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QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Note by the Secretary-General

In accordance with a request received from the Permanent Representative of Poland to the United Nations Office at Geneva, the annexed document pertaining to the European Conference on the Rights of the Child held in Warsaw from 16 to 19 January 1979 on the initiative of the International Commission of Jurists, the International Association of Democratic Lawyers and the Polish Association of Jurists is circulated as a document of the Commission on Human Rights.

WARSAW CONFERENCE ON THE LEGAL PROTECTION OF THE
RIGHTS OF THE CHILD, 16-19 JANUARY 1979

Organized by the International Association of Democratic Lawyers,
the International Commission of Jurists and the
Polish Association of Jurists

A conference on the Legal Protection of the Rights of the Child was held in Warsaw on 16-19 January 1979, organized by the International Commission of Jurists, the International Association of Democratic Lawyers and the Polish Association of Jurists.

The Polish Association of Jurists, as the host organization, generously provided conference premises in the Palace of Culture and Science, interpretation in four languages (Polish, Russian, French and English), and a most interesting series of visits for the participants, including one to the new Childrens' Hospital built as a memorial to the 13 million children killed in the Second World War, of whom over two million came from Poland.

Apart from numerous Polish jurists, some 50 participants came from abroad, approximately half from the socialist countries of eastern Europe (Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Romania, USSR and Yugoslavia) and half from Western Europe (Austria, Belgium, France, German Federal Republic, Ireland, Italy, Netherlands, Norway, Sweden, Switzerland and the United Kingdom), as well as representatives of the United Nations Secretariat for the International Year of the Child, the United Nations Division of Human Rights and the United Nations High Commissioner for Refugees. Many of the participants were jurists of considerable eminence with experience and expertise in the field of family law.

Professor Adam Lopatka, President of the Polish Association of Jurists and Polish delegate to the United Nations Commission on Human Rights, presided at the opening session and the Polish Minister of Justice, H. Jerzy Bafia, attended both the opening and closing sessions of the Conference, as well as hosting a reception to the participants.

Working Papers were prepared by the three General Rapporteurs for the three Commissions of the Conference as follows:

- I The Evolution of the Concept of the Rights of the Child, by
Maitre Roland Weyl (France, IADL);
- II The Responsibility of the Family and of Society towards the Child, by
Dr. Olive Stone (United Kingdom and Canada, ICJ);
- III State Organs Empowered to take Decisions about Children, by
Dr. Marta Katona Soltez (Presidente de Chambre, Supreme Court of Hungary).

Several other very informative papers were prepared by participants describing the legislation and practice concerning the rights of the child in their own countries.

At the Closing Plenary Session presided by Mr. N. MacDermot, Secretary-General of the International Commission of Jurists, reports were received from the three Commissions and a statement of principles concerning the legal protection of the rights of the child was approved. A copy of this statement of principles is annexed, together with two resolutions adopted by the Conference, one in support of the early adoption of an International Convention on the Rights of the Child, and the other in support of the implementation of the United Nations Declaration on the Preparation of Societies for Life in Peace.

RESOLUTION IN SUPPORT OF THE ADOPTION OF AN INTERNATIONAL
CONVENTION ON THE RIGHTS OF THE CHILD

We, the participants at the International Conference on the Legal Protection of the Rights of the Child held under the auspices of the International Commission of Jurists and the International Association of Democratic Lawyers,

Having met in Warsaw, capital of a country which lost more than two million children during the second world war,

Convinced that our organizations and all lawyers should support every initiative aimed at realizing progressive and humanist ideals in the service of greater respect for the dignity and value of man, of social progress and the creation of better conditions of life in greater freedom,

Being agreed that mankind should always give of its best to every child,

Welcome with satisfaction the initiative of the Thirty-fourth Session of the Commission on Human Rights in March 1978 contained in its resolution 20/XXXIV and confirmed in resolutions of the Economic and Social Council and the thirty-third session of the General Assembly of the United Nations, aimed at the acceptance by the United Nations, if possible in 1979, of an International Convention on the Rights of the Child.

Every child needs care, education and the assurance that its material needs will be met. He has a right to full development. For balanced development of his personality, he needs love, understanding and a sense of security. All these can and should be assured to the child by adults. It is their duty to protect the child against neglect, cruelty and exploitation. It is also their duty to bring up the child in the spirit of peace and humanity and to provide conditions which will ensure that the rights of the child are respected and the obligations of society towards the child are carried out.

Special protection of the child requires legally guaranteed opportunities and facilities for his physical, mental, moral, spiritual and social development in freedom and dignity. This applies to all children without exception, distinction or discrimination on grounds of race, colour, sex, language, religion, political or other opinion, nationality, social origin, property, birth or for any other reason relating to the child or his family.

These duties towards the child, which are now a supreme moral imperative of society, should be reinforced by giving them the status of norms under international law in the form of an International Convention on the Rights of the Child.

For this reason we call upon all who cherish the ideals of law and democracy to support actively the initiative for the speedy adoption of such a Convention.

In common with all progressive opinion throughout the world, we consider it necessary to draw attention to the need to take energetic measures for the purpose of realizing the ideals which led to the proclamation of 1979 as the International Year of the Child.

We lawyers from every part of Europe, meeting in Warsaw, consider that the adoption of an International Convention on the Rights of the Child would be a highly significant event in the service of achieving these goals, bringing nearer the realization of the rights of childhood, the recognition and assurance of which are in the interest of all progressive States and of all humanity.

Warsaw, 19 January 1979.

STATEMENT OF PRINCIPLES ON THE LEGAL PROTECTION OF THE RIGHTS OF THE CHILD

At the final plenary session of the Conference the participants, who came from 19 countries of eastern and western Europe, agreed unanimously upon the following principles:

1. The State has an important responsibility to secure the Rights of the Child through support to the family in need, and thus to ensure that the child will grow up happily from its birth.
2. To this end, the State should set out clearly what is required of parents to ensure the welfare of the child in society, and also how the State and organizations and individuals in society propose to assist parents in the upbringing of their children.
3. At the same time, both the State and parents should respect the right of the child to be consulted about its welfare whenever the child is in a position to express such opinions.

In the particular areas of the child's development which are the subject of education, health and recreation, the following more detailed conclusions were reached.

Education

4. The duty to provide the means of education (including the training of teachers in adequate numbers) falls in the first place on the State.
5. In deciding on the content and form of programmes of education, the State, parents, teachers and the children themselves, and their representative organizations, all have an important role. How the responsibility for those decisions is distributed must depend in part on the institutional and social structures and traditions of different countries, but there are dangers in placing too great a degree of responsibility on any one of the four parties to the exclusion of the others. Therefore, even where the law places that responsibility on a single organ, that organ should ensure that all the other parties are able to participate in the making of the decisions.
6. So far as possible, both parents and children should benefit from improvements in methods of education by having a choice of those best suited to enable the child to develop its abilities to the full.
7. Although it is desirable to provide special educational facilities for children who are exceptional either in their talents or in their handicaps, it is important that their education should, so far as possible, be integrated with that of other children.
8. Where it has not yet been realized both in law and in fact, priority should be given, within the available resources, to equating education for girls and women with that of boys and men, in all fields and at all levels, including mathematics, science, engineering, economics, medicine (including all its specialities), and administration, as well as the arts, humanities and sports.

Health

9. The obligation to provide adequate health care for all children falls primarily upon the State.

10. As a child becomes older and more responsible, its own views on the events which will shape its future become increasingly important. Even before it reaches the age of legal majority, it should be able to participate in any major decisions about its physical and mental health. In order that its participation should be both free and informed, the child should have access to full information and independent advice, and procedures should be made available for the resolution of differences between the views of the child and those of its parents.

11. The primary responsibility for preventing a child from pursuing activities harmful to itself (such as drinking alcohol, smoking tobacco, or taking other drugs) falls upon the parents, both by education and by example. Although the State can reinforce this protection by suitable legislation and education, there is an age (not later than the age of legal majority) after which a person has the sole moral responsibility to make decisions on these matters, and accept the consequences which the laws of his country impose.

Recreation

12. The obligation to provide means for the recreation of children falls primarily on the State.

13. As their age increases, the choice by children of different forms of recreation should increase also. Older children should not be forced to engage in forms of recreation which they do not wish to pursue: at the same time, they should be free to pursue forms of recreation which they enjoy and which do not harm others.

Child labour

14. Further, as child labour is damaging for the development of the child in its education, its health and its recreation, we demand the end of child labour everywhere and we call for all nations to implement the provisions of Convention No. 138 of the International Labour Organization.

Accordingly, the Conference concludes that:

15. A distinction should be drawn between the way of dealing with rights concerning children whose age entails their absolute legal incapacity, and those for whom, by reason of their greater maturity, the law can provide forms of partial legal capacity, especially in the choice of their studies, their profession and, if necessary, their residence, which will prepare them by stages for the exercise of their full legal capacity on attaining majority.

16. Protection of the child should, in the case of interventions by public authorities, be accompanied by legal procedures which ensure judicial control, full discussion and rights of appeal, so as to ensure that the concept of the "interests of the child" shall be applied in the most objective way taking into account the complex realities of specific situations.

17. In their relations with families and individuals concerning children, State institutions and social organizations should avoid as far as possible making the child an object of dispute and should act in a spirit of the widest possible co-operation, as indeed should individuals, and particularly the parents, in their relations with each other.

18. Particular importance attaches to Principle 7 of the United Nations Declaration on the Rights of the Child, since the interests of the child include the right to be prepared by an adequate education so as to be able to face the complex problems of his or her future adult life, including all that this implies in terms of the duties, efforts and constraints inherent in social life.

19. The children of refugees and child refugees should be treated in the same way as other children and enjoy the same protection, both in their country of asylum and abroad.

20. The same principle should be applied to the children of migrant workers.

21. It follows also that equality of opportunity should be effectively guaranteed to children by the provision of the necessary material and cultural means. This should be done both by public facilities placed by the community and the State at the disposal of the children and of the adults responsible for them, by reason of their importance for the multilateral development of the child, as well as through social security and welfare benefits which will ensure to the families the material and cultural conditions of life to enable them to fulfil their role under truly favourable conditions. The satisfaction of these needs should become an integral part of the development plan of each country.