation, for the full and effective implementation of the rights recognized in the Convention."

45. Several delegations expressed the view that the Working Group should ask the Commission to request the Economic and Social Council to authorize the Working Group to meet for one week prior to the next session of the Commission in order to facilitate completion of the work on the draft Convention. Several other delegations, however, opposed this view.

Annex

Paragraphs of the draft Convention on the Rights of the Child adopted by the working group

The States Parties to the Convention

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

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

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

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

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

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

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

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

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

Have agreed as follows:

## Article 1

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

## Article 2

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