



CF Item Barcode Sign

Page 37  
Date 2/28/2005  
Time 12:46:20 PM

Login Name Edwin Ramirez



CF-RAI-USAA-DPP-LIB-2005-00045

Expanded Number **CF-RAI-USAA-DPP-LIB-2005-00045**

External ID **UN-SEC-HR/1996/SER.1/ARTICLE.38**

Title

**Article 38 (Children in Armed Conflicts) for : Legislative History of the Convention on the Rights of the Child (1978 - 1989)**

Date Created  
1/1/1996 at 12:20 PM

Date Registered  
2/10/2005 at 12:46 PM

Date Closed

Primary Contact **United Nations Centre for Human Rights**

Owner Location **Library & Special Collections Related Functions**

Home Location **CF-RAF-USAA-DB01-2005-00251 (In Container)**

Current Location/Assignee **Library & Special Collections Related Functions since 2/25/2005 at :**

F12: Status Certain? **No**

F13: Record Copy? **No**

d01: In, Out, Internal Rec or Rec Copy

Contained Records  
Container

Date Published      Fd3: Doc Type - Format      Da1:Date First Published      Priority

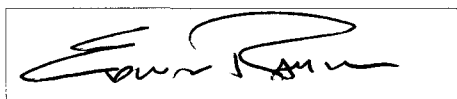
Record Type **A01 DPP-LIB ITEM**

Document Details **Record has no document attached.**

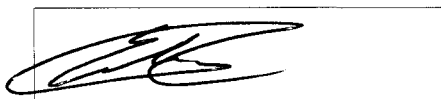
Notes

Printing code **GE.96-16407**

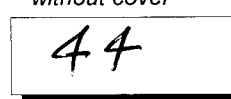
Print Name of Person Submit Image



Signature of Person Submit



Number of images  
without cover







# **Legislative History of the Convention on the Rights of the Child (1978 - 1989)**

## **ARTICLE 38**

### **(CHILDREN IN ARMED CONFLICTS)**

The *Legislative History of the Convention on the Rights of the Child (1978-1989)* was prepared with the support of Rädsla Barnen (Swedish Save the Children). It consists of a series of 45 booklets covering the drafting and adoption of each article of the Convention, as well as the preamble, based on United Nations records. This series will ultimately be collected and produced in a single set of volumes.

HR/1995/Ser.1/article.38

**ARTICLE 38**

**(CHILDREN IN ARMED CONFLICTS)**

Table of contents

<b>I.</b>	<b>FINAL TEXT ADOPTED BY THE GENERAL ASSEMBLY (1989)</b> . . . . .	4
<b>II.</b>	<b>FIRST POLISH DRAFT CONVENTION AND COMMENTS (1978)</b> . . . . .	4
	A. The first Polish draft . . . . .	5
	B. Comments on the first Polish draft . . . . .	5
	1. Austria . . . . .	5
	2. Germany, Federal Republic of . . . . .	5
	3. International Committee of the Red Cross (ICRC) . . . . .	6
<b>III.</b>	<b>FIRST READING (1979-1988)</b> . . . . .	7
	A. 1979: Revised Polish draft . . . . .	7
	B. 1980: Proposal submitted to the Working Group . . . . .	7
	1. Friends World Committee for Consultation (Quakers) . . . . .	7
	C. 1981: Proposal submitted to the Working Group . . . . .	8
	1. Friends World Committee for Consultation (Quakers) . . . . .	8
	D. 1982: Proposal submitted to the Working Group . . . . .	9
	1. Joint NGO proposal . . . . .	9
	E. 1983: Proposal submitted to the Working Group . . . . .	9
	1. Algeria . . . . .	9
	F. 1984: Proposals submitted to the Working Group . . . . .	10
	1. Canada . . . . .	10
	2. Iran, Islamic Republic of . . . . .	10
	3. NGO Ad Hoc Group . . . . .	11
	G. 1985: Proposals submitted to the Working Group . . . . .	11
	1. Netherlands, Belgium, Sweden, Finland, Peru and Senegal . . . . .	11
	2. NGO Ad Hoc Group . . . . .	11
	H. 1985: Discussion at the Working Group . . . . .	12
	I. 1986: Modified proposal presented by Poland . . . . .	12
	J. 1986: Proposal submitted to the Working Group . . . . .	12
	1. Iraq . . . . .	12
	K. 1986: Discussion and adoption at the Working Group . . . . .	13
	L. 1987: Proposals submitted to the Working Group . . . . .	17
	1. International Committee of the Red Cross (ICRC) . . . . .	17
	2. Rädde Barnen . . . . .	21
	M. 1987: Discussion at the Working Group . . . . .	23

**ARTICLE 38**

**(CHILDREN IN ARMED CONFLICTS)**

Table of contents (continued)

N.	1988: Proposals submitted to the Working Group . . . . .	24
	1. Netherlands . . . . .	24
	2. Sweden . . . . .	24
	3. NGO Ad Hoc Group . . . . .	25
O.	1988: Discussion and adoption at the Working Group . . . . .	25
P.	Text as adopted at the first reading . . . . .	28
<b>IV.</b>	<b>TECHNICAL REVIEW (1988)</b> . . . . .	<b>28</b>
	A. Comment by the United Nations High Commissioner for Refugees (UNHCR) . . . . .	28
	B. Comment by UNICEF . . . . .	28
	C. Comment by the International Committee of the Red Cross (ICRC) . . . . .	31
<b>V.</b>	<b>SECOND READING (1988-1989)</b> . . . . .	<b>31</b>
	A. Proposals submitted to the Working Group at the second reading . . . . .	31
	1. Germany, Federal Republic of . . . . .	31
	2. India . . . . .	32
	3. Sweden . . . . .	32
	B. Discussion and adoption at the second reading . . . . .	32
	C. Statements made during the adoption of the report . . . . .	39
<b>VI.</b>	<b>CONSIDERATION BY THE COMMISSION ON HUMAN RIGHTS, THE ECONOMIC AND SOCIAL COUNCIL AND THE GENERAL ASSEMBLY</b> . . . . .	<b>40</b>
<b>VII.</b>	<b>RELATED REFERENCES</b> . . . . .	<b>40</b>
<b>ANNEX 1</b>	<b>Organizations participating in the NGO Ad Hoc Group</b> . . . . .	<b>41</b>
<b>ANNEX 2</b>	<b>Related articles of the Convention</b> . . . . .	<b>42</b>

## ARTICLE 38

### (CHILDREN IN ARMED CONFLICTS)

#### I. FINAL TEXT ADOPTED BY THE GENERAL ASSEMBLY (1989)

*The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.*

- 1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.**
- 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.**
- 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.**
- 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.**

#### II. FIRST POLISH DRAFT CONVENTION AND COMMENTS (1978)

*In a letter dated 17 January 1978 addressed to the Director of the Division of Human Rights (see E/CN.4/1284), the Permanent Representative of Poland to the United Nations Office at Geneva proposed that "The question of the Convention on the Rights of the Child" be included in the agenda of the thirty-fourth session of the Commission of Human Rights. At that session, the Polish delegation presented a draft resolution (E/CN.4/L.1366) which contained a draft convention based upon the provisions of the 1959 Declaration of the Rights of the Child. The resolution was subsequently revised (E/CN.4/L.1366/Rev.1) and two additional articles (XI and XII) were added to the draft convention annexed in the final version of the draft resolution (E/CN.4/L.1366/Rev.2) which was then adopted by the Commission on Human Rights (see E/CN.4/1292, pages 122 to 127) as resolution 20 (XXXIV) of 8 March 1978.*

## **A. THE FIRST POLISH DRAFT**

*Article VIII of the Polish draft appears to be related to the substantive concerns covered under present article 38. The following text of article VIII is taken from the 1978 report of the Commission on Human Rights, E/CN.4/1292, page 125.*

### Article VIII

The child shall in all circumstances be among the first to receive protection and relief.

## **B. COMMENTS ON THE FIRST POLISH DRAFT**

*The Secretary-General was requested in Commission on Human Rights Resolution 20 (XXXIV) of 8 March 1978 to invite Member States, competent specialized agencies, regional, intergovernmental organizations and non-governmental organizations to communicate to him their views, observations and suggestions concerning the draft convention submitted by Poland. The views received are contained in documents E/CN.4/1324 and Corr.1 and Add.1-5. The comments concerning article VIII of the draft are the following.*

### **1. Austria**

*The following is taken from E/CN.4/1324, page 42.*

The purpose of article VIII is not clear. Does it mean that in case of danger children are to be rescued before adults? A more detailed wording of this article would be desirable.

### **2. Germany, Federal Republic of**

*The following is taken from E/CN.4/1324, page 42.*

See paragraph 7, Federal Republic of Germany, under General Comments.

*Paragraph 7, which appears on page 11 of document E/CN.4/1324, is as follows. The text in brackets appears in the french original but was omitted in the english translation.*

7. Conversely, the provisions of the draft relating to objectives, content and methods of education cannot be considered as either rights of the individual or undertakings on the part of States. The provisions in question are contained in the first sentence of article VI, the first part of article VII, paragraph 2, [article VIII] and the second sentence of article X of the draft. It is the responsibility and duty of the parents whose rights are also recognized in the draft to take binding decisions in this regard. The provisions referred to can more appropriately be

made the subject of a recommendation to be incorporated in the preamble to the Convention.

### 3. International Committee of the Red Cross (ICRC)

*The following comment on article I of the Polish draft, taken from E/CN.4/1324, page 27, addresses substantive concerns under present article 38.*

1. In analysing the draft Convention on the Rights of the Child, ICRC must consider the relationship between the draft and the provisions of the Geneva instruments concerning protection of the child.
2. An examination of article I of the draft shows that its material scope has not been defined. The article provides that the Convention shall apply to every child "without any exception whatsoever". In the absence of any clarification, it could be inferred from this that the material scope is very broad and that the draft is to be applied in times of peace as well as in times of armed conflict.
3. Only article VIII stipulates that "the child shall in all circumstances be among the first to receive protection and relief". It seems to us that the words "in all circumstances" apply to all the provisions and have been inserted in this article only to emphasize the fact that the child must always be among the first to receive protection and relief. Moreover, consideration of the provisions themselves shows that they are very general in nature and capable of being observed at all times. The provisions attempt not so much to grant the child specific rights connected with a particular situation, but to deal with general questions so as to guarantee the child a harmonious background for his physical and mental development.
4. The personal scope of the draft has been defined, for the Convention is to apply to children (article I). The notion of "child" has not, however, been made clear. The concept varies from one culture to another. This silence seems wise and will facilitate universal application of the Convention irrespective of local peculiarities.
5. The context of the Geneva Convention and the Additional Protocols is much more precise. Their scope has been strictly defined - they apply in situations of armed conflict. The notion of "child" has not been defined for the purpose of the Conventions and the Protocols as a whole. An age-limit of either 15 or 18 years has, however, often been added. The provisions relating to the protection of children therefore have a specific character. They define the rights of the child in precise and practical terms.
6. We are confronted, on the one hand, by a draft convention characterized by the general and global nature of both its scope and its provisions and, on the other, by the provisions of the Geneva instruments, which are more precise and which apply only in times of armed conflict. The two texts are not incompatible. It is necessary to point out, however, that the protection accorded by existing law must

not be reduced by the draft Convention. We considered whether it was necessary to express this idea by means of a reservation upholding existing law. This does not seem to be the case, since the provisions of positive law, which go further than the proposed law, must be regarded as leges speciales. This is particularly true of the 1949 Geneva Conventions and the Protocols additional thereto which, as leges speciales for situations of armed conflict, will remain fully in force. If, however, there was any doubt on this point, a clause should be formulated and inserted in the draft.

7. In order to avoid any ambiguity, we propose that the material scope of the draft should be clarified by the addition of the words "in all circumstances" after the words "shall be entitled" in article I.

### **III. FIRST READING (1979-1988)**

*In 1979, the Commission on Human Rights decided to establish an informal open-ended working group to meet for one week to consider the question of a draft convention on the rights of the child during the session of the Commission. The Working Group met again in 1980 and was authorized in 1981 and each year thereafter to meet for one week prior to the Commission session. In 1988, the Working Group met for two weeks in order to complete the first reading. The text of article 38, which was not based on any article of the revised Polish draft, was discussed and adopted by the Working Group in 1986. Additional proposals were submitted to the Working Group in 1987 and 1988 with the result that the article was reconsidered in 1988 and a new sentence was added to paragraph 2 at that time. This article was referred to as article 20 throughout the first and second readings.*

#### **A. 1979: REVISED POLISH DRAFT**

*A revised version of the draft convention was included in a note verbale dated 5 October 1979 addressed to the Division of Human Rights from the Permanent Representation of the Polish People's Republic to the United Nations in Geneva. This revised Polish draft, which appears in document E/CN.4/1349, formed the basis for discussion at the 1980 and subsequent sessions of the Working Group. That draft did not contain an article relating to children in armed conflicts.*

#### **B. 1980: PROPOSAL SUBMITTED TO THE WORKING GROUP**

##### **1. Friends World Committee for Consultation (Quakers)**

*The following text, taken from document E/CN.4/NGO/265, was made available to the Working Group at its 1980 session.*

The Friends World Committee for Consultation at its last triennial meeting in Switzerland considered and endorsed the following resolution of the Switzerland Yearly Meeting of Friends:

In this International Year of the Child, we wish to go on record against the practices of training children to kill and maim other human beings. We regret that the United Nations Declaration on the Rights of the Child offers no protection even against the use of children in open fighting. We encourage the United Nations and the international organizations to press for measures against the participation of children in military training and action.

We believe that it would be valuable for the Convention on the Rights of the Child, now under discussion by the United Nations Commission on Human Rights, to include a provision comparable to the provision set forth in the protocols adopted by the International Diplomatic Conference on Humanitarian law in 1977:

"(The Parties to the conflict) shall take all feasible measures in order that children who have not attained the age of 15 years do not take a direct part in hostilities and, in particular they shall refrain from recruiting them into the armed forces."

**C. 1981: PROPOSAL SUBMITTED TO THE WORKING GROUP**

**1. Friends World Committee for Consultation (Quakers)**

*The following text, taken from document E/CN.4/NGO/295, was made available to the Working Group at its 1981 session.*

We have been informed within the past year about children of ten countries who have been taking part in civil wars, in resistance movements, in wars of liberation from colonial powers, and in international conflicts. In a considerable number of additional countries, young people under 15 are reported to be involved in paramilitary or military training. We regret these practices, and we continue to alert our members and the public about the problems and to improve the situation in specific instances.

We regret that the United Nations Declaration on the Rights of the Child does not include a stand in principle against training children to kill and cripple other human beings and using them in open warfare.

We urge that the Convention on the Rights of the Child, now being prepared by the Commission on Human Rights, should include a provision encouraging governments to take measures to ensure that children do not take a direct part in hostilities and that children are not recruited into the armed forces.

**D. 1982: PROPOSAL SUBMITTED TO THE WORKING GROUP**

1. **Joint NGO proposal for a new article submitted by the following non-governmental organizations in consultative status: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers, World Jewish Congress**

*The following is taken from document E/CN.4/1982/WG.1/WP.1, para. 13.*

1. Without prejudice to the application of other relevant articles of the present Convention, States parties to an armed conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities, and in particular, they shall refrain from recruiting them into their armed forces. [In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States parties to the armed conflict shall endeavour to give priority to those who are the oldest.]\*/

2. If, in exceptional cases, despite the provisions of paragraph 1, children who have attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse party, they shall continue to benefit from the special protection accorded by this provision, whether or not such children are prisoners of war.

3. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units.

\*/ Friends World Committee for Consultation wishes to dissociate itself from this last sentence.

**E. 1983: PROPOSAL SUBMITTED TO THE WORKING GROUP**

1. **Algeria**

*The following is taken from E/CN.4/1983/WG.1/WP.27.*

1. The States Parties to the Convention have the right and the duty individually and collectively to eliminate colonialism, apartheid, racial discrimination, neocolonialism and all forms of foreign aggression, occupation and domination and their economic, social and cultural consequences, as a necessary prerequisite for the harmonious development of children and their families.

2. Children should be protected in all circumstances and especially during armed conflicts against attacks, acts of violence, bombardments and other inhuman practices which impair their moral and physical integrity.

## **F. 1984: PROPOSALS SUBMITTED TO THE WORKING GROUP**

### **1. Canada**

*The following proposal concerning present article 29 (aims of education) is taken from the 1984 report of the Working Group to the Commission on Human Rights (E/CN.4/1984/71, annex II).*

1. The States Parties to the present Convention recognize that the bringing up and education of the child should promote the full development of his personality, his respect for human rights and fundamental freedoms.
2. The child should be prepared for an individual life in a free society, in the spirit of understanding, tolerance and friendship among all peoples, ethnic and religious groups.
3. The States Parties to the present Convention undertake to ensure that the child is educated in harmony with the principles of peace proclaimed by the United Nations.
4. In accordance with paragraphs 1, 2 and 3 of this article, the States Parties to this Convention undertake to protect the child from conscription or from use in military combat.

### **2. Iran, Islamic Republic of**

*The following is taken from the 1984 report of the Working Group to the Commission on Human Rights, E/CN.4/1984/71, annex II.*

- (a) The States Parties to the present Convention, guided by the principles of international customary law and Geneva law, shall refrain from committing a military attack and bombardment of undefended cities and the civilian population, inflicting incalculable suffering, especially on children who are the most vulnerable members of the population.
- (b) The use of chemical and bacteriological weapons in the course of armed conflict constitutes one of the most flagrant violations of the Geneva Protocol of 1925, and the principles of international humanitarian law and inflicts heavy losses on civilian populations including defenceless children, such acts constitute a crime against humanity.

**3. NGO Ad Hoc Group (see annex 1 for participating organizations)**

*The following proposal, made available to the Working Group at its 1984 session in the Report of informal consultations among international non-governmental organisations (December 1983), is taken from E/CN.4/1985/WG.1/WP.1.*

1. The States Parties to the present Convention shall refrain from recruiting children into the armed forces and shall take all measures to ensure that children do not take part in hostilities.
2. Recognizing the special vulnerability of children, the States Parties to the present Convention shall, in cases of internal and international armed conflicts, take special measures to prevent all children from being subjected to any form of physical or psychological violation and to ensure that they are always among the first to receive protection and care.

**G. 1985: PROPOSALS SUBMITTED TO THE WORKING GROUP**

**1. Netherlands, Belgium, Sweden, Finland, Peru and Senegal**

*The following is taken from the 1985 report of the Working Group to the Commission on Human Rights, E/CN.4/1985/64, annex II.*

1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to children.
2. In order to implement these obligations States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities.

**2. NGO Ad Hoc Group (see annex 1 for participating organizations)**

*The following proposal, made available to the Working Group at its 1985 session in the Report of informal consultations among international non-governmental organisations (December 1984), is taken from E/CN.4/1986/WG.1/WP.1, page 58. Paragraphs 1 and 2 of the proposed new article were submitted to the Working Group in 1984 (see section F above).*

1. The States Parties to the present Convention shall refrain from recruiting children into the armed forces and shall take all measures to ensure that children do not take part in hostilities.

2. Recognizing the special vulnerability of children, the States Parties to the present Convention shall, in cases of internal and international armed conflicts, take special measures to prevent all children from being subjected to any form of physical or psychological violation and to ensure that they are always among the first to receive protection and care.

3. The States parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts and which are relevant to children in this situation.

## **H. 1985: DISCUSSION AT THE WORKING GROUP**

*The following is taken from the 1985 report of the Working Group to the Commission on Human Rights, E/CN.4/1985/64, paragraph 9.*

9. (...) The representative of the Netherlands also drew the Working Group's attention to a proposed article relating to children in armed conflicts submitted by the delegations of the Netherlands, Belgium, Finland, Peru, Senegal and Sweden, in order that Governments might review this proposal for discussion at the Group's next session.

## **I. 1986: MODIFIED PROPOSAL PRESENTED BY POLAND**

*At its 1986 session, the Working Group had before it an elaboration of the draft convention which had been made available to the General Assembly in 1985 (see A/C.3/40/3) by the Polish delegation with a view to expediting the drafting process. That document contained the text of the articles which had already been adopted as well as a number of modified proposals which had been made at the Working Group. The following text is taken from A/C.3/40/3, paragraph 12.*

### Article 20

1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to the child.

2. In order to implement these obligations, the States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities.

## **J. 1986: PROPOSAL SUBMITTED TO THE WORKING GROUP**

### **1. Iraq**

*For the text of this proposal, see paragraph 124 in section K below.*

**K. 1986: DISCUSSION AND ADOPTION AT THE WORKING GROUP**

*The following is taken from the 1986 report of the Working Group to the Commission on Human Rights, E/CN.4/1986/39, paragraphs 124-145.*

124. In 1985, the delegations of Belgium, Finland, the Netherlands, Peru, Senegal and Sweden had submitted a proposed new article to be incorporated in the draft convention as article 20 and that read as follows:

- "1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to children.
2. In order to implement these obligations States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities."

A proposal submitted by the delegation of the Islamic Republic of Iran in 1984 read as follows:

- "(a) The States Parties to the present Convention, guided by the principles of international customary law and Geneva law, shall refrain from committing a military attack and bombardment of undefended cities and the civilian population, inflicting incalculable suffering, especially on children who are the most vulnerable members of the population.
- (b) The use of chemical and bacteriological weapons in the course of armed conflict constitutes one of the most flagrant violations of the Geneva Protocol of 1925, and the principles of international humanitarian law and inflicts heavy losses on civilian populations including defenceless children, such acts constitute a crime against humanity."

In addition, the delegation of Iraq submitted the following proposal in 1985:

- "1. Special respect must be shown for children. Their protection must be ensured and the parties to the conflict must provide them with the care and assistance that they need by virtue of their age.
2. On the occurrence of an armed conflict, the parties involved therein must take every possible measure to ensure that children do not participate directly in hostilities and are not sent to combat areas. The said parties shall, in particular, refrain from mobilizing these young persons in their armed forces.

3. If, in exceptional circumstances and notwithstanding the provisions contained in the preceding paragraph, children participate directly in hostilities and are captured by the adversary, they shall continue to enjoy the special protection to which they are entitled under this article.

4. In the event of children being captured, detained or interned for reasons connected with an armed conflict, they must be confined in places separate from those assigned to adults."

The delegation of Poland submitted a proposal in document A/C.3/40/3 that read:

"1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable in armed conflicts which are relevant to the child.

2. In order to implement these obligations, the States Parties to the present Convention shall, in conformity with the relevant rules of international humanitarian law, refrain in particular from recruiting children into the armed forces and shall take all feasible measures to ensure that children do not take part in hostilities."

All those proposals were reintroduced at the Working Group's current session as originally submitted. A proposal was also submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention in document E/CN.4/1986/WG.1/WP.1 [see section G above].

125. The proposal by the delegation of Poland was taken as the basis for discussion. The observer for the International Committee of the Red Cross made a statement.

#### Paragraph 1

126. The representative of the United States expressed the view that the phrase "rule of international humanitarian law applicable in armed conflicts" was ambiguous; she therefore proposed inserting the words "to them" after the word "applicable" to make clear that States are not obliged to respect "rules of law" contained in treaties to which they are not a Party, unless such "rules" are binding as customary international law.

127. While understanding the concern of the representative of the United States, the representative of France suggested adding the phrase "as defined by the international conventions regularly approved and ratified by States" after the words "armed conflicts". The observer for the Netherlands, supported by the observers for Finland and Canada, voiced his concern over the proposal by the French delegation. They stated their preference for leaving the text as it stood. In a spirit of compromise, the observer for Finland suggested inserting the words "the relevant" before the words "rules of international humanitarian law" and ending the paragraph after the words "armed conflicts".

128. The representative of France further revised her proposal and suggested adding the phrase "as they arise from custom and conventions applicable to States in case of armed conflicts" after the words "humanitarian law". The delegations of Austria and Japan indicated their preference for keeping the text as it stood in the original version. The delegations of the Netherlands, Norway and Poland, while also expressing their preference for the original proposal, stated that they would support the proposal by the United States for the reasons put forward by that delegation.

129. The Working Group then proceeded to adopt paragraph 1 of Article 20 as follows:

"The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child."

### Paragraph 2

130. The representative of the United Kingdom proposed replacing the word "recruiting" by the word "conscripting" and suggested adding the words "under the age of fifteen" after the word "children" in the third line of the paragraph. The observer for the Netherlands did not agree with the inclusion of the word "conscripting" and the representative of the United Kingdom therefore proposed adding the word "compulsory" after the word "recruiting".

131. The delegations of Bangladesh and Canada stressed the importance of qualifying the definition of children by making a reference to the age of 15. The observer for the International Committee of the Red Cross drew the attention of the Working Group to the Additional Protocols of 1977 to the Geneva Conventions of 1949 which set the age below which children may not be recruited into the armed forces at 15. In this connection, the representative of Canada, supported by the representative of Norway, suggested adding the words "who have not attained the age of fifteen years" after the word "children". The representative of the United Kingdom then withdrew his amendment reading "under the age of fifteen" in favour of the Canadian amendment.

132. The representative of Venezuela proposed inserting the words "and using" after the word "recruiting", and replacing the words "take part" by the words "participate in any way"; she disagreed with the proposed reference to a minimum age of fifteen years, expressing her preference for a minimum age of eighteen years.

133. The observer for Finland proposed reformulating the paragraph as follows:

"In conformity with the relevant rules of international humanitarian law, States Parties to the present Convention shall take all feasible measures to ensure that no child takes part in any way in hostilities and they shall

refrain in particular from recruiting any child who has not attained the age of fifteen years into the armed forces."

134. The Finnish proposal was supported by the delegation of the Netherlands. The observer for Finland, after listening to a statement by the delegation of Japan, proposed that the phrase "In conformity with the relevant rules of international humanitarian law", be deleted. The representative of the USSR stated that, if the age of 15 years were to be maintained in the provision, it could create problems in the second reading, particularly because there was no reference in the draft convention to a minimum age for employment of children.

135. The Chairman then decided to invite the delegations of Finland, the USSR, the United Kingdom and Venezuela to hold informal consultations with a view to drafting a new text for paragraph 2.

136. As a result of these consultations, the representative of the USSR introduced the following revised text for paragraph 2:

"States Parties to the present Convention shall take all feasible measures to ensure that no child takes direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of fifteen years into their armed forces."

137. During the debate, the representative of Algeria expressed her disagreement with the proposed age limit, and indicated her wish that the age of 18 years, which appeared in article 1 of the draft Convention, be maintained in the text under discussion. The delegations of the Netherlands and the United Kingdom stressed that the text should remain as proposed by the informal drafting party.

138. The representative of the United States suggested that the phrase "takes direct part in hostilities" should read "takes a direct part in hostilities". The suggestion was accepted by the representatives of France and the United Kingdom.

139. The representative of Algeria introduced an amendment to paragraph 2 which consisted in inserting the words "against his or her will" after the words "a direct part". Many delegations objected to such an amendment, the general feeling being that it would be contrary to the spirit of the Convention. The representative of Algeria placed on record her reservation regarding this provision and her wish to return to it at a later stage.

140. After a further exchange of views, the Working Group adopted paragraph 2 as follows:

"States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of fifteen years into their armed forces."

### Paragraph 3

141. The observer for Sweden introduced a text for an additional paragraph 3 which read: "In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take any necessary measures to ensure protection and care of children."

142. The observer for the Netherlands indicated his agreement with the aforementioned paragraph. The representative of the United States also expressed her support for the paragraph and proposed adding the following words: "and shall refrain from making children the object of armed attack".

143. The Chairman requested the observer for Sweden, in consultation with the delegations of Australia, the Netherlands and the United States, together with the International Committee of the Red Cross, to submit a revised text to the Working Group.

144. The observer for Sweden submitted the revised proposal which read:

"In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by a conflict."

145. The representative of the German Democratic Republic proposed deleting the word "a" at the end of the paragraph and replacing it with the words "an armed". With this amendment and the introduction of the words "to this Convention" after the words "States Parties", the Working Group adopted paragraph 3 as follows, with the general understanding that it includes a prohibition on making civilian children the object of armed attack.

"In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict."

## **L. 1987: PROPOSALS SUBMITTED TO THE WORKING GROUP**

### **1. International Committee of the Red Cross (ICRC)**

*The following text from document E/CN.4/1987/WG.1/WP.4, was also reproduced in part in E/CN.4/1988/WG.1/WP.2, page 17.*

(...)

It is above all paragraphs 2 and 3 of Article 20 which give rise to comment.

1. Paragraph 2

Paragraph 2 speaks of taking part in hostilities (first sentence) and recruitment (second sentence).

1.1. As far as taking part in hostilities is concerned, this provision might, it is true, appear to extend somewhat the protection afforded by the 1977 Protocols. Indeed, Article 20, paragraph 2, prescribes that the "States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct act in hostilities ...". The term "child" must be interpreted in accordance with Article 1 of the Draft Convention which gives the following definition: "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". Although in most industrialized countries this age is 18 years or even older, it is to be feared that in other parts of the world, in fact those parts where armed conflicts most often take place, the age of majority is reached earlier. In Islamic countries, the age of majority is reached by boys between 12 and 15 years of age and by girls at 17 years of age. 1/ The law in force in Angola since 9 February 1982 fixes the age at 14 years. 2/ In this connection, the International Union for Child Welfare (IUCW) declared during the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law (1974-1977): "In a number of developing countries, especially in Africa, children of 14 are already adults. 3/..." This is one of the reasons for which the age of 15 years was maintained in the 1977 Protocols, which represents some progress while remaining realistic.

The Working Group could have taken advantage of the adoption of Article 20 to improve protection by prescribing that the States Party to the present Convention take all "necessary" measures instead of "all feasible" measures. In other words, the text which was finally approved means that voluntary participation by children is not totally prohibited. During the Diplomatic Conference (1974-1977), the ICRC had proposed the words "necessary measures" but this was, unfortunately, not accepted. Protocol I, Article 77, speaks of "feasible measures".

Likewise, the Working Group could have strengthened protection by removing the word "direct". The ICRC suggested this too during the Diplomatic Conference but the proposal was not approved. This being the case, it can reasonably be inferred from the present Article 20 of the Draft Convention that indirect participation, for example gathering and transmitting military information, transporting weapons, munitions and other supplies is not affected by the provision.

By contrast, Protocol II, Article 4, paragraph 3, goes further, dispensing with terms such as "feasible measures" and "direct". 4/

In other words, the first sentence of the second paragraph in Article 20 does nothing to improve the protection of children over that provided by the Protocols.

1.2. As for the question of recruitment (second sentence of the second paragraph), one can only conclude that it does not go as far as Protocol I. In fact, Protocol I, Article 77, paragraph 2, adds: "... In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, the Parties to the conflict shall endeavour to give priority to those who are oldest". This was a compromise on the part of the Diplomatic Conference (1974-1977): indeed, one delegation had proposed an amendment in which the minimum recruiting age would be raised from 15 to 18 years. The majority was opposed to extending the ban on recruitment beyond 15 years of age but, in recognition of this proposal, the provision was made that in recruiting persons between the ages of 15 and 18, those oldest would be recruited first. 5/

## 2. Paragraph 3

But it is paragraph 3 which presents the greatest risk of weakening international humanitarian law.

In using the wording "... States Parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict", the authors of Article 20 failed to incorporate the rule prohibiting attacks on civilians and therefore, obviously, on children. Certainly one of the fundamental rules of international humanitarian law applicable in armed conflicts is the one stating that the parties to the conflict shall, at all times, distinguish between the civilian population and the combatants in such a way that the population and civilian objects are spared. Neither the civilian population as such nor individual civilians may be the object of attack. Attacks may only be made on military objectives. 6/ This principle conveys the humanitarian rules applicable in any of the situations normally faced by armed forces. They are set forth in more detail in treaties such as the Regulations of the Hague of 1907 and the Geneva Conventions of 1949. The two Additional Protocols of 1977 reaffirm and develop these rules. Within the meaning of these instruments, the prohibition of attacks on the civilian population is an inviolable principle (Protocol I, Article 51, paragraph 2). The right to care and assistance is also absolute. Article 23 of the Fourth Convention, for example, prescribes that "each High Contracting Party shall permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers and maternity cases". Several other provisions in the Fourth Geneva Convention and Protocol I prescribe similar assistance.

## Conclusion

New instruments must not be allowed to undermine rights already acquired and weaken the special protection which has already been given to children in the Geneva Conventions of 1949 and their Additional Protocols of 1977. That is what is in danger of happening if, at its second reading, the working of Article 20 is not changed.

It should be noted that the Twenty-Fifth International Conference of the Red Cross adopted in October 1986 a resolution (Protection of children in armed conflicts) which "stresses that the protection accorded by the new Convention should be at least the same as that accorded by the Geneva Conventions and the two Additional Protocols".

In addition, the provisions contained in Article 20 must not convey the impression of addressing the entire question, and it must not be forgotten that there are some 25 Articles covering this area which are in force in international humanitarian law.

In order to preserve the essential gains which have been made in international humanitarian law, we feel it important that the safeguard clause in Article 21 of the Draft Convention on the rights of the child 7/ not be modified.

A more appropriate wording of Article 20 could read as follows:

1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties to the present Convention shall take all necessary measures in order that children who have not attained the age of fifteen years do not take part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States Parties to the present Convention shall endeavour to give priority to those who are oldest.
3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to this Convention shall take all necessary measures to ensure protection and care of children who are affected by an armed conflict.

#### Notes

1/ Quoted by Philippe Saunier in his study on children in armed conflicts, University of Nice, February 1986, p.18.

2/ Quoted by the same author, p.19.

3/ Quoted in "New Rules for victims of armed conflicts. Commentary on the two 1977 Protocols additional to the Geneva Conventions of 1949" by M. Bothe, K.J. Partsch, W.A. Solf, The Hague/Boston/London, 1982.

4/ Protocol II, Article 4, paragraph 3 (c): "children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities".

5/ See Official Records III, page 301, CDDH/III/325.

6/ Twentieth International Conference of the Red Cross, Vienna 1965. Basic rules of the Geneva Conventions and their Additional Protocols, ICRC, September 1983, p.7.

7/ "Nothing in this Convention shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party, or

(b) Any other international convention, treaty or agreement in force for that State."

## **2. Rädga Barnen**

*The following is taken from E/CN.4/1987/WG.1/WP.3.*

### Paragraph 1

This sentence refers to the international humanitarian law which is relevant. Though the expression "ensure respect" could have been more specific, this paragraph as a whole is not objectionable.

### Paragraph 2

This text is no improvement as compared to the stipulations in the Additional Protocols (1977) to the Geneva conventions. This in itself is disappointing as, during the decade since protocols were agreed, the real situation in this area has deteriorated seriously. In recent years a large number of children have been pushed into taking part in warfare itself, even in combative roles. Stricter rules in this field are required.

The formulation "all feasible measures" is weak and seems to indicate that, for instance, so-called voluntary participation by children is not totally prohibited. Better would be: "necessary measures". The intention of the word "direct" could be inferred to mean that indirect participation, such as transport of weapons and munition would be allowed for minors.

However, the specification of the age below 15 means an indirect recognition that minors of 15, 16 and 17 years of age can be enlisted. This is a serious shortcoming, not least against the background of the misuse of boys of 15 and 16 in some countries. Therefore, the most relevant aspect is not covered. On

the contrary, the text means a direct acceptance of recruitment of such young people.

The Red Cross Protocols at least address the problem. They state in an addition (Protocol I, article 77, paragraph 2): "In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, the parties to the conflict shall endeavour to give priority to those who are oldest." The idea was that among the persons between 15 and 18 efforts shall be made to avoid recruiting the youngest. This was of course a compromise formulation. During the so-called Diplomatic Conference when this was discussed there were those who argued that the age should be 18 - full stop. This is the decent position.

The draft article 20 therefore represents a weakening of the humanitarian law which in turn also is unsatisfactory.

A possible solution would be to omit any reference to a specific age. In fact no other article refers to an age in that manner. The implication of simply stating that no child should be recruited would in reality be an aged limit of 18 for many countries but there are also countries with a more narrow (younger) definition of "child". Article 1 of the Draft Convention says: "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." This drawback, however, seems less serious than the one reflected in the present draft.

It has been argued that there is a distinction between the two bits of paragraph 2, in article 20. In relation to hostilities there is a reference to "child", in relation to recruitment to the armed forces the age limit is introduced. This could be interpreted to mean that though a 15 year old could be enlisted to the army he could not be allowed to take part in hostilities. This is logical, but the problem is that this is a too fine point to be understood - or at least work - in practice. In situations of war all soldiers will be used.

### Paragraph 3

This paragraph is weaker than international humanitarian law. It does not reflect the absolute prohibition against attacks on civilians including children. Attacks can only be made on military objectives. This is in fact one of the most fundamental principles of the Geneva Conventions. The formulation in article 20 makes this aspect relative; its use of "all feasible measures" in this context is most unfortunate.

### Conclusion

The shortcomings in this text are serious. As the subject area is of such a fundamental importance, it is necessary to reopen the discussion on this very point before the draft is given its final form.

It is proposed that the revised article be given the following formulation:

1. The States parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States parties to the present Convention shall take all necessary measures to ensure that no child takes part in hostilities and they shall refrain from recruiting any child into their armed forces.
3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States parties to this Convention shall take all necessary measures to ensure protection and care of children who are affected by an armed conflict.

#### **M. 1987: DISCUSSION AT THE WORKING GROUP**

*The following is taken from the 1987 report of the Working Group to the Commission on Human Rights, E/CN.4/1987/25, paragraphs 160-165.*

160. The delegations of both Sweden and Switzerland urged the Working Group to re-open the discussion on article 20 - adopted by the Group in 1986 - dealing with the protection and care of children affected by an armed conflict, in order to ensure better protection for them.

161. The delegation of Switzerland - which was the first to address the Working Group on the question - drew the Group's attention to resolution IX on protection of children in armed conflicts adopted by the Twenty-fifth International Conference of the Red Cross in October 1986, in operative paragraph 7 of which the Conference expressed its support for the work being done by the Commission regarding the drafting of a convention on the rights of the child, and stressed "That the protection accorded by the new Convention should be at least the same as that accorded by the Geneva Conventions and the two Additional Protocols".

162. The observer for Switzerland thought that article 20 failed to preserve the essential headway that had been made in international humanitarian law, and indicated that what was at stake was safeguarding the essential achievements of the various provisions of the Geneva Conventions of 1949 and their Additional Protocols of 1977, which applied to children in armed conflicts. He appealed to the Working Group not to allow those existing rights to be weakened and the special protection given to children under armed conflicts by the Geneva Conventions and their Additional Protocols to be lessened. Accordingly, he suggested that the Working Group should reconsider the question at its next session, or at the latest during the second reading of the draft Convention.

163. The Chairman reminded the observer for Switzerland that article 20 had been adopted the previous year with the participation of the delegations of

Switzerland and of the International Committee of the Red Cross, and regretted that the ideas currently being expressed by the observer for Switzerland had not been put forward on the occasion of the adoption of that article by the Working Group.

164. The observer for Sweden said that her delegation had some questions concerning certain articles that had been adopted such as numbers 2, 4, 19 and especially article 20 which, she hoped, would be dealt with during the second reading of the draft Convention. With respect to article 20, she regarded it as being only a first step in the work on the protection of children in times of war, and therefore thought that it would be of great value to take a new look at the article during the next session of the Working Group or, at the latest, during the second reading of the draft Convention, with particular reference to paragraph 2 concerning recruitment into the armed forces. The Chairman reminded the observer for Sweden, also, that her delegation had been present the previous year during the discussion of article 20 by the Group.

165. The observer for the Netherlands was in agreement with the remarks made by the previous speakers to the effect that article 20 should be reviewed at a later stage, for the protection given to children in armed conflicts should at least be the same as that which they enjoyed under the Geneva Conventions and their Additional Protocols. He also pointed out the links that existed between article 1 and article 20 of the draft Convention, and suggested that the Working Group should also review article 1. The representative of Venezuela agreed with the remarks on article 20 that had been made by previous speakers.

## **N. 1988: PROPOSALS SUBMITTED TO THE WORKING GROUP**

### **1. Netherlands**

*The following is taken from E/CN.4/1988/WG.1/WP.26.*

#### New second paragraph

2. The States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of 16 years into their armed forces.

### **2. Sweden**

*The following is taken from E/CN.4/1988/WG.1/WP.19.*

1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties to the present Convention shall take all necessary measures to ensure that persons who have not attained the age of eighteen years do not take part in hostilities and they shall refrain from recruiting into their armed forces persons below the age of fifteen years. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States Parties to the present Convention shall endeavour to give priority to those who are oldest.

3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to the present Convention shall take all necessary measures to ensure protection and care of children who are affected by an armed conflict.

**3. NGO Ad Hoc Group** (see annex 1 for participating organizations)

*For the text of this proposal, which was reproduced in E/CN.4/1988/WG.1/WP.2, page 17, see the proposal by Rädde Barnen in 1987, section L above.*

**O. 1988: DISCUSSION AND ADOPTION AT THE WORKING GROUP**

*The following is taken from the 1988 report of the Working Group to the Commission on Human Rights, E/CN.4/1988/28, paragraphs 71-79 and 223.*

Article 20, additional sentence to paragraph 2 (Armed conflicts)

71. With regard to article 20, two proposed amendments to the text already adopted were submitted to the Working Group by Sweden and the Netherlands (E/CN.4/1988/WG.1/WP.2, E/CN.4/1988/WG.1/WP.19 and E/CN.4/1988/WG.1/WP.26 respectively).

72. The observer for Sweden introduced his proposal and stated that since the adoption of article 20 in 1986, the General Assembly had drawn up guidelines for the development of international instruments in the field of human rights in resolution 41/120. By that resolution, the Assembly had urged Member States, when developing new international human rights standards, to give due consideration to the established international legal framework, so as to ensure that such standards were consistent with existing provisions of human rights law. Article 20, as adopted in 1986, undermined existing standards of international humanitarian law, in particular, the Geneva Conventions of 1949 and the two Additional Protocols thereto, and resolution IX adopted by the 25th International Conference of the Red Cross (23-31 October 1986) had stressed that the protection accorded by the new convention on the rights of the child should be at least the same as that accorded by the Geneva Convention and the two Additional Protocols. The Swedish proposal did not indicate a revision of article 20 but only some amendments that would bring the text into line with the above-mentioned

international humanitarian instruments. The following amendments were proposed: in paragraphs 2 and 3, to replace the words "feasible measures" by "necessary measures"; in paragraph 2, to replace the word "child" in the second line by "persons who have not attained the age of 18 years"; in the same line, to delete the word "direct". Concerning recruitment into the armed forces, it was proposed to insert as the last sentence a text based on article 77, paragraph 2, of Additional Protocol I to the Geneva Conventions which read: "In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States Parties to the present Convention shall endeavour to give priority to those who are oldest".

73. The observer for the Netherlands withdrew his proposal (E/CN.4/1988/WG.1/WP.26) and stated that he supported the proposal submitted by Sweden.

74. Numerous members and observers spoke on this matter and voiced their support to the spirit of the proposal, indicating that it involved a considerable improvement on article 20 as adopted, because it complied with General Assembly resolution 41/120. It was pointed out, however, that the expression "necessary measures" and the deletion of the word "direct" in the phrase "take direct part in hostilities" would be an improvement on the standard in the Additional Protocols to the Geneva Conventions. Another observer strongly supported the proposal and stated that the proposed amendments to paragraph 2 of article 20 would improve the protection of the child in armed conflicts, which was necessary if there was a will to provide special protection for children. The representative of the International Committee of the Red Cross supported the proposal and stressed the need to include those standards in the convention on the rights of the child thereby strengthening the position of the Red Cross when carrying out its humanitarian activities in armed conflicts. The representative of the High Commissioner for Refugees also supported this proposal as strengthening the protections afforded to refugee children.

75. One participant stated that article 20 as adopted was the result of a compromise and that the necessary revision should be done in connection with the revision of article 1, giving priority to the latter. The group should not limit itself to revision of the concept of recruitment and recruitment age, because the real problem was the militarization of children in official, private or informal armies. Children should be assured a "different" protection, not the same protection as adults. One participant shared the view that it was premature to take decisions on the age of recruitment until a satisfactory definition had been achieved in article 1. Another pointed out an inconsistency in paragraph 2 of article 20 in which two definitions of "child" were contained, one of them contradicting that in article 1.

76. The proposed text met with objections from some participants, who stated that some norms in their national legislation prevented them from supporting it. However, they were ready to take the question to their Governments and to study all the information that the International Committee of the Red Cross or other organizations wished to provide. On that basis, some participants stated that they

would prefer to reopen the debate on article 20 at the second reading and not during this session.

77. The observer for Egypt expressed the view that his delegation would like to include in article 20 a differentiation between voluntary recruitment by military schools and obligatory recruitment.

78. The Chairman of the working group drew the attention of participants to the fact that two different items were dealt with in the discussion: the first involved amendments to the existing text, which improved international standards, the second was the insertion in paragraph 2 of a new text, which was taken from article 77 of the Additional Protocol I to the Geneva Conventions. The Chairman's point was taken by some participants, who suggested the insertion of the new text based on Additional Protocol I in paragraph 2 of article 20, and leaving the amendments to the existing text for the second reading of the convention. That suggestion was agreed to by all the participants and the new text, to be added to paragraph 2, was adopted to read as follows:

"In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States Parties to the present Convention shall endeavour to give priority to those who are oldest."

79. The observers for Sweden and the Netherlands stated that they had joined the consensus on the understanding that the other parts of the text would be reviewed at the second reading of the convention (see below paragraph 223).

(...)

#### PROPOSALS DISCUSSED, BUT NOT ADOPTED, BY THE WORKING GROUP:

223. The parts of the proposal submitted by the representative of Sweden (E/CN.4/1988/WG.1/WP.19) which were not adopted during the current session (see above paragraphs 71 and 79) were also deferred to second reading as follows:

1. States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties to the present Convention shall take all necessary measures to ensure that persons who have not attained the age of eighteen years do not take part in hostilities and they shall refrain from recruiting into their armed forces persons below the age of fifteen years.

3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to

the present Convention shall take all necessary measures to ensure protection and care of children who are affected by an armed conflict."

#### **P. TEXT AS ADOPTED AT THE FIRST READING**

*The following text is taken from document E/CN.4/1988/WG.1/WP.1/Rev.1.*

##### Article 20

1. The States Parties to the present Convention undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any child who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the States Parties to the present Convention shall endeavour to give priority to those who are oldest.
3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties to this Convention shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

#### **IV. TECHNICAL REVIEW (1988)**

*By a letter addressed to the Secretary-General (see E/CN.4/1988/28, paragraph 248), the Working Group requested that a technical review of the draft convention be undertaken by the United Nations Secretariat in advance of the second reading. Among the aims of the technical review were to identify overlap and repetition between and within draft articles; to check for linguistic consistency and accuracy in the text; to compare the standards established with those in other widely accepted human rights instruments; and to make recommendations as to how any overlaps or inconsistencies might be corrected in the second reading.*

*The Secretary-General subsequently requested comments on matters within their respective mandates of a number of the specialized agencies and other United Nations bodies, as well as the International Committee of the Red Cross. Those comments were compiled in the Technical Review of the text of the draft Convention on the Rights of the Child (E/CN.4/1989/WG.1/CRP.1 and Add.1), which was taken into account by the Working Group during the second reading of the draft Convention.*

**A. Comment by United Nations High Commissioner for Refugees (UNHCR)**

*The following is taken from E/CN.4/1989/WG.1/CRP.1, page 39.*

As UNHCR pointed out during the last session of the Working Group, draft article 20 provides a lower standard of protection to children in armed conflicts than that which currently exists in international humanitarian law. In line with General Assembly resolution 41/120, we would hope that the standard set by article 20 would be raised to meet or surpass current norms. This would be in keeping with resolution 41/120 and the thrust of the Working Group's efforts concerning the draft Convention as a whole and in line with articles 55(c) and 56 of the Charter of the United Nations which enjoin United Nations Member States to take joint and separate action to achieve universal respect for, and observance of, human rights and fundamental freedoms for all.

**B. Comment by UNICEF**

*The following is taken from E/CN.4/1989/WG.1/CRP.1, page 40.*

Paragraph 1. The view has been expressed that the present formulation of this paragraph, by virtue of the phrase "applicable to them", might be read to cover only those States which have specifically undertaken relevant humanitarian law treaty obligations. This would, however, be an incorrect interpretation. The existing language clearly applies equally to the customary law obligations of all States, as confirmed by the travaux préparatoires. Thus, no change is suggested.

Paragraph 2. Since the provisions of this paragraph draw heavily upon those contained in existing international humanitarian law treaties, it is particularly important to ensure that any deviation therefrom does not result in a diminished level of protection, thus contravening General Assembly resolution 41/120.

One issue which has been raised is whether the use of the qualifier "feasible" before the word "measures" does not unduly dilute the level of obligation assumed by States Parties. The phrase is taken directly from article 77, paragraph 2, of the First Additional Protocol to the Geneva Conventions of 12 August 1949. It may be noted, however, that article 4, paragraph 3(c), of the Second Additional Protocol, which contains a comparable provision, is cast in the form of an unqualified obligation on the part of States Parties. Moreover, article 4 is entitled "Fundamental guarantees", thus appearing to underline its importance. Consideration might thus be given to either deletion of the qualifier (so that the paragraph would read "States Parties ... shall [ ] ensure...") or to replacement of the word "feasible" by "necessary" or "possible".

Another issue relates to the absence of any specific minimum age in the first part of paragraph 2, which reads: "States Parties to the present Convention shall take all feasible measures to ensure that no child takes a direct part in hostilities ...". Read in conjunction with article 1 of the draft convention, this provision would

enable a State Party, under whose law a child attains the age of majority at 14 years or younger, to avoid taking any measures to ensure that a 14-year-old child takes no direct part in hostilities.

That situation would, however, be in conflict with, and thus represent a diminution in, the level of protection granted in article 77, paragraph 2, of the First Additional Protocol to the Geneva Conventions, which applies to all "children who have not attained the age of fifteen years". One solution would be to specify that age as applying to the first part of article 20, paragraph 2. On its own, however, such a solution would reduce the level of protection currently provided by the draft convention to children in States where the age of majority is above fifteen years. A better solution, which ensures no reduction in the present level of protection and no lowering of the standard contained in the First Additional Protocol, would be to add a new sentence after the word "hostilities" to the effect that:

"This provision shall apply to every child who has not attained the age of 15 years and to any other child below the age of 18 years who, under the law of his or her State, has not attained the age of majority."

The remaining part of paragraph 2 could then be placed in a new paragraph 2 bis which would begin:

"States Parties to the present Convention shall refrain from recruiting any child ..."

The division of the existing paragraph 2 into two separate paragraphs would also seem to be warranted given the significantly different nature of the two issues dealt with: non-participation in hostilities, and non-recruitment into the armed forces.

Paragraph 3: This paragraph provides that:

"States Parties ... shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict."

Limiting the measures which are required to be taken to those which are considered to be "feasible" would seem to constitute a very significant diminution of the level of protection already provided by a wide range of existing treaty provisions, including in particular the Geneva Conventions of 1949 and their two Additional Protocols of 1977.

In this connection, it is appropriate to recall the Declaration on the Protection of Women and Children in Emergency and Armed Conflict in which the General Assembly solemnly proclaimed, inter alia, that:

"All States shall abide fully by their obligations under the Geneva Protocol of 1925 and the Geneva Conventions of 1949, as well as other instruments

of international law relative to respect for human rights in armed conflicts, which offer important guarantees for the protection of women and children."

In order to avoid any diminution of existing standards, consideration might be given to replacing the word "feasible" by "necessary" or shortening the phrase to read: "States Parties ... shall [ ] ensure..."

### **C. Comment by the International Committee of the Red Cross (ICRC)**

*The following is taken from E/CN.4/1989/WG.1/CRP.1, page 41.*

As you know, article 20 of the said draft Convention on children in armed conflicts is of particular interest to the ICRC. This provision, as adopted during the first reading, falls short of the norms set by international humanitarian law currently in force. We are enclosing a critical study of article 20 as it compares with international humanitarian law, which was published in the Norwegian review, "Mennesker og Rettigheter" in 1986.

We are also sending you several texts presenting the ICRC's position in this matter. (Texts available upon request from the Secretariat.)

### **V. SECOND READING (1988-1989)**

*By a letter addressed to the Secretary-General (see E/CN.4/1988/28, paragraph 248), the Working Group requested that the draft of the convention as adopted at the first reading be circulated to all Member States so that their comments could be taken into account during the second reading of the draft. The Working Group conducted the second reading from 28 November to 9 December 1988 and adopted its report from 21 to 23 February 1989.*

#### **A. PROPOSALS SUBMITTED TO THE WORKING GROUP AT THE SECOND READING**

*The following written proposals were submitted at the second reading.*

##### **1. Germany, Federal Republic of**

*The following is taken from E/CN.4/1989/WG.1/WP.51.*

Reformulate the second paragraph as follows:

2. States Parties shall take all feasible measures to ensure that no child takes a direct part in hostilities and they shall refrain in particular from recruiting any person who has not attained the age of 18 years into their

armed forces. A reservation as to this age is permitted. A State Party which has made a reservation to this effect shall, nevertheless, refrain from recruiting any child who has not attained the age of 15 years into its armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the State Party concerned shall endeavour to give priority to those who are oldest.

## 2. India

*The following is taken from E/CN.4/1989/WG.1/WP.16.*

### Article 20 (2)

In view of the fact that article 1 provides the uniform age limit of 18 years for the child, an age limit of 15 years in this paragraph would not be harmonious with the rest of the Convention. Accordingly, it is proposed that this paragraph ends with the words "a direct part in hostilities" and that the rest of paragraph may be deleted.

## 3. Sweden

*For the text of this proposal, which was reproduced in E/CN.4/1989/WG.1/WP.50, see the proposal submitted by Sweden to the Working Group in 1988, section N above. The only change in 1988 was the deletion of the words "to the present Convention" in paragraphs 1, 2 and 3.*

## B. DISCUSSION AND ADOPTION AT THE SECOND READING

*The following is taken from the report of the Working Group to the Commission on Human Rights, E/CN.4/1989/48, paragraphs 600-622.*

600. The Working Group had before it a text of the article as adopted during the first reading incorporating suggested revisions by UNICEF (E/CN.4/1989/WG.1/WP.2). The text read as follows:

"1. (The) States Parties (to the present Convention) undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties (to the present Convention) shall take all necessary (feasible) measures to ensure that no child takes a direct part in hostilities. This provision shall apply to every child who has not attained the age of 15 years and to any other child below the age of 18 years who, under the law of his or her State, has not attained the age of majority.

2 bis. States Parties (and they) shall refrain (in particular) from recruiting any child who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, (the) States Parties (to the present Convention) shall endeavour to give priority to those who are oldest.

3. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties (to this Convention) shall take all necessary (feasible) measures to ensure protection and care of children who are affected by an armed conflict."

601. The Working Group also had before it a proposal for the article made by a drafting group consisting of Angola, Australia, Austria, France, India, Italy, Mozambique, the Netherlands, Norway, Sweden, the United States of America, UNHCR, ICRC, Friends World Committee for Consultation (Quakers) and Radda Barnen (E/CN.4/1989/WG.1/WP.65). The text read as follows:

"1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. [States Parties shall take all feasible measures to ensure that no child takes a direct part in hostilities. With respect to persons who have attained majority before the age of 18 years, States Parties shall endeavour to prevent them from taking a direct part in hostilities. Persons who have not attained the age of 15 years shall not be allowed to take part in hostilities.]

2. [States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.]

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all [feasible] [necessary] measures to ensure protection and care of children who are affected by armed conflict."

602. In introducing the proposal contained in E/CN.4/1989/WG.1/WP.65 the observer for Sweden indicated that the group had reached a consensus on the text for paragraphs 1 and 3 but that, as the brackets indicated, no consensus had been reached on paragraph 2 or paragraph 4. With regard to paragraph 2 he indicated that the first version of that paragraph reflected the view of several members of

the drafting group that the provision adopted in the first reading regarding participating in hostilities had to be supplemented, in order not to fall below existing standards, by an absolute bar against the involvement of children below the age of 15 years in hostilities, whether they had attained majority or not. Those delegations also felt that, although paragraph 3 made clear that persons from the age of 15 years could be recruited into armed forces and therefore could not realistically in every case be protected from participation in hostilities, States Parties should at least endeavour to prevent persons between 15 and 18 years of age from taking a direct part in hostilities. With regard to paragraph 4, consistent with the desire not to undermine existing standards regarding children involved in armed conflicts, several delegates supported the adoption of the word "necessary" because they took the view that that word was more in line with the absolute nature of current international standards concerning civilians in armed conflicts than the word "feasible", which had been adopted during the first reading.

603. The representative of the United States of America stated that his country had no desire to see children involved in armed conflict and that it was for this reason that the United States joined consensus on article 20 during the first reading. He further indicated that since the article had been the subject of lengthy debates and a consensus arrived at as recently as 1986, his delegation would be willing to join a consensus in favour of keeping the article as it was then adopted. In addition, he stated that this text reaffirmed existing international humanitarian law on the protection of children in armed conflict, in particular, by adhering to the language of article 77 of Protocol I to the Geneva Conventions of 1949. He stated that that language was the result of lengthy debates in the Diplomatic Conference convened during the last decade to draft the Protocols and that his Government did not believe that the Working Group was an appropriate forum to revise existing international law in this area. However, the representative of the United States of America indicated that, if at all the first reading text should be altered, it should be to replace the word "child" with the words "persons who have not attained the age of 15 years", thereby prohibiting the sending, by States Parties, of very young "majors" to participate directly in armed conflicts. He explained that the 15-year age limit reflected existing international law, whereas the formulation in the first proposal for the paragraph sought to alter the Law of War established in Protocol I in ways that the Diplomatic Conference concluded were unreasonable. With regard to paragraph 4, the representative of the United States of America expressed strong opposition to the proposal contained in E/CN.4/1989/WG.1/WP.65 to replace the word "feasible" with the word "necessary" because the latter would represent a standard which would be impossible for any State Party to implement. He further stated that his Government felt that it was more important for the Convention to enforce existing standards rather than to create new ones which would not be observed.

604. Pursuant to the two introductory statements a lengthy debate was carried out regarding which text should be adopted for article 20. During the course of this debate a number of participants in the Working Group took the view that in order to ensure the maximum protection for children in the drafting of the present Convention, the Working Group should not feel constrained by existing

international standards. It was, however, the opinion of the representatives of the Union of Soviet Socialist Republics and the United States of America that neither was the Working Group mandated to review existing standards in international law nor was it an appropriate forum in which to do so.

605. The representatives of the Federal Republic of Germany and the United States of America were of the opinion that if no consensus text for article 20 could be reached then the whole article should be deleted. Numerous delegations spoke in support of the retention of the article and, in particular, the representatives of Austria, India, the Netherlands and New Zealand suggested that if no consensus could be reached then it would be necessary to adopt a text with brackets or alternative wording, to be settled by the Commission on Human Rights when it reviewed the text of the Convention. In this connection, the Chairman suggested that it would be preferable for the Working Group to adopt a minimum text with a consensus rather than to transmit a text without consensus and with brackets to the Commission on Human Rights. Another solution put forward to solve a possible deadlock was that the article should be adopted only with whichever paragraphs on which a consensus could be reached.

#### Paragraph 1

606. Paragraph 1 as contained in E/CN.4/1989/WG.1/WP.65 was adopted without comment to read as follows:

"1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child."

#### Paragraph 2

607. With regard to the two versions of paragraph 2 contained in E/CN.4/1989/WG.1/WP.65 there was agreement amongst the representatives of Algeria, Angola, Argentina, Australia, Austria, Canada, China, Colombia, Finland, France, the German Democratic Republic, the Holy See, India, Italy, Mexico, Mozambique, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, the Union of Soviet Socialist Republics, the United Kingdom, Venezuela and the International Committee of the Red Cross in favour of the first version. The representatives of the Netherlands and New Zealand indicated that they would have preferred the paragraph to extend to children of up to 16 years of age but that they were willing to compromise and accept a ban extending only to children of up to 15 years of age. Further to this the representative of Colombia raised the question of why, if the Working Group was willing to recognize rights generally for children of up to 18 years of age, the Working Group was not willing to protect children in times of armed conflict up to the same age limit. The representatives of India and the United Kingdom indicated that, in spite of slight hesitations, they would support a consensus in favour of the first version of the paragraph. The representative of the United Kingdom indicated that his

hesitation was based on the fact that the army of the United Kingdom contained children below the age of 18 years and that it would be difficult in times of hostilities to observe the express terms of the paragraph. Both the representatives of India and the United Kingdom indicated that if the first version of the paragraph was adopted they would wish to make reservations as to the extent to which their respective Governments would be in a position to observe it.

608. The representatives of the Union of Soviet Socialist Republics and the United States of America indicated their support for the adoption of the second version of the paragraph, and the representative of the United States of America stated his unwillingness to join a consensus in support of the first version of the paragraph.

609. In an effort to reach a compromise solution, the representative of the Union of Soviet Socialist Republics suggested that the concerns of the proponents of the first version could be met even if paragraphs 2 and 3 were deleted and the words "in particular the provisions of article 77 of the first additional Protocol to the Geneva Conventions" were added to the end of paragraph 1. Although the representative of the German Democratic Republic supported the text of the first version of paragraph 2 he indicated that if no consensus could be reached on either text, the proposal of the representative of the Union of Soviet Socialist Republics would be acceptable to him, but with the modification that neither version of paragraph 2 should be included. The observer for Sweden indicated that he could not support this solution, as it did not take into account the second additional Protocol to the Geneva Conventions, and in the interests of a compromise the representative of the Union of Soviet Socialist Republics withdrew his proposal for the addition to paragraph 1. Also in an attempt to find a compromise solution the observer for Sweden proposed a third possible text for paragraph 2 reading as follows:

"(a) States Parties shall take all feasible measures to ensure that no child takes a direct part in hostilities.

(b) No person below the age of 15 years may be exempted from the protection provided for in this paragraph on the grounds that he or she has attained majority."

610. Pursuant to the foregoing debate, the Chairman noted that some participants in the Working Group were unable to support the first version of the paragraph and observed that the Working Group could not agree on a compromise text to bridge the gap between the two versions contained in E/CN.4/1989/WG.1/WP.65. In view of these facts, he stated that since no participants in the Working Group had expressed opposition to the standards contained in the text of the second version of the paragraph, it was his suggestion that the Working Group should adopt that second version as it was the maximum level of protection on which a consensus could be reached. Participants in the Working Group did not express any opposition to the solution to the deadlock proposed by the Chairman.

Therefore, the text of the second version of paragraph 2 contained in E/CN.4/1989/WG.1/WP.65 was adopted.

611. The text of paragraph 2 of article 20 was adopted to read as follows:

"2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities."

612. Following the adoption of the paragraph, the representatives of Australia, Austria, Belgium, Finland, Italy, the Netherlands, New Zealand, Sweden, Switzerland and Venezuela stated that they could not join the consensus on paragraph 2. It was stated that the formulation was now deficient in that, although consistent with Protocol I of the 1977 Geneva Protocols, it failed to extend to children in internal conflicts a level of protection equal to that recognized in Protocol II of the 1977 Geneva Protocols. Article 20 might thus be said to undermine existing standards of humanitarian law.

613. At this point, the representative of Norway asked the Chairman if consensus on paragraph 2 had been broken. In response, the Chairman confirmed that the consensus on paragraph 2 had not been broken.

614. The representatives of France and Italy made statements to be reflected in the report indicating that it was the policy of their respective Governments not to allow children below the age of 18 years to take part in hostilities.

615. The observer for the Netherlands made a statement for the report indicating that it was regrettable that the Chairman had allowed paragraph 2 to be adopted in the light of such extensive opposition to the chosen text.

616. The representative of Italy regretted that she had been called out of the room to receive her Government's instructions at the time paragraph 2 was adopted. She further indicated that had she been present in the room she would have strongly opposed the text that was finally adopted.

### Paragraph 3

617. The text of paragraph 3 as contained in E/CN.4/1989/WG.1/WP.65 was adopted without comment to read as follows:

"3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest."

### Paragraph 4

618. There was agreement amongst the representatives of Algeria, Angola, Argentina, Australia, Austria, Canada, China, Finland, the German Democratic Republic, the Holy See, Italy, Mexico, Mozambique, the Netherlands, Norway, Senegal, Spain, Sweden, Switzerland, Venezuela and the International Committee of the Red Cross to adopt paragraph 4 with the word "necessary" rather than "feasible", which had been adopted during the first reading. This group of participants took this position because they felt that the word "necessary" more accurately reflected the absolute nature of protection which international instruments accorded civilians in times of armed conflict. In a spirit of compromise, the representatives of Austria, the Holy See, Mexico, the Netherlands and Spain were of the view that if "necessary" could not be adopted, they could support a consensus in favour of the adoption of the word "feasible". The representative of the United States of America indicated a strong preference for the word "feasible" as had been adopted during the first reading in old paragraph 3.

619. In an effort to reach a compromise the representative of the United Kingdom suggested that the word "practicable" could be adopted as an alternative to either "necessary" or "feasible". This proposal was supported by the representatives of India, the Union of Soviet Socialist Republics and the United States of America. However, in view of the concern of the observer for Australia that the word would mean that States Parties would do "only what they were able to do" the representative of the United Kingdom did not insist on his proposal. As a further alternative, the observer for Australia suggested the use of the word "possible" but the representative of the United States of America felt unable to join a consensus in support of this word. In a spirit of compromise the observer for Australia did not insist on his proposal.

620. Pursuant to the foregoing debate the Chairman noted that there was opposition in the Working Group to the adoption of the word "necessary" and observed that the Working Group could not agree on a compromise word as an alternative to "necessary" or "feasible". Taking into account the fact that no participants in the Working Group had expressed opposition to the adoption of the word "feasible" and the fact that some delegations had indicated that they were willing to support a consensus in favour of the word, the Chairman suggested that it might be a solution for the Working Group to adopt that word. No participants in the Working Group objected to the solution put forward by the Chairman.

621. The text of paragraph 4 of article 20 was adopted to read as follows:

"4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict."

622. After the adoption of article 20, the observer for Sweden requested the Secretariat to provide a transcript of the debate on that article as it was likely that the question would be subject to further deliberations. At the end of the afternoon

meeting of 9 December 1988, the Chairman stated that concern had been expressed regarding the text adopted for article 20 on children in armed conflict. He stated that the text was not yet definitive because States could re-open issues they were concerned about when the Commission on Human Rights and the General Assembly considered the draft convention. He further indicated that the Working Group was an auxiliary body of experts mandated to draft the Convention and that organs such as the Commission on Human Rights and the General Assembly, empowered to take political decisions, would decide on the final text of the Convention.

### C. STATEMENTS MADE DURING THE ADOPTION OF THE REPORT

*The following is taken from the 1989 report of the Working Group to the Commission on Human Rights, E/CN.4/1989/48, paragraphs 725 and 732-735.*

725. The delegation of Portugal emphasized the importance it attached to the fact that, after lengthy analysis and exchanges of experience, it had been possible to complete a standard-setting exercise in the United Nations. A range of children's rights had been gathered together in a single text so as to ensure the protection of children in various fields and their active participation in society. It was in that spirit that Portugal viewed the Convention and participated in the Working Group, taking into consideration, *inter alia*, two criteria for action: firstly, an openness to consensus; and, secondly, the need to take account of the provisions of other international instruments concerning human rights, particularly those adopted by the United Nations. There would certainly be articles where a different wording could have been desired and others where it would have been desirable to go further - that was the price that inevitably had to be paid to obtain a convention of universal scope. However, there were other instances where the draft convention did not measure up to the level of protection ensured by other legal instruments adopted by the international community. That was the case of article 38, and Portugal deeply regretted the fact. The delegation of Portugal added that, for the purpose of implementing that article, Portugal would also take account of article 41 of the draft convention, which invited States to take into consideration more favourable provisions applicable in their country.

(...)

732. During the meeting at which the report of the Working Group was adopted, with regard to the first sentence of paragraph 612 above, the representatives of Argentina, Bahrain, Egypt, the Federal Republic of Germany, Ireland, Morocco, Pakistan, Senegal, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America declared that paragraph 2 of article 20 had been adopted by consensus in the Working Group in the same manner as all other provisions in the draft convention. Other representatives confirmed that they had not been able to join the consensus on that paragraph.

733. The observer for Austria stated that the wording of paragraphs 612, 613 and 732 as adopted fairly reflected the unsatisfactory situation they were confronted with before and after the "adoption" of article 38 (former article 20) during the Group's session of December 1988. The Austrian delegation therefore reserved its position on the consequences of what was stated in the report.

734. The observer for Switzerland stated that his delegation had joined the consensus on paragraphs 612, 613 and 732 of the report relating to the adoption of article 38 (former article 20) of the convention. His delegation, however, referred to the speed and confusion which characterized the meeting during which article 38 (former article 20) was adopted and asked that the transcript of that meeting be annexed to the report.

735. The Chairman, in light of the discussion concerning the Swiss proposal, stated that the transcript would be made available at the Secretariat upon request.

## **VI. CONSIDERATION BY THE COMMISSION ON HUMAN RIGHTS, THE ECONOMIC AND SOCIAL COUNCIL AND THE GENERAL ASSEMBLY**

*The text of article 38 as adopted by the Working Group at the second reading was adopted along with the other articles of the Convention by the Commission on Human Rights by its resolution 1989/57 of 8 March 1989, by the Economic and Social Council by its resolution 1989/79 of 24 May 1989 and by the General Assembly by its resolution 44/25 of 20 November 1989.*

## **VII. RELATED REFERENCES**

*For further research, see the legislative history of articles 1 and 39. See also annex 2, "Related articles of the Convention".*

\* \* \* \* \*

## **ORGANIZATIONS PARTICIPATING IN THE NGO AD HOC GROUP**

The organizations listed below participated consistently in the NGO Ad Hoc Group on the drafting of the Convention on the Rights of the Child, which was active in the drafting process from 1983 to 1989. The individual participating organizations did not necessarily subscribe to every provision contained in the various proposals submitted by the NGO Ad Hoc Group.

### *Participating organizations*

Amnesty International  
Anti-Slavery Society for the Protection of Human Rights (Anti-Slavery International)  
Associated Country Women of the World  
Baha'i International Community  
Defence for Children International (Secretariat for the NGO Ad Hoc Group)  
Friends World Committee for Consultation  
Human Rights Internet  
International Abolitionist Federation  
International Association of Democratic Lawyers  
International Association of Juvenile and Family Court Magistrates  
International Association of Penal Law  
International Catholic Child Bureau  
International Commission of Jurists  
International Council of Jewish Women  
International Council on Social Welfare  
International Federation of Business and Professional Women  
International Federation of Social Workers  
International Federation of Women Lawyers  
International Federation of Women in Legal Careers  
International Movement of ATD Fourth World  
International Social Service  
Rädda Barnen International  
Rädda Barnen Sweden  
Save the Children Alliance  
World Association for the School as an Instrument of Peace  
World Association of Girl Guides and Girl Scouts  
World Organization for Early Childhood Education  
Zonta International.

## **RELATED ARTICLES OF THE CONVENTION**

The following grouping of related substantive articles is based on the guidelines adopted by the Committee on the Rights of the Child for the preparation of State party reports (CRC/C/5):

### ***GENERAL MEASURES OF IMPLEMENTATION***

- Implementation of rights (article 4)
- Promotion of rights and dissemination of information (article 42)
- Respect for higher standards (article 41)

### ***DEFINITION OF A CHILD***

- Definition of a child (article 1)

### ***GENERAL PRINCIPLES***

- Non-discrimination (article 2)
- Best interests of the child (article 3)
- Right to life, survival and development (article 6)
- Respect for the views of the child (article 12)

### ***CIVIL RIGHTS AND FREEDOMS***

- Name and nationality (article 7)
- Preservation of identity (article 8)
- Freedom of expression (article 13)
- Access to appropriate information (article 17)
- Freedom of thought, conscience and religion (article 14)
- Freedom of association and peaceful assembly (article 15)
- Protection of privacy (article 16)
- Prohibition of torture and the death penalty (article 37(a))

### ***FAMILY ENVIRONMENT AND ALTERNATIVE CARE***

- Parental guidance and the child's evolving capacities (article 5)
- Parental responsibilities (articles 18(1) and (2))
- Separation from parents (article 9)
- Family reunification (article 10)
- Recovery of maintenance for the child (article 27(4))
- Children deprived of a family environment (article 20)
- Adoption (article 21)

- Illicit transfer and non-return (article 11)
- Prevention of abuse and neglect (articles 19 and 39)
- Periodic review of placement (article 25)

### ***BASIC HEALTH AND WELFARE***

- Disabled children (article 23)
- Health and health services (article 24)
- Social security and child care services and facilities (articles 26 and 18(3))
- Standard of living (article 27)

### ***EDUCATION***

- Education, including vocational training and guidance (article 28)
- Aims of education (article 29)
- Leisure, recreation and cultural activities (article 31)

### ***SPECIAL PROTECTION MEASURES***

#### ***Children in situations of emergency***

- Refugee children (article 22)
- Children in armed conflicts (article 38)

#### ***Children in conflict with the law***

- Administration of juvenile justice (article 40)
- Children deprived of their liberty (article 37(b), (c) and (d))
- Sentencing of juveniles (article 37(a))
- Physical and psychological recovery and social reintegration (article 39)

#### ***Children in situations of exploitation, including physical and psychological recovery and social reintegration***

- Economic exploitation, including child labour (article 32)
- Drug abuse (article 33)
- Sexual exploitation and sexual abuse (article 34)
- Sale, trafficking and abduction (article 35)
- Other forms of exploitation (article 36)
- Children belonging to a minority or indigenous group (article 30)

-----

