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REPORT OF THE WORKING GROUP ON A DRAFT CONVENTION  
ON THE RIGHTS OF THE CHILD

Chairman-Rapporteur: Mr. Adam Lopatka (Poland)

Introduction

1. In resolution 36 (XXXVI) of 12 March 1980, the Commission on Human Rights resolved to continue its work on the draft convention on the rights of the child as a matter of priority. By decision 1980/138 of 2 May 1980, the Economic and Social Council authorized an open-ended Working Group to meet for one week prior to the Commission's thirty-seventh session to facilitate the completion of the work on the draft convention. At its thirty-fifth session, the General Assembly, by resolution 35/151 of 11 December 1980, welcomed Council decision 1980/138 and requested the Commission, at its thirty-seventh session, to continue to give high priority to the question of completing the draft convention.
2. At its 1583rd meeting on 3 February 1981, the Commission on Human Rights by decision 1 (XXXVII) decided that a sessional open-ended Working Group should be established for the consideration of item 14 on its agenda concerning the drafting of a convention on the rights of the child.
3. The 1981 pre-sessional Working Group held 10 meetings from 26 January 1981 to 30 January 1981, at which it discussed paragraph 2 of article 2 and articles 3, 4, 5, 6, 7 and 8 of the revised draft convention (E/CN.4/1349). The sessional Working Group had discussions on articles 6, 8 and 9 during meetings held on 2 and 3 February 1981. At its meetings on 25, 26 and 27 February 1981, the Working Group adopted its report as contained in the present document.

Elections

4. At the first meeting of the pre-sessional Working Group, on 26 January 1981, Mr. Adam Lopatka (Poland) was elected by acclamation Chairman-Rapporteur. Mr. Lopatka continued as Chairman-Rapporteur of the Working Group established by the Commission on Human Rights at its thirty-seventh session to continue the work of the pre-sessional Working Group.

Participation

5. The meetings of the pre-sessional and the sessional Working Groups, which were open to all members of the Commission on Human Rights, were attended by representatives of the following States: Argentina, Australia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Cuba, Denmark, France, the Federal Republic of Germany, India, the Netherlands, Pakistan, the Philippines, Poland, Portugal, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Yugoslavia and Zaire.

6. The following States, non-members of the Commission on Human Rights, were represented at the Working Group by observers: Egypt, Holy See, Ireland, Italy, Norway and Turkey.
7. The International Labour Organisation was represented at the Working Group by an observer.
8. The International Catholic Child Bureau, the International Association of Penal Law, the International Union for Child Welfare and the World Association for the School as an Instrument of Peace sent observers to the Working Group.

#### Documents

9. The Working Group had before it a number of relevant documents including the Revised Draft Convention on the Rights of the Child (E/CN.4/1349), 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), the reports of the 1979 and 1980 Working Groups (E/CN.4/L.1468 and E/CN.4/L.1542) and a written statement by the International Labour Office concerning the employment of children (E/CN.4/WG.1/WP.1/1). Non-governmental organizations in consultative status also submitted written statements for consideration by the Commission (E/CN.4/NGO 230, 234, 244, 265, 276, 291 and 295).

10. As in 1980, the basic working document for the discussions in the Working Group was the revised draft convention submitted by Poland (E/CN.4/1349), which incorporated the four preambular paragraphs adopted by the Working Group in 1979. It will be recalled that the five further preambular paragraphs as well as article 1 and paragraph 1 of article 2 of this draft were adopted and annexed to the report of the Working Group of 1980 (E/CN.4/L.1542).

#### Consideration of Articles

11. As a result of its debates, the Working Group adopted paragraph 2 of article 2, and articles 3, 4, 5, 7 and 8.

#### Article 2

##### Paragraph 2

12. Paragraph 2 of article 2 of the revised Polish draft was as follows:

"The States parties to the present Convention undertake to introduce into their legislation 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, the application of the proper national law would not grant him any nationality whatever."

13. At the Working Group's session of 1980, the representative of Australia submitted the following amendment to paragraph 2 of article 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."

This proposal was reintroduced at the 1981 session of the Group.

14. Some speakers felt that there were no substantial differences between the text of the revised Polish draft convention and the proposal submitted by Australia. They also felt that both the Australian and Polish delegations were inspired by humanitarian principles in proposing their formulations for the paragraph, recalling that this paragraph was aimed at providing every child with a nationality so as to prevent cases of statelessness among children.

15. The representative of Poland withdrew paragraph 2 of article 2 of the revised Polish draft in favour of the Australian amendment.

16. It had been noted by some speakers that the Australian proposal was largely aimed at bringing the draft convention as close as possible to the general principles of the Convention on the Reduction of Statelessness of 1961.

17. During the ensuing discussion, some speakers drew the attention of the Working Group to the problems that might arise from the fact that many Member States of the United Nations had based their legislation on nationality on principles other than those laid down in the Convention on the Reduction of Statelessness and the proposed paragraph 2. For, in the view of these speakers, there were countries where the jus sanguinis basis of nationality prevailed, as opposed to the jus soli approach in the Polish and Australian texts, and therefore the Working Group should consider the need for a compromise formula in order to prevent possible reservations by States to this provision of the convention on the rights of the child at the time of ratification.

18. The Working Group adopted by consensus paragraph 2 of article 2, as proposed by Australia, on the understanding that at a later stage, if necessary, the Working Group would resume the consideration of those problems pointed out by some members of the Group.

### Article 3

19. Article 3 of the revised Polish draft was as follows:

"1. In all actions concerning children, whether undertaken by their parents, guardians, social or State institutions, and in particular by courts of law and administrative authorities, the best interest of the child shall be the paramount consideration.

"2. The States parties to the present Convention undertake to ensure the child such protection and care as his status requires, taking due account of the various stages of his development in family environment and in social relations, and, to this end, shall take necessary legislative measures.

"3. The States parties to the present Convention shall create special organs called upon to supervise persons and institutions directly responsible for the care of children."

20. The representative of the United States of America reintroduced a new article 3 which had been submitted by his delegation the year before but had not been considered owing to lack of time. The new article read as follows:

"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."

21. The delegation of Australia also had submitted in 1980 the following text to replace paragraphs 2 and 3 of article 3:

"2. 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.

"3. The States parties to the present Convention shall ensure competent supervision of persons and institutions directly responsible for the care of children."

This proposal was reintroduced at the 1981 session of the Working Group.

Paragraph 1

22. A number of speakers agreed that the Polish version of this paragraph was wider and better protected the child, but in search for compromise it was agreed to take as a basis for discussion the proposal of the United States delegation.

23. A discussion ensued as to whether, on general humanitarian grounds, the best interests of the child should be the pre-eminent consideration in actions undertaken by his parents, guardians, social or State institutions. The imposition of obligations on parents and guardians by an international convention was questioned, but the inclusion of obligations in this provision was felt by some delegations to provide greater protection for the child. Moreover, the word "paramount" used in the revised Polish draft to qualify the consideration to be given to the interests of the child was considered too broad by some delegations which felt that the best interest of the child should be "a primary consideration".

24. In the course of the discussion a speaker stated that the interests of the child should be a primary consideration in actions concerning children but were not the overriding, paramount consideration in every case, since other parties might have equal or even superior legal interests in some cases (e.g., medical emergencies during childbirth). He also pointed out that his delegation did not attempt to regulate private family decisions but only official actions. The view was also expressed by some representatives that paragraph 1 did not need to have a reference to specific obligations of States parties in respect of the best interests of the child; paragraph 1 enunciated general principles while the specific obligations of States parties would be listed in the following provisions which would also take into consideration actions concerning children and undertaken by their parents or guardians.
25. After further discussion, agreement was reached to delete the word "official" from the first line of the proposal made by the representative of the United States of America.
26. The Working Group adopted by consensus paragraph 1 as proposed by the delegation of the United States of America, with the deletion of the word "official".

#### Paragraph 2

27. One representative suggested that the Working Group consider paragraph 2 as proposed by the delegation of the United States of America, since it made reference to judicial and administrative proceedings. The representative of the United States explained that paragraph 2, as submitted by his delegation, contained concepts that were missing in the draft convention.
28. Some speakers indicated that the opportunity for the views of the child to be heard, mentioned in the amendment proposed by the delegation of the United States, was also mentioned in article 7 of the revised Polish draft, but others pointed out that the amendment by the United States delegation to paragraph 2 of article 3 made specific reference to all judicial or administrative proceedings affecting a child in this respect and followed logically from paragraph 1 of article 3 as a means by which judicial or administrative authorities could ascertain a child's best interests in a given case.
29. One delegate stated that although the idea contained in the paragraph under consideration was correct, the characterization of "the age of reason" was very difficult. He also believed that views of children could be expressed in court through their legal guardians. The observer of the International Association of Penal Law suggested that language should be borrowed from article 7 to replace the phrase "has reached the age of reason". The Working Group agreed to replace the words "the age of reason" by the following words of article 7: "is capable of forming his own views".
30. The representative of Brazil said that it would be preferable to insert the words "shall be provided" after the words "an opportunity". A further suggestion, made by the representative of the Netherlands, was that in the third line of the paragraph, the phrase "either directly or indirectly through a representative" should be inserted after the word "heard". In addition, proposals were made to delete the word "independent" from the third line of the paragraph and to add the following phrase at the end of that paragraph: "in a manner consistent with the procedures followed in the State Party for the application of its legislation".

31. One representative stated that, because no provision had yet been made for determining the best interests of a child not capable of forming his own views, the Working Group might need to revert to that point at a later stage.

32. The paragraph as revised and adopted by the Working Group read as follows:

"In all judicial or administrative proceedings affecting a child that is capable of forming his own views, an opportunity shall be provided for the views of the child to be heard, either directly or indirectly through a representative, as a party to the proceedings, and those views shall be taken into consideration by the competent authorities, in a manner consistent with the procedures followed in the State Party for the application of its legislation."

Paragraph 3

33. The Working Group considered the proposal submitted by the delegation of Australia to replace paragraph 2 of article 3 of the revised Polish draft. The representative of Australia pointed out that his proposal took into account a basic aim of the Conference on the Legal Protection of the Rights of the Child held in Warsaw on 16-19 January 1979, namely, the need to secure the rights of the child through support to the family in need.

34. After an exchange of views, it was agreed to insert, in the third line of the text, the phrase "legal guardians" after the word "parents". Further to the Chairman's request that a compromise text be elaborated following consultations, the delegation of the United States submitted a text that read as follows:

"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 duties of his parents, legal guardians, or other individuals legally responsible for him, and, to this end, shall take all appropriate legislative and administrative measures."

35. That text of paragraph 3 was adopted by consensus by the Working Group.

Paragraph 4

36. The amendment put forward by the Australian delegation to replace paragraph 3 of article 3 was considered by the Working Group.

37. There was a discussion on the word "persons". The representative of Norway suggested that the word "persons" be replaced by the word "personnel". The representative of the United States proposed that the word "persons" be replaced by the word "officials" or by the phrase "officials and personnel of institutions" and explained that the term "officials" would cover, for example, the board of directors of a hospital or an orphanage; he indicated that if those amendments were accepted by the Working Group, paragraph 3 of article 3 submitted by his delegation would be withdrawn in favour of the Australian amendment.

38. After discussion, the Working Group adopted the proposed amendments. The paragraph, as adopted, reads as follows:

"The States Parties to the present Convention shall ensure competent supervision of officials and personnel of institutions directly responsible for the care of children."

The Working Group later decided that that text should become paragraph 4 of article 3.

#### Article 4

39. Article 4 of the revised Polish draft was as follows:

"1. The States Parties to the present Convention shall respect and extend all the rights set forth in this Convention to all children in their territories, irrespective of these children's race, colour, sex, religion, political and other opinion, social origin, property, birth in lawful wedlock or out of wedlock or any other distinction whatever.

"2. The States Parties to the present Convention shall undertake appropriate measures individually and within the framework of international co-operation, particularly in the areas of economy, health and education for the implementation of the rights recognized in this Convention."

#### Paragraph 1

40. A proposal was introduced by the representative of the United States which read as follows:

"Each State Party to the present Convention shall respect and extend all the rights set forth in this Convention to all children lawfully in its territory."

That proposal was regarded by some delegations as containing a principle with which they could not agree, namely, the limitation of the rights set forth in the draft convention to children who were lawfully in the territory of a State Party. Other delegations agreed that the parents' illegal entry into the territory of a State Party could not be invoked in order to limit the rights of their children.

41. The representative of Argentina further suggested the insertion of the phrase "or arising under their legal systems" after the word "convention" in the second line of the text of the revised Polish draft.

42. Another proposal was submitted by the representative of Brazil after consultations to the effect that the last three lines of paragraph 1 of the revised Polish draft should be replaced by the following text:

".... irrespective of these children's or their family's or legal guardian's race, colour, sex, religion, political and other opinion, social origin, property, family status, language, national origin, educational background, or any other distinction whatever."

43. Proposals were also made to bring the formulation of the paragraph more closely into line with relevant passages of existing United Nations international instruments, particularly the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the UNESCO Convention against Discrimination in Education.

44. Following consultations, the representative of the United States submitted the following text as a possible compromise:

"1. The States Parties to the present Convention shall respect and extend all the rights set forth in this Convention to all children (lawfully) in their territories without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, family status, ethnic origin, economic condition, cultural beliefs or practices, property, educational attainment, and birth or other status.

"2. States Parties to the present Convention shall take appropriate measures to ensure that the child is protected against all forms of discrimination on any basis whatsoever, particularly against any form of discrimination or punishment based on the activities or beliefs of the child's parents, legal guardians, or other family members.

"3. Each State Party to this Convention shall take steps, in accordance with its constitutional processes and its available resources, with a view to achieving the full realization of the rights recognized in the present Convention by all appropriate means, including particularly the adoption of legislative or administrative measures."

45. The representative of the United States indicated that if paragraph 1 of this new text was adopted without mentioning the term "lawfully" there need not be a provision concerning aliens such as the one embodied in article 5 of the revised Polish draft.

46. Several delegations supported a proposal to revert to the maximum extent possible to the Polish version of the text under consideration, in particular by retaining article 5 on the rights of alien children.

47. After further discussion, the representative of the United States proposed to merge paragraphs 1 and 2 of the text presented by him and agreed to withdraw paragraph 3. He also agreed to withdraw the words "lawfully" and "economic condition" on the understanding that article 5 would be deleted. The revised text read as follows:

"The States Parties to the present Convention shall respect and extend all the rights set forth in this Convention to each child in their territories without discrimination or distinction of any kind, irrespective of the child's or his parent's or legal guardians' race, colour, sex, language, religion, political or other opinion, national or social origin, family status, ethnic origin, cultural beliefs or practices, property, educational attainment, and birth or other status, or any other basis, including any form of discrimination or punishment based on the activities or beliefs of the child's parents, legal guardians, or other family members."



48. The representative of the Byelorussian Soviet Socialist Republic proposed the deletion from the third line of that text of the words "discrimination or". The representative of Brazil suggested the addition, in the antepenultimate line, after the words "and birth or", of the phrase "any other distinction whatever". The representative of the United States indicated his preference for the word "basis" rather than the word "distinction".

49. The Chairman proposed that the text as amended, with the deletion of the phrase "including any form of discrimination or punishment based on the activities or beliefs of the child's parents, legal guardians, or other family members" should be adopted and suggested that a new paragraph be formulated for inclusion in article 4.

50. The Working Group adopted by consensus paragraph 1 of article 4, in its revised version, which read as follows:

"The States Parties to the present Convention shall respect and extend all the rights set forth in this Convention to each child in their territories without distinction of any kind, irrespective of the child's or his parents' or legal guardians' race, colour, sex, language, religion, political or other opinion, national or social origin, family status, ethnic origin, cultural beliefs or practices, property, educational attainment, birth, or any other basis whatever."

51. One representative felt that, notwithstanding the fact that the language adopted in paragraph 1 would apply to all children, if article 5 of the revised Polish draft contained a reference to a certain category of children (alien children), that would undermine the universality of paragraph 1. Other delegates agreed that article 5 would no longer be necessary if paragraph 1 of article 4 were adopted, and proposed its deletion. The representative of Italy expressed her reservation on this course of action.

52. The Working Group decided to delete article 5 of the revised Polish draft.

#### Paragraph 2

53. The delegation of the United States put forward for consideration by the Working Group the following proposal:

"States Parties to the present Convention shall take appropriate measures to ensure that the child is protected against all forms of discrimination on any basis whatsoever, particularly against any form of discrimination or punishment based on the activities or beliefs of the child's parents, legal guardians, or other family members."

54. After a lengthy debate that proposal was withdrawn in favour of a revised version of paragraph 2 which had been elaborated by the delegation of Norway and that read as follows:

"States Parties to the present Convention shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment based on the activities, expressed opinions, or beliefs of the child's parents, legal guardians, or other family members."

55. The representative of the Byelorussian Soviet Socialist Republic proposed that the words "based on" be replaced by the words "on the basis of". The representative of Brazil further suggested the insertion of the word "status" before the word "activities". Several delegations expressed support for those amendments.

56. Further to a joint proposal by the delegations of Australia and the United States to the effect that the above-mentioned text, with the proposed amendments, become paragraph 2 of article 4, the Working Group adopted by consensus the revised version of paragraph 2 which read as follows:

"States Parties to the present Convention shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or other family members."

#### Article 5

57. The Working Group discussed the question of how concretely the obligation of States Parties under the future Convention on the Rights of the Child should be laid down in order to ensure the implementation of the rights recognized in the Convention. Norway favoured the following formulation:

"The States Parties to the present Convention shall undertake appropriate measures individually and within the framework of international co-operation, through legislation, in local and national planning, in the economy and in the areas of health, social welfare and education, for the implementation of the rights recognized in this Convention."

58. In this connection, a proposal submitted in 1980 by the representative of Australia which had not been considered owing to lack of time, was reintroduced. It read as follows:

"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 contained in the Convention."

59. Some delegations felt that the amendment proposed by Norway was more in line with the original text of the revised Polish draft which read: "The States Parties to the present Convention shall undertake appropriate measures individually and within the framework of international co-operation, particularly in the areas of economy, health and education for the implementation of the rights recognized in this Convention." In addition, paragraph 3 of article 4 of the text submitted by the representative of the United States (see paragraph 44) was again brought to the attention of the Working Group in view of its more generalized formulation.

60. The Working Group moved to a text elaborated after consultations and proposed by the representative of Brazil which read as follows:

"The States Parties to the present Convention shall undertake all appropriate administrative and legislative measures, in accordance with their available resources, and, where needed, within the framework of international co-operation, for the implementation of the rights recognized in this Convention."

61. Several delegations expressed support for that proposal, and the Working Group adopted it by consensus as a separate article. The Group decided at a later stage of the proceedings that it should become article 5.

#### Article 6

62. Article 6 of the revised Polish draft read as follows:

"The parents shall have the right to specify the place of the child's residence unless, guided by his best interests, a competent state organ is authorized, in accordance with national law, to decide in this matter."

63. The Polish delegation submitted the following revised text to replace the original wording of article 6 of the revised draft convention:

"The parents have the right to determine the place of the child's residence. If the place of residence determined by parents endangers the child's well-being and in case of disagreement between the parents as well as if the child does not remain under the care of parents, his residence will be decided by a competent, state organ, guided by the child's well-being."

64. The delegation of Australia suggested that article 6 be deleted because a provision concerning the rights accruing to the parents had no place in such a convention.

65. The representative of the United States proposed that the original wording of articles 6 and 10 of the revised draft convention, be replaced by a revised text which read as follows:

"1. States parties shall ensure that a child shall not be involuntarily separated from his parents, except when competent authorities determine, in accordance with procedures and criteria specified by domestic law, that such separation is necessary for the welfare of the child in a particular case, such as one involving maltreatment or abuse of the child by the parents or one where the parents are living separately and a decision must be made as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.

"2. In cases where both parents lawfully reside in one State party and their child lawfully resides in another State party, the States parties concerned shall deal with applications for family reunification in a positive, humane and expeditious manner. States parties shall charge only moderate fees in connection with such applications and shall not modify in any way the rights and obligations of the applicant(s) or of other members of the family concerned. States parties shall ensure that applications for the purpose of family reunification of parents with their children which are not granted for any reason may be renewed at the appropriate level and will be considered at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned, and, in such cases, fees will be charged only when applications are granted. Until family reunification in a particular case is accomplished, all States parties involved shall permit frequent and regular family contacts.

"3. The provisions of paragraph 2 shall also apply in cases where a child's only surviving parent lawfully resides in one State party and the child lawfully resides in another State party.

"4. If the parents of a child lawfully reside in different States parties States parties shall ensure that the child's preference as to which parent he wishes to reside with shall be an important consideration in any determination made by competent authorities concerning the child's place of residence."

66. Although the representative of Norway submitted a text to replace article 6 only, he shared the view of the United States delegation that there was a strong relationship between articles 6 and 10 of the revised Polish draft convention. The text put forward by Norway read as follows:

"A child shall not, against the will of the parents be separated from them, unless a competent public organ is authorized, in accordance with national law, to make such a decision in order to protect the child."

67. The representative of Australia maintained his suggestion that article 6 be deleted and requested the sponsors of the amendments and of the original version to delete the article. The representative of the United States agreed with the representative of Australia that the article as drafted should be deleted, but insisted that the convention should contain a provision on family reunification and that article 6 was the logical place for this provision because it dealt with the child's place of residence.

68. The representative of the Union of Soviet Socialist Republics supported the wording of article 6 of the revised draft convention, stressing the importance of retaining this provision guaranteeing the child's interest with regard to his place of residence. In addition, he pointed out that the proposal made by the delegation of the United States (see paragraph 64) was aimed at substituting the provision concerning the child's place of residence for a provision on the reunification of families.

69. One speaker pointed out that it was not the rights of the parents that were emphasized, but the best interests of the child. In that connection, the representative of Australia proposed the following amendment to article 10:

"A child of pre-school age shall not be separated from his parents unless extraordinary circumstances determine that such a separation is necessary for the child's welfare."

70. The representative of Denmark proposed a new text, stating her preference that it should not be incorporated in article 6 but should stand as a separate article. It read as follows:

"Parents or other guardians have the main responsibility for the child. Every State party has, however, the responsibility to satisfy the needs of the child and ensure the child the rights set forth in this Convention."

71. The representative of Poland taking account of the views expressed by other delegations, submitted a new revised text of article 6 which read:

"The States parties shall recognize the right of the child to have his residence to be determined by his parents. If the place of residence specified by the parents is likely to be detrimental to the child's well-being, or in the case of disagreement between the parents, a competent public organ, guided by the child's well-being, shall determine his place of residence."

72. The Working Group was unable to continue consideration of Article 6 for lack of time.

#### Article 7

73. Article 7 of the revised Polish draft read as follows:

"The States parties to the present Convention shall enable the child who is capable of forming his own views the right to express his opinion in matters concerning his own person, and in particular, marriage, choice of occupation, medical treatment, education and recreation."

74. The representative of Australia proposed that the article should read:

"The States parties to the present Convention shall assure to the child the right to express his opinion in matters concerning his own person, and in particular marriage, choice of occupation, medical treatment, education and recreation. In all such matters the wishes of the child shall be given due weight in accordance with his age and maturity."

75. The delegation of Denmark felt that it was not sufficient to state that the child has the right to express his opinion in matters concerning his own person; therefore, the concept that the child should as soon as possible have an influence in matters concerning his person should be expanded. Accordingly, the representative of Denmark proposed the following amendment:

"Parents or other guardians have the right and duty to decide in matters concerning the person of the child. But the child shall, as soon as possible, have an influence in such matters. As the child gets older, the parents or the guardian should give him more and more responsibility for personal matters with the aim of preparing the child for the life of a grown-up."

76. The representative of the United States put forward for consideration a revised version of article 7 which read:

"The States parties to the present Convention shall enable the child who is capable of forming his own views the right to express his opinion effectively and non-violently in matters concerning his own person, and in particular, religion, political and social beliefs, matters of conscience, cultural and artistic matters, marriage, choice of occupation, medical treatment, education, travel, place of residence, and recreation."

77. A discussion was held on the phrases "The States parties to the present Convention shall enable the child" (first line of the revised Polish draft and of the proposal of the delegation of the United States) and "The States parties to the present Convention shall assure to the child" (first line of the Australian proposal) as well as the term "effectively" qualifying the phrase "to express his opinion". One speaker pointed out that the State is under no obligation, as a matter of law, towards children: the child should have a degree of freedom comparable to that enjoyed by an individual under the Covenants and comparable instruments of law.

78. Most delegations felt that the matters concerning the child in which the States parties to the Convention would enable him to express his opinion should not be subject to the limits of a list, and therefore the list ought to be deleted.

79. The representative of the United States suggested the insertion of the word "all" before the word "matters" if the Working Group decided to eliminate the aforementioned list. The representative of Canada proposed the insertion of the word "freely" after the word "opinion".

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

"The States parties to the present Convention shall assure to the child who is capable of forming his own views the right to express his opinion freely in all matters, the wishes of the child being given due weight in accordance with his age and maturity."

81. One delegation stated that the text as adopted would need to be examined carefully from a legal point of view to determine whether it might comply with general rules relating to standing in legal and administrative proceedings. The representative also noted that it might be necessary at a later stage for the Working Group to consider the desirability of including provisions concerning the need to discover the best interests of children not yet capable of forming their own views.

### Article 3

82. Article 3 of the revised Polish draft read as follows:

"1. The duty of bringing up the child shall lie equally with both the parents, who, in any case, should be guided by his best interests and, in keeping with their own beliefs and in compliance with the stipulations of article 7, shall prepare him for an individual life.

"2. The States parties to the present Convention shall render all necessary assistance to parents and guardians in the performance of their educational function, and shall undertake measures to organize and ensure the development of institutions of children's care.

"3. Children of working mothers shall have the right to frequent the institutions of day care of children until they have completed school age."

### Paragraph 1

83. The representative of Australia proposed that the last three words of the paragraph be replaced by the phrase "life as an individual".

84. The delegation of the United States proposed that paragraph 1 be replaced by the following text:

"State parties shall take all appropriate measures to ensure the recognition of the common responsibility of men and women in the upbringing and development of their children or, in the case of legal guardians, of the children legally entrusted to their care."

85. The representative of Cuba proposed that the first line and a half of paragraph 1 should be replaced by the following: "The duty of bringing up the child shall lie with both parents, each of whom shall play an equally important role. The parents should be guided, in any case ...".
86. Some delegations, in particular the delegation of the Soviet Union, felt that they would prefer the statement in the revised Polish draft to the effect that the duty of bringing up the child should lie equally with both parents not to be amended. It was indicated that this idea of equal responsibility conformed to article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women, which stated that States parties in particular shall ensure on a basis of equality of men and women, inter alia, the same rights and responsibilities as parents, in matters relating to their children.
87. Another representative disagreed with this interpretation, maintaining that article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women concerned equality of men and women only as to legal rights and responsibilities of parenthood, not the daily routine parental responsibilities. He asserted that the concept of common responsibility of men and women in the upbringing and development of children expressed in article 5(B) of that Convention was more appropriate in this context than equality, since each family allocates parental responsibilities differently, and it is no concern of the State how this is done, except in child support or other extreme cases.
88. Following consultations, the delegation of the United States proposed the following revised text:
- "Parents have the primary responsibility for the upbringing of their children. States parties shall take all appropriate measures to ensure the recognition of the common responsibility of both parents in the upbringing and development of their children or, in the case of legal guardians, of the children legally entrusted to their care."
89. The representative of Brazil suggested the addition of the phrase "or, as the case may be, guardians" in the first line of the paragraph after the word "parents", in order not to leave orphans unprotected. He also proposed the insertion of the words "and development" after the word "upbringing" in the second line of the paragraph under discussion, and the introduction, after the first sentence of the paragraph, of the following sentence: "The best interest of the child will be their basic concern." Besides, the representative of Brazil proposed the insertion in the second line of the paragraph of the words "States parties shall make the best efforts" instead of the words "States parties shall take all appropriate measures".
90. In addition, the delegation of Italy suggested that the words "their children" at the end of the first sentence be replaced by the words "the child".
91. Accordingly, the first two sentences of paragraph 1, as amended, read: "Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern." One of the representatives explained that the aim of the first sentence was to protect parents against excessive intervention of the State and also to indicate that parents cannot expect the State always to intervene, because the upbringing and development of their child is their primary responsibility.

92. After prolonged discussion on the questions presented by the introduction of the concept of equality into this paragraph, the representative of the Soviet Union proposed the insertion of the words "and equal" in the third line of the text between the words "common" and "responsibilities".

93. A proposal to delete the following words from the end of the paragraph "or, in the case of legal guardians, of the children legally entrusted to their care" was also put forward for consideration by the Working Group and received the support of some delegations.

94. The representative of Australia, after consultations, proposed the following formulation for the third sentence of paragraph 1:

"States parties shall use their best efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child."

95. The Working Group adopted by consensus paragraph 1 as amended:

"Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. States parties shall use their best efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child."

#### Paragraph 2

96. The representative of Australia proposed that paragraph 2 should be re-worded to read:

"The States parties to the present Convention shall render all necessary assistance to parents and guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions for the care of children."

97. Some delegations found both the Australian and Polish texts for this paragraph acceptable, while others only supported the Australian amendment.

98. A discussion ensued concerning the nature of the assistance to be rendered by States parties to parents and guardians in the performance of their educational function. One delegation raised the question as to how the State could be prevented from granting unwanted assistance to parents and guardians in the performance of their duties as well as from interfering in family life. That delegation agreed, however, that States should provide financial or other material assistance and counselling where appropriate.

99. After some further discussion, the representative of the United States proposed the following text for paragraph 2:

"For the purpose of guaranteeing and promoting the rights set forth in this Convention, the States parties to the present Convention shall render appropriate assistance to parents and guardians in the performance of the child-rearing responsibilities and shall ensure the development of institutions for the care of children."

100. This new text was supported by the Working Group and was adopted by consensus.



Paragraph 3

101. There was a proposal by the representative of Australia to re-word paragraph 3 as follows:

"Children of working mothers or of parents who both work shall have the right to attend institutions for the day care of children until they reach school age."

102. The delegation of Poland indicated that it had considered proposing an amendment to the original version of the paragraph that would take account of children of working parents; therefore the Australian proposal was acceptable.

103. The delegation of the United States also introduced a proposal to replace paragraph 3 of the revised Polish draft by the following:

"In accordance with available resources, States parties shall ensure that children of working parents shall have access to public day care facilities for which they are eligible until they have completed their schooling."

104. In addition, the representative of Norway proposed that the phrase "working mothers" should be replaced by "both parents working or with sole provider" and that the word "completed" in the last line of the paragraph should be replaced by the word "reached".

105. The delegation of Poland proposed the following text which had been elaborated after consultations:

"States parties shall ensure that children of working parents shall have the right to attend institutions for child-care for which they are eligible until they have completed their schooling."

106. The observer from the International Labour Office drew attention to the provisions of ILO Recommendation 123 relative to child care services, which is at present being revised by the International Labour Conference. He also presented a text which read:

"The States parties to the present Convention undertake to adopt all appropriate measures in the light, inter alia, of existing international instruments so as to ensure that services and institutions providing care (and day care) for children primarily meet the needs of children of working parents."

107. The representative of the United Kingdom of Great Britain and Northern Ireland suggested the inclusion in the article under consideration of the idea that the State should ensure that any child care services and facilities from which children have the right to benefit were of an adequate standard.

108. Differing views were expressed regarding the extent to which States parties to the Convention should be obliged to provide institutions for the care of children of working parents. One representative drew the attention of the Working Group to the fact that there were many developing countries where the possibility of having child care services and facilities was virtually

non-existent due to scarcity of resources. Some delegations indicated that the concept that children of working parents have the right to benefit from child care services and facilities should not be omitted from the Convention under elaboration, even if in some countries there were no resources available yet to implement that right. One delegation stressed the importance of acknowledging that child care facilities in some countries are established and maintained primarily by local communities or private entities and that the eligibility requirements of such facilities must not be undermined by the Convention.

109. The Chairman announced that, after consultations, a compromise text had been elaborated which read as follows:

"States parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible. These services and facilities shall conform with the standards established by competent authorities, particularly in the areas of safety and health."

110. The representative of the United Kingdom found the new text acceptable but suggested the addition, after the word "health", of the words "and in the number and suitability of their staff".

111. The representative of Australia felt that only the first sentence of the above-mentioned text should be maintained as paragraph 3, and that the second sentence should be transferred to paragraph 2 of article 8.

112. The representative of Bulgaria requested the deletion of the phrase "particularly in the areas of safety and health" at the end of the paragraph.

113. After a further exchange of views, a consensus was reached to the effect that the paragraph should read:

"States parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible. These services and facilities shall conform with the standards established by competent authorities, particularly in the areas of safety, health, and in the number and suitability of their staff."

#### Paragraph 4

114. The representative of France suggested that the second sentence of paragraph 3, with a small amendment, should become a fourth paragraph which would read:

"The institutions, services and facilities referred to in paragraphs 2 and 3 of this article shall conform with the standards established by competent authorities, particularly in the areas of safety, health, and in the number and suitability of their staff."

Many delegations expressed support for this proposal.

115. The Working Group adopted by consensus as paragraph 4 the text that had been presented by the representative of France. Consequently, paragraph 3 of article 8, as adopted by the Working Group, read as follows:

"States parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible."

Article 9

116. Article 9 of the revised Polish draft read as follows:

"Parents, guardians, State organs and social organizations shall protect the child against any harmful influence that mass media, ~~and in particular~~ the radio, film, television, printed materials and exhibitions, on account of their contents, may exert on his mental and moral development."

117. The delegation of Norway proposed that the word "film" in the third line of the paragraph be replaced by the phrase "recorded vision or sound".

118. The observer of the Holy See suggested the insertion of the words "spiritual and social" in the fourth line between the words "moral" and "development".

119. Differing views were expressed regarding the extent to which States parties should ensure the protection of the child against any harmful influence that mass media, and in particular radio, film, television, printed materials and exhibitions, on account of their contents, might exert on his mental and moral development.

120. One speaker felt that the mass media does more good than harm and therefore the article should be phrased in a positive way, rather than in terms of protecting children from the mass media. States parties should ensure freedom of information, so that children can take advantage of a diversity of opinion concerning all matters. The speaker also stated that his delegation would urge deletion of the article unless it could be reformulated to take a positive approach, acknowledging the educational role of the mass media, the need for reciprocity in the free flow of information across international borders, and the importance of guaranteeing children access to information from a diversity of sources.

121. Some delegations agreed with what had been advocated by that speaker, while another speaker pointed out that protecting the child from harmful influences of the mass media deserved special treatment by the Working Group. Also, the idea was put forward that it was necessary to recognize liberty, diversity and free circulation of information, as well as reciprocity of information between the States parties. Some other delegations supported the text of article 9 of the revised draft convention and indicated that in the Polish draft there was no question of limiting the freedom of information but only of the protection of children from the harmful influences of the mass media.

122. The representative of Australia proposed that article 9 of the revised Polish draft should be replaced by the following text:

"States parties to the present Convention shall assure to the child the right to protection from exploitation and abuse. To this end, States parties shall encourage parents and guardians to provide their children with appropriate protection from written, printed or recorded material injurious to the health or morals of children and shall encourage the mass media to follow guidelines consistent with its responsibilities."

The representative of Australia observed that the proposal had been submitted not as a result of consultations but to facilitate further discussion of the issues raised in article 9.

123. The Working Group, however, was unable further to consider article 9 for lack of time.

124. Before finishing its work, several delegations expressed the view that the Working Group had made a very positive contribution towards the next phase of the drafting of the draft Convention on the rights of the child, and thanked the delegation of Poland for the draft that was contained in document E/CN.4/1349 which had proved a most useful basis for discussion.

Other provisions of the draft Convention

125. In addition, the Working Group had before it the following amendments which were not discussed by the Group for lack of time:

(a) A proposal by the representative of Australia to replace the existing text of article 10 by the following:

"A child of pre-school age shall not be separated from his parents unless extraordinary circumstances determine that such separation is necessary for the child's welfare."

(b) Another proposal by the representative of Australia to amend article 11 as follows:

"Replace paragraph 2 with:

"The States parties to the present Convention shall provide an appropriate environment for the upbringing of a child who is deprived of his natural family environment or who, for reasons concerning his welfare, cannot be brought up in such an environment.

"Replace paragraph 3 with:

"The States parties to the present Convention shall take measures to facilitate adoption of children where appropriate and shall ensure favourable conditions for establishing foster families."

(c) A proposal submitted by the delegation of Denmark to amend article 11 as follows:

"Replace paragraph 2 with:

"The States parties to the present Convention shall ensure that a child who is deprived of his natural family environment or on account of his well-being, cannot be brought up in that environment shall be provided with a guardian.

"Add to paragraph 3 the following:

"The child shall not, however, be adopted unless there has been a serious attempt to investigate and elucidate his status concerning parents, guardians, relatives and other biological and stable social relations.

"Proposed new paragraph 4 to read:

"The refugee child, whether unaccompanied or in company with his family, guardian or relatives, needs special protection and assistance. The States parties to the present Convention undertake to assist the refugee child in every possible way and also undertake to, as soon as possible, investigate whether the child has a family or other close relations, and recognize the right of the refugee child to be reunited with his guardians or relatives. In cases where no close relatives have been found the child shall, if possible, be placed within his own cultural and linguistic group. The best interest of the child shall in every case be the guiding principle."

(d) A proposal by the representative of Norway to add to article 11 a new paragraph 4 to read as follows:

"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."

(e) A proposal submitted by the representative of Australia to amend article 12 as follows:

"Replace 'undertake to' with 'shall' in paragraph 1.

"Replace paragraph 2 with:

"A disabled child shall grow up and receive education in conditions designed to achieve the fullest possible social integration of the child. The special educational needs of the disabled child shall be met free of charge and aids and appliances shall be provided to ensure equal opportunity and access to institutions."

#### Procedural question

126. The view was expressed by several delegations that the Working Group should ask the Commission on Human Rights 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 did not fully share this view in that the matter had financial implications which must be considered by Governments and that the question was entirely for the plenary of the Commission to resolve in dealing with the forthcoming draft resolution on the Convention.

AnnexParagraphs of the draft Convention on the Rights of the Child  
adopted by the Working GroupThe 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.
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.

Article 3

1. In all 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 is capable of forming his own views, an opportunity shall be provided for the views of the child to be heard, either directly or indirectly through a representative, as a party to the proceedings, and those views shall be taken into consideration by the competent authorities, in a manner consistent with the procedures followed in the State Party for the application of its legislation.
3. 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 duties of his parents, legal guardians, or other individuals legally responsible for him, and, to this end, shall take all appropriate legislative and administrative measures.
4. The States Parties to the present Convention shall ensure competent supervision of officials and personnel of institutions directly responsible for the care of children.

Article 4

1. The States Parties to the present Convention shall respect and extend all the rights set forth in this Convention to each child in their territories without distinction of any kind, irrespective of the child's or his parents' or legal guardians' race, colour, sex, language, religion, political or other opinion, national or social origin, family status, ethnic origin, cultural beliefs or practices, property, educational attainment, birth, or any other basis whatever.
2. States Parties to the present Convention shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or other family members.

Article 5

The States Parties to the present Convention shall undertake all appropriate administrative and legislative measures, in accordance with their available resources, and, where needed, within the framework of international co-operation, for the implementation of the rights recognized in this Convention.

Article 7

The States Parties to the present Convention shall assure to the child who is capable of forming his own views the right to express his opinion freely in all matters, the wishes of the child being given due weight in accordance with his age and maturity.

Article 8

1. Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child.
2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, the States Parties to the present Convention shall render appropriate assistance to parents and guardians in the performance of the child rearing responsibilities and shall ensure the development of institutions for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.
4. The institutions, services and facilities referred to in paragraphs 2 and 3 of this article shall conform with the standards established by competent authorities, particularly in the areas of safety, health, and in the number and suitability of their staff.