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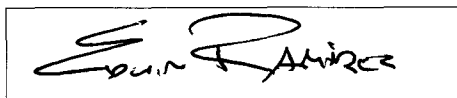
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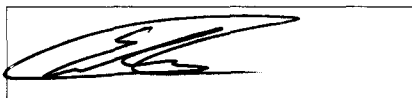
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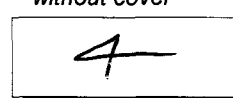
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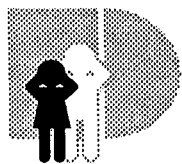


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DCI/UNICEF Briefing Kit
THIRD EDITION — MAY 1989



The future United Nations Convention on the Rights of the Child

Document No. 2

The future Convention: How it came about

1924-1959

Logically, the origins of the future Convention on the Rights of the Child can be traced back to the five basic principles for child welfare and protection set out in the "Declaration of Geneva", which was promulgated in 1924 by the then "Save the Children Fund International Union". This first attempt to codify in one text the fundamental conditions to which children had a right was endorsed by the League of Nations that same year. It was revised and amplified in 1948, and the resulting text formed the basis of the ten-point Declaration on the Rights of the Child adopted unanimously by the General Assembly of the United Nations on 20 November 1959.

Declarations and Conventions

As international instruments, declarations are what is known as "soft" law: they are statements of general principles accepted by governments but which carry no specific obligations as such. They contrast with conventions, which are binding, "hard" law, requiring an active decision on the part of individual States to ratify or accede to them. Those "States Parties" to a convention thereby signify their intention to comply with the provisions and obligations it contains. A mechanism for monitoring their compliance is normally established as an integral part of the convention. Attempts to codify global children's rights have until now given rise only to declarations, so no binding international instrument currently exists setting out States' obligations towards children.

Children in human rights law

This being said, alongside the gradual development of universally-accepted principles concerning responses to the special vulnerability, needs and situations of children, the body of international humanitarian and human rights law was also being constituted — and, of course, is continually being supplemented. This "body" comprises a wide range of instruments. Some are binding — although only on those governments that ratify them —, such as the Red Cross Geneva Conventions, the ILO Conventions, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. Others are non-binding — for example, the Standard Minimum Rules for the Treatment of Prisoners, the Principles of Medical Ethics and, of course, the Declaration on the Rights of the Child itself. Many of the provisions of both the binding and non-binding texts in fact apply implicitly to children (by virtue of the latter's status as human beings) or make specific and explicit reference to the child. Indeed, one can identify over 80 international instruments that concern, in one way or another, the situation of children, and many of these are binding. At the same time, because these texts have been drawn up separately over a sixty-year period and without any overall and special concern for children's global needs, the rights they grant contain a number of inconsistencies and, in particular, are far from being comprehensive. In addition, those provisions that are not child-specific, whilst being

applicable to children, do not take account of the latter's special needs which often require in principle the setting of standards that are higher than for adults. Finally, the instruments in question are, as we have said, a mixture of "hard" and "soft" law, meaning that by no means all the rights they implicitly or explicitly afford to children put any obligations on States.

■ The need for a Convention

Children's rights are an integral part of human rights, which has as its umbrella text the Universal Declaration of Human Rights adopted in 1948. The International Covenants, which were adopted nearly twenty years later (in 1966), together with certain other texts, are seen as the necessary binding instruments on which the effective promotion and defence of human rights can take place. In the same way as the protection of human rights has and requires a coherent and integrated collection of international legislation, with a global declaration and specific binding instruments, so the defence of children's rights must be founded on an equally consistent and recognisable body of law.

Thus, the future Convention will supplement, and not replace, the 1959 Declaration. It was against this background that the Polish authorities launched their proposal for a Convention on the Rights of the Child on the eve of the International Year of the Child (1979). The initiative thus provided an opportunity and impetus to define more clearly, and to harmonise, human rights standards for children, to fill in the many gaps identified in current provisions, and to set the results of this in-depth reassessment exercise within the context of a single, binding international instrument.

■ From scepticism to green light

The prospect of a Convention did not, however, secure unanimous support at first. Even if it was not binding, some said, there existed already a declaration on children's rights that had been accepted by — and was therefore presumably applicable to — all States, whereas the Convention could only be invoked with regard to States that ratified it. Those who adopted that position seemed to forget that the Declaration would still be as valid an instrument as it ever was, but for a time they held considerable sway. To their reticence was added the concern that others felt about dealing with children as the "target" of a separate binding human rights instrument. They felt that children's needs could and should be met within the framework of global texts. In this respect, it can be noted that there is indeed a danger inherent in apparently distinguishing between "children" and other human beings. This can be overcome, however, by taking the approach that children have special human rights rather than special rights as opposed to other humans. Furthermore, standards frequently do have to be higher for children than for adults.

■ The UN Working Group

The supporters of the idea of a Convention finally won the day. In 1979, the Commission on Human Rights decided to set up a Working Group — the "open-ended Working Group on the Question of a Convention on the Rights of the Child" — to review and reformulate the text. This body has normally met immediately before the annual sessions of the Commission, for one week each year at the end of January — except in 1988, when the traditional meeting was exceptionally extended to a two-week period and when the Group met for a further fortnight in November-December for the "second reading".

The Working Group itself was composed of representatives of all the 43 Member States of the Commission. Delegates from any other United Nations member country could also attend as "observers" and participate fully in the debates. Inter-governmental agencies such as ILO, UNHCR and UNICEF, as well as non-governmental organisations (NGOs) in consultative status with the UN Economic and Social Council (ECOSOC) could also be represented and participate fully in discussion of the draft.

■ The NGO Ad Hoc Group

Several NGOs, jointly and individually, reacted to the original Polish proposals for the draft Convention, but their involvement in the drafting process at the start of the Eighties was sporadic and uncoordinated. Few, indeed, were playing an active role. Some NGO representatives attending the 1983 meeting of the Working Group expressed concern about this state of affairs; they were convinced that their organisations had special knowledge and experience to contribute to the drafting work, but that the opportunity for doing so was being lost. They decided to organise a mid-year "NGO consultation" for interested organisations, aimed at ensuring that NGO input be well-prepared and coherent. There emerged from this first consultation an "NGO Ad Hoc Group on the drafting of the Convention" which thereafter met twice a year to pool its ideas and present clear, unified proposals to the UN Working Group. From the start, Defence for Children International was asked to serve as secretariat for the Ad Hoc Group, which ended up with 50 organisations on its list, over half of which, on average, participated in the twice-yearly consultations (*see Annex I*) and attended the UN Working Group meetings (more than double the number at the 1983 meeting).

The experience of the past six years has shown beyond doubt the worthwhile nature of this NGO initiative. The carefully thought-out proposals put forward by the NGO Group have resulted in a large number of their ideas and concerns — and sometimes entire articles — being taken up by the UN Working Group and incorporated in the draft. In fact during the final debate on the text by the Commission on Human Rights, several delegations stated that the role of NGOs in drafting this Convention set a precedent in terms of impact and input regarding the drafting of an international instrument. And in two consecutive UNICEF Executive Board Resolutions, special recognition was given to the work of the NGO Ad Hoc Group.

From the moment it was set up, the NGO Ad Hoc Group benefited from logistical and other assistance from UNICEF. Since that time, UNICEF itself has slowly but surely become more directly involved in issues relating to the Convention and a forceful advocate for its adoption and ratification.

■ The three elements of a Convention

There are three main sections to this — and indeed to every other — Convention:

- the preamble, which sets out the major underlying principles of the question that the Convention is tackling;
- the substantive articles, which set out the obligations of those States that ratify it in due course (States Parties) (Part I — Articles 1 to 41);
- the implementation provisions that define how compliance with the Convention is to be monitored and fostered and set out the conditions under which it comes into force (Parts II and III — Articles 42 to 54).

■ Review, approval... and adoption?

After the Working Group adopted the draft of all three sections, the entire text underwent an in-depth "technical review" within the UN Secretariat, essentially to ensure that it contained no contradictions — within itself or in regard to standards set in other international instruments — and that it was worded in accordance with the terminology of international legal texts. The Working Group then proceeded, from 28 November to 9 December 1988, to the "second reading". At this stage, the members of the Working Group had the opportunity of re-examining the full draft in the light of the review and their own concerns and proposals. Despite lengthy and difficult debates on politically and culturally complex issues including religion, inter-country adoption, armed conflict and legal protection before birth, the Working Group was highly motivated and committed to finalising the draft. The Working Group managed to complete the

"second reading" in order for the text of the "finalised" draft Convention to be submitted to the Commission on Human Rights, which approved it on 8 March 1989 and sent it up to the UN Economic and Social Council (ECOSOC) and thence on the final stage of its journey, i.e. to the General Assembly of the United Nations. From the moment the General Assembly adopts the draft text, the latter becomes a fully-fledged Convention — although it will only enter into force thirty days after the twentieth State has ratified it (article 49).

At the present stage, the only officially unresolved question in the text is to be found in article 43. It relates to the financing of the "Committee on the Rights of the Child" set up to consider the reports submitted by the States Parties. This Committee could be financed either by the regular budget of the United Nations or by the States Parties themselves. The fundamentally divergent opinions on this point could not be resolved in the Working Group nor in the Commission on Human Rights, and it was therefore decided to leave the decision — by a vote if necessary — to a higher body of the United Nations. ■

May 1989