

# AD HOC COMMITTEE ON A COMPREHENSIVE AND INTEGRAL INTERNATIONAL CONVENTION ON THE PROTECTION AND PROMOTION OF THE RIGHTS AND DIGNITY OF PERSONS WITH DISABILITIES

4<sup>th</sup> Session (New York, 23 August to 3 September 2004)

## BACKGROUND

The treaty under negotiation was proposed to the General Assembly by Mexico in 2001. The treaty will create a legally binding framework for promoting the rights of the world's 600 million people with disabilities. The text will address wider issues beyond the traditional concept of access to the physical environment, including equal access to education, employment, health, and political participation. The convention may be presented for adoption by the General Assembly as soon as September 2005.

## INTRODUCTION

The fourth session of the **Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities** took place at the United Nations (UN) headquarters in New York from 23 August to 3 September 2004. The session was chaired by H.E. **Luis Gallegos Chiriboga** (Ecuador). Participants included member States, UN agencies, representatives of national human rights institutions (NHRIs), disabled people's organisations (DPOs) and other non-governmental organisations (NGOs), including representatives from human rights organisations.

## OVERVIEW

During the first week of its fourth session, the Ad Hoc Committee (AHC) concluded its first reading of the **draft text prepared by the Working Group** (A/AC.265/2004/WG/1) and considered those elements deferred from the third session of the AHC, including the title, structure of the convention, part of the preamble, definitions (Article 3) and monitoring (Article 25). During the remainder of the week, the AHC conducted a review of Government-proposed revisions and amendments on Articles 1 to 15 and 24(bis) of the Working Group text, as contained in the compilation text produced by the AHC during its third session (A/AC.265/2004/5 and Corr.1 and 2).

The Chair used these meetings to determine those proposals that attracted widespread agreement and those on which opinions remained divided. The procedure for negotiations during the first week continued in a similar manner to the third AHC session; following the Government delegations' interventions and submissions of draft revisions, UN agencies and NHRIs presented their proposals and suggestions. Lastly, the NGOs took the floor to make statements and comments.

For the first time in the process, the **International Disability Caucus**<sup>1</sup> (IDC), which includes 35 international, regional and national organisations representing persons with

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<sup>1</sup> *Australian Federation of Disability Organisations (AFDO), Bizchut - The Israel Human Rights Center for Peoples with Disabilities, Canadian Association for Community Living (CACL), Center for International Rehabilitation (CIR), Council of Canadians with Disabilities (CCD), Danish Organisation of Disabled People, Disability Australia Ltd (DAL), Disabled Peoples' International (DPI), European Disability Forum (EDF), Forum of People with Disabilities, Forum for Human Rights of People with Disabilities - Costa Rica, Fiji Disabled People's Association, Handicap International, Inclusion International (II), Inter-American Institute on Disability (IAID), International Disability Convention Solidarity in Korea, Japan Disability Forum (JDF), Landmine Survivors Network (LSN), Lebanese Council of Disabled People (LCDP), National Disability Party, National Association of Community Legal Centres (NACLC), National Disability Council of Netherlands, People with Disability Australia Incorporated (PWDA), People Who, Rehab Group, Rehabilitation International (RI), Support Coalition International, World Blind Union (WBU), World Federation of the Deaf (WFD), World Federation of the Deaf-Blind (WFDB), World Network of Users and Survivors of Psychiatry (WNUSP), World Union for Progressive Judaism (WUPJ).*

disabilities from all regions of the world and from all groups of persons with disabilities, presented joint statements to the AHC.

During the second week of the fourth session, **H.E. Ambassador Don Mackay** (New Zealand), who served as the **Co-ordinator** of the session<sup>2</sup>, conducted informal negotiations on the text of Articles 4, 5, 6 and 7. The aim of this phase was to synthesise proposals put forward by delegations, reduce duplication and overlap among the articles, and identify issues that still need to be resolved. The second week marked a significant change in the participation of NGOs in the negotiation procedures. Intergovernmental organisations, NGOs and NHRIs were invited to attend negotiation sessions, but were not afforded the right to provide interventions. While NGOs did not have a formal role in the negotiations during the second week, the IDC still influenced discussion by lobbying and feeding text to the delegates during meetings, and by holding separate interactive panel briefings with delegates on key issues of concern.

After delineating some key concepts for discussion within each article, the Co-ordinator delegated further negotiations under that article to a pre-appointed facilitator, who continued those discussions with interested Governments, and facilitated drafting efforts. It was generally felt by various NGOs and DPOs that the meetings under the able leadership of Ambassador Mackay were fruitful and productive, whereas the "facilitated" meetings were not so successful in moving the AHC forward.

Significantly, while the AHC had the option to close certain meetings to NGOs as they felt necessary, this option was not exercised during the second week.

At the end of the meeting, the AHC adopted, as orally amended, the report of the fourth session (document A/AC.265/2004/L.4) and also recommended that its fifth session should take place in New York in January 2005.

## DRAFTING OF THE PROPOSED CONVENTION

### Preamble

The **Chair** invited comments on the preamble and **New Zealand** started by noting that it needed streamlining. Subparagraphs<sup>3</sup> of the preamble dealing with women, children should be deferred until the substance of the related articles has been settled. New Zealand rejected the idea of referring to sub-groups of PWD, expressing concerns about listings - which have the potential of excluding rather than including circumstances - in general. **Japan** endorsed the Costa Rican proposal to highlight the important role of PWD in society in ((q)bis)<sup>4</sup>.

**Mexico** made complementary submissions: the **EU** proposal for (i)<sup>5</sup> was supported with the exception of the last phrase - "*in particular developing countries*" - as it is a reflection of the traditional view that international co-operation is a transfer of resources to developing countries. The moment should be seized to embrace new forms of co-operation. In (g)<sup>6</sup>, the term "*diversity*" should connote various types of disabilities and additional language, such as

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<sup>2</sup> Ambassador Don Mackay was also Co-ordinator of the January 2003 Working Group of the AHC.

<sup>3</sup> The following references in footnotes to preambular paragraphs refer to the report of the third session of the AHC (A/AC.265/2004/5). See <http://www.un.org/esa/socdev/enable/rights/ahc3reporte.htm>.

<sup>4</sup> (q)bis reads: "*(Recognising the important role that persons with disabilities can play in the sustainable development of their communities — Costa Rica)*".

<sup>5</sup> (i) reads: "*[Emphasising — India, Namibia] (Recognising — India, Namibia) the importance of international co-operation (because of its multisided benefit to all member countries — Lebanon) promote the full enjoyment of (all — Cuba, Lebanon) human rights and fundamental freedoms of (all — Lebanon) persons with disabilities, — EU, Syria] (Recognising the importance of international co-operation for improving the living conditions of persons with disabilities in every country, in particular in the developing countries — EU, Syria, Argentina)*".

<sup>6</sup> (g) reads: "*Recognising further [[the diversity — India, Pakistan] (the diverse nature of disabilities — Pakistan) (the wide range of abilities, skills, functional competencies and concerns of — India) of [persons with disabilities — Morocco, Argentina] — South Africa] (disabilities — Morocco, Argentina) (, their needs and requirements — Thailand) (that person that disabilities are not a homogeneous group, but diverse in their own right — South Africa)*".

the **Thai** suggestion to include "*needs and requirements of PWD*", was rejected as paternalistic.

Stating that not all countries are members to all conventions, the **United States of America** (USA) supported the **Pakistani** proposal to list international treaties, as did **Mexico**, **China** and **Malaysia**. Various suggestions were also made by **India**, among them the inclusion of "*and discrimination*" in (c)<sup>7</sup> to highlight the obstacles PWD face. **Chile's** proposals included a reference to the Convention on the Rights of the Child, which found the support of the **Republic of Korea**.

**Australia** proposed two new paragraphs, one reflecting the social definition of disability, calling for the recognition of "*the disabling impact of inaccessible social structures and processes*" ((e)bis). The other paragraph, (f)bis, recalls "*the history and experience of eugenics, abuse, neglect, isolation, segregation and violence against [PWD]*". **China** endorsed a variety of suggestions, among them the need to eliminate poverty, which is addressed in paragraph (o), and the proposals by Cuba, Pakistan and Canada for (r)<sup>8</sup>.

**Canada** called for a more concise text and will possibly suggest a paragraph highlighting the needs of PWD who are indigenous. **Lebanon** proposed a new paragraph recognising the "*interactive process between the personal and functional position [of PWD]*".

**Japan** still had difficulties with the reference to families and is opposed to the classification of PWD in (m)<sup>9</sup>. **Venezuela** emphasised the need for a reference to women and girls with disabilities. It supported the Canadian proposal for (r) but with the inclusion of "*their participation and integration*". The **Republic of Korea** proposed new language for (l)<sup>10</sup> to reflect the role of caregivers in the decision-making process. The **Philippines** and **Mexico** supported a reference to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, an idea that the **Republic of Korea** opposed.

The **Mexican** proposal to include a reference to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was endorsed by **Cuba**. The **Indian** proposal to include natural disasters in (p)<sup>11</sup> was supported by **Cuba** and **Thailand**. The importance of international co-operation was underlined by **Lebanon**, the **Republic of Korea**, **China**, **Cuba**, **Yemen**, and **Bahrain**, the latter four supporting a separate preambular paragraph. With regard to the issue of armed conflict, **New Zealand** and **Yemen** supported a reference in the preamble.

The **World Network of Users and Survivors of Psychiatry** (WNUSP) endorsed Japan's

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<sup>7</sup> (c) reads: "*Reaffirming the universality, indivisibility (inalienability, irrevocability — Costa Rica) and interdependence of all human rights and fundamental freedoms and [the need for — EU] (and that persons with disabilities are — EU) [persons with disabilities [to be — EU] guaranteed — Sierra Leone] their full enjoyment without (any form of — South Africa) discrimination*".

<sup>8</sup> (r) reads: "*Convinced that a convention [dealing specifically with (full enjoyment of — Sierra Leone) (all — Cuba) [the human rights of — EU] (the enjoyment of human rights by — EU) persons with disabilities — Pakistan] (addressing specifically the rights and dignity of persons with disability — Pakistan) will make a significant contribution to (the improvement of the Human Development Index of this group and the world population in general — Chile) redressing the profound [social — EU] disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural [spheres — Pakistan] (activities — Pakistan) [with equal opportunities — Canada], in both developing and developed countries*".

<sup>9</sup> (m) reads: "*Concerned about the difficult conditions faced by persons with [[severe or — Argentina] multiple — Canada, Yemen, Cuba, Namibia, Lebanon] disabilities [and of persons with disabilities — Costa Rica] (and in particular those — Costa Rica) who are subject to [multiple or aggravated — Lebanon] [forms of — EU] discrimination [on the basis of race, colour, sex, language, (and the kind and degree of disability — Lebanon) (age, — Sierra Leone, Israel, Costa Rica) religion, political or other opinion, (ethnic, — Canada) national or social origin, property, birth (, sexual orientation — EU, Brazil) or other status, — Pakistan]*".

<sup>10</sup> (l) reads: "*Considering that persons with disabilities (and their families — India, Pakistan) (and care-givers — Pakistan) should have the opportunity to be actively involved (and taking leading roles — Republic of Korea) in decision-making processes about policies and programmes, [especially those directly concerning them — South Africa, Namibia]*".

<sup>11</sup> (p) reads: "*Concerned that [situations of — Sierra Leone, Saudi Arabia, Lebanon] armed [conflict — Sierra Leone] (conflicts — Sierra Leone) (and foreign occupation of territories and assets of others — Syrian Arab Republic, Yemen, Saudi Arabia, Lebanon) [have especially — South Africa] (cause disabilities and have — South Africa) devastating consequences for the [human — Sierra Leone] rights of persons with disabilities*".

stance opposing the inclusion of families as paternalism. **People with Disability Australia Incorporated** (PWDA) proposed to replace "*considering*" with "*recognising*" in (l) to positively reflect the participation of PWD. Issues of gender and disability ought to be emphasised more in (n)<sup>12</sup> and PWDA endorsed the recognition of minority sexual status. **Save the Children Alliance** made a proposal to be added to (k)<sup>13</sup> which includes a reference to Article 5 of the Convention on the Rights of the Child.

## Title

The near consensus that a shorter title was necessary was underlined by various proposals. Leaning on the Convention on the Rights of the Child, **New Zealand** proposed a new title "*Convention on the Rights of Persons with Disabilities*", which was endorsed by **Burkina Faso, China, Guatemala, Lebanon, the Russian Federation and Thailand**. The same title, but starting with "*international*" was suggested by **South Africa** and found the support of **Cameroon, Costa Rica, the Republic of Korea, Kenya, Mali and Tanzania**.

**Yemen** proposed "*International Convention for the Rights of Persons with Disabilities*", which was endorsed by **Bahrain and Morocco**. The **Netherlands** (on behalf of the **European Union** (EU)) proposed "*International Convention on the Full and Equal Enjoyment of all Human Rights and Fundamental Freedoms by PWD*", which was endorsed by **India**. **Egypt** voiced its concern over endless negotiations on the title and stated that the New Zealand proposal adequately reflected the EU's concerns. It proposed "*International Convention on the Equal Rights of PWD*".

The **Republic of Korea** agreed with the EU that the title should capture the essence of the convention and suggested "*International Convention on the Rights of PWD*". **El Salvador** proposed "*International Convention to Protect the Rights and Dignity of PWD*". **Mexico** endorsed the proposal of Sierra Leone from the third AHC. **NHRIs** and the **World Blind Union** (WBU) supported the New Zealand proposal; **Disabled Peoples' International** (DPI) endorsed the South African suggestion.

## Structure

**New Zealand** proposed a string of suggestions, emphasising the need to remain consistent with existing human rights treaties, namely in terms of the level of detail and style. The existing concept of "*progressive realisation*" should be reflected and thus not be extended to civil and political rights. The overall focus should be on issues and rights particularly relevant to PWD. The article on "*personal mobility*" should be deleted and merged into Articles 4 (General Obligations) and 15 (Living Independently and Being Included in the Community). Provided that both national and international monitoring are recognised, the EU's proposed merger of Article 6 (Statistics And Data Collection) and 25 (Monitoring) has merit. Additionally, Article 11 (Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment) should focus on informed consent, while Article 12 (Freedom from Violence and Abuse) should focus on freedom from all forms of violence and abuse.

The **Netherlands** (EU) withdrew its proposal on compiling various non-discrimination provisions in a separate article and suggested to replace Article 7 on this issue with new Article 3. Furthermore, Article 5 on the promotion of positive attitudes should now become Article 24bis<sup>14</sup>. **Canada** supported both the New Zealand and EU proposal, calling them "*quite compatible*", a stance endorsed by **Chile**. Chile in turn stressed the importance of including language on implementation and follow-up as well as on anti-discrimination measures.

**Australia** outlined the five parts that human rights treaties usually consist of, namely:

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<sup>12</sup> (n) reads: "*Emphasising the need to incorporate a gender perspective in all efforts to promote the full enjoyment of (all — Cuba) human rights and fundamental freedoms by persons with disabilities*".

<sup>13</sup> (k) reads: "*Recognising the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices*".

<sup>14</sup> Draft Article 24 concerns participation in cultural life, recreation, leisure and sport.

(i) Interpretative provisions; (ii) General obligations; (iii) Provisions on civil and political rights; (iv) Provisions on economic and social rights; (v) Remaining provisions and implementation.

**China, Kenya, Mali, Serbia and Montenegro** and **Thailand** commented favourably on the various suggestions made. **Kenya** insisted that disability needed to be defined and **Mali** urged the AHC to include language on an international implementing mechanism. **Thailand** expressed its hope to include provisions on remedies.

The New Zealand proposal for Articles 11 and 12 was rejected by the **WNUSP**. It furthermore stressed that the structure and content of the convention should reflect the rejection of any limitation, restriction or exclusion of rights of PWD. **NHRIs** and **PWDA**, the latter criticising the current structure as "*underdeveloped*", endorsed the Australian proposal.

## Article 1: Purpose

**Liechtenstein** described the Working Group text on this article as "*excellent*". This text reads that: "*the purpose of this convention shall be to ensure the full, effective and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities*"<sup>15</sup>. The draft was also supported by **Lebanon, Norway, Serbia and Montenegro, South Africa** and – with the insertion of "*promote*" – by **Jamaica**. The **Mexican** proposal "*the purpose of the present convention is to promote the full and equal enjoyment of all human rights and fundamental freedoms and dignity of all persons*" was endorsed by **Guatemala** and **Venezuela**. The phrase "*full enjoyment*" was endorsed by **Costa Rica, Eritrea, Kenya** and **New Zealand**. **China** and **Mexico** included the term "*dignity*" in their proposals. The term "*ensuring*" was endorsed by **Bahrain, Canada, Liechtenstein** and **Sierra Leone**.

The phrase "*protect and promote*" was supported by **China, Costa Rica, Eritrea, Kenya** and **Morocco**. **Mali** also endorsed the protection aspect, provided it was guaranteed "*without distinction*". The **Netherlands** (EU) stated that it would prefer "*enjoyment*" instead of "*protection and promotion*" and referred to Article 3 of the International Covenant on Civil and Political Rights (ICCPR), Article 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 1 (4) and 2 (2) of the International Convention on the Elimination of all Forms of Racial Discrimination as well as the Vienna Declaration. **Kenya** wished to include language on "*fulfilment*" and **New Zealand** suggested "*on a basis of equality with others*".

**India, Jamaica, New Zealand, Norway** and **Thailand** saw the aspect of non-discrimination sufficiently covered in other parts of the convention. **Eritrea** and **Morocco**, on the other hand, expressed their hope to include the prevention or elimination of discrimination in Article 1.

Mirroring the statements made by States, **PWDA** supported the Working Group text and called for inclusion of "*dignity*". The **South African Human Rights Commission** and the **European Disability Forum** (EDF) (on behalf of the IDC) want to see "*ensure*" as well as "*promote and protect*" included in the text. **DPI** stressed that the concept of "*effective enjoyment*" was important.

The **Chair** noted substantial agreement and proposed the following text for consideration: "*The purpose of this convention shall be to promote, protect and ensure full enjoyment of all human rights and fundamental freedoms of PWD, their dignity and participation as members of society*".

## Article 2: Principles

Stating that the draft "*looks like a shopping list*", the **EU** urged to have a more succinct article, a move supported by **New Zealand**, which called for a more timeless article that is not stuck in the era of the International Covenants on Human Rights. **Lebanon** stated that the article should reflect general principles that assist the application of provisions. Likewise,

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<sup>15</sup> A/AC.265/2004/WG/1.

**Norway** stated that general principles are "*goals*". **Sierra Leone** cited elements from various articles, which needed to be reflected as principles in Article 2. **Japan** proposed to use language derived from Article 4 of the United Nations Framework Convention on Climate Change.

The Working Group text<sup>16</sup> was principally endorsed by **Australia, Jamaica, Morocco** and **Serbia and Montenegro**. **Thailand** suggested adding "*self determination*" to the Working Group text. **Chile** and **Jordan** also stated that they wanted this concept reflected, with Chile adding that "*personal self-determination*" might help to clarify the meaning. **Canada** also endorsed the Working Group text, provided that gender equality was included among the principles.

There was broad consensus to include gender equality or a gender perspective respectively by **Chile, China, Costa Rica, Cuba, the EU, India, Liechtenstein, New Zealand, the Republic of Korea, Serbia and Montenegro, Sierra Leone, South Africa, Thailand, Trinidad and Tobago, Venezuela** and **Yemen**. **Bangladesh** joined the proposal emphasising the need to take all age groups into account. **Kenya** proposed to use the term "*gender equity*" which it saw as more fitting.

The reformulated sub-paragraph (c)<sup>17</sup>, as proposed by the **EU**, was endorsed by **Australia, Canada, Morocco, Serbia and Montenegro** and the **USA**. With regard to the Mexican proposal to include international co-operation, **Bangladesh, Chile, China, Cuba, Jordan, India, Namibia, Tanzania, Thailand, Trinidad and Tobago** and **Venezuela** supported the inclusion. Citing that it was a means of implementation, **New Zealand, Norway, the Republic of Korea** and **Yemen** opposed the inclusion.

**Canada** proposed to include "*substantive equality*" and **India** as well as **Serbia and Montenegro** endorsed the **Japanese** proposal to include "*realisation of a barrier-free environment*". **Yemen** urged the AHC to avoid any language creating a hierarchy of disabilities and **Jordan** suggested including the principle of empowerment. **Thailand** wished to have accessibility recognised as a principle, which **Yemen** opposed. **Eritrea** suggested adding "*prevention*" as a principle.

The **Republic of Korea** urged the AHC to reflect the need for continuous consultation with and involvement of PWD. **Mexico** made a proposal<sup>18</sup>, in line with the Vienna Convention on the Law of Treaties, which was endorsed by **Venezuela** and **Namibia**.

The **South African Human Rights Commission** (on behalf of the **NHRIs**) made a variety of suggestions, among them the insertion of "*respect for human diversity*" as well as "*recognition of disability*" in paragraph (d). The **IDC** generally supported the Working Group text as well as the inclusion of gender equality. The IDC did not support the inclusion of international co-operation in Article 2. **DPI** and **Save the Children Alliance** endorsed the Working Group text.

The **Special Rapporteur on Disability** commented on the differing views regarding "*international co-operation*" and suggested to substitute it with "*international responsibility*".

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<sup>16</sup> The Working Group text (A/AC.265/2004/WG/1) on Article 2 reads: "*The fundamental principles of this Convention shall be:*

- a. *dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
- b. *non-discrimination;*
- c. *full inclusion of persons with disabilities as equal citizens and participants in all aspects of life;*
- d. *respect for difference and acceptance of disability as part of human diversity and humanity;*
- e. *equality of opportunity*".

<sup>17</sup>Article 2 (c) reads: "*The fundamental principles of this Convention shall be ...[Full inclusion of persons with disabilities as equal citizens and participants in all aspects of life; — EU, Mexico, Costa Rica] (Full and effective participation and inclusion in society on an equal basis for persons with disabilities — EU, Mexico, Costa Rica)*". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>18</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4mexico.htm>.

### Article 3: Definitions<sup>19</sup>

**China, Cuba, Chile, Mali, the Republic of Korea, Venezuela** and the **Holy See** argued that the most important terms should be defined, and expressed support for retaining the article. **Australia** stated that it should be clear who is protected under the convention and supported a broad and inclusive definition, a stance that was basically supported by **Argentina**. **Argentina, Kenya, Mexico** and **Sierra Leone** each submitted proposals for defining disability. Despite the inherent risks, **Thailand** favoured a definition and supported one based on the social model, as did **Guatemala** and **Venezuela**. **Japan** requested "*flexible*" wording and **Ethiopia** wanted a definition based on "*broad terms*". **Cuba** suggested to follow the definitions used by the World Health Organisation (WHO).

While **Kenya** and **Sierra Leone** submitted definitions for disability, they joined **Bahrain, Canada** and **Lebanon** in requesting that definitions are spelled out within the relevant articles. The **Netherlands** (EU) opposed defining disability due to the risk of being exclusive, while **Norway** was opposed due to the challenge of finding a definition that fits all needs. **New Zealand** stated that it was too early for definitions and suggested that terms, which are used repeatedly, should be defined. **Costa Rica** and **India** wanted to see the matter left to States parties.

**Guatemala** and **Yemen** requested more information on the concept of reasonable accommodation<sup>20</sup>. **Japan** stated that the term was not defined under international law, while the **Netherlands** (EU) called for a definition of it. The **EU** would further like to see "*discrimination on grounds of disability*" defined and **Guatemala** and **Yemen** supported a definition for "*universal design*".

The **International Labour Organisation** (ILO) endorsed the idea of defining those concepts repeatedly used in the convention early on. Calling for a broad and inclusive definition – if it were to be included – the ILO also referred to the 1983 Convention concerning Vocational Rehabilitation and Employment of the Disabled Persons (ILO Convention C159).

All NGOs taking the floor supported definitions, particularly of disability, to ensure the widest scope of protection of the convention. **PWDA** stated that the definition should be broad and inclusive to accommodate persons suffering from disabilities due to illnesses such as HIV/AIDS. The **World Federation of the Deaf** (WFD) called for a definition of language which would cover both spoken and sign language, which the **WBU** supported, amongst others. The **WNSUP** stressed the need to support people with psychosocial disabilities and **DPI** emphasised the need to draw on the social model for the definition. **Save the Children Alliance** pointed out that a definition of disability was important for purposes of data collection as well as monitoring and implementation. **NHRIs** warned that a failure to define certain concepts would render some countries unable to accede to the convention due to the uncertainty caused by missing definitions.

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<sup>19</sup> Not all delegations supported the inclusion of a definition of disability. While some argued that a definition is necessary in order to identify the people who would be the beneficiaries of the convention, others argued that any definition of disability runs the risk of becoming exclusive and suggested that a definition of disability should be the responsibility of State parties in their countries. However, this position has drawn concern since many countries base their definition of disability on a medical model, which focuses on a person's individual characteristics and serves to exclude people considered to not have a "real" impairment but who nevertheless face societal barriers and discrimination. Supporters of a definition encourage a broad, inclusive definition that encompasses all impairment groups and recognises that disability may be permanent, temporary, episodic, or transitory in nature.

<sup>20</sup> In line with views expressed by the Committee on Economic, Social and Cultural Rights in General Comment No. 5, para. 15, there is substantial support to include a provision on "*reasonable accommodation*". Being a fairly new concept to many States, there are question marks from some as to its scope and implementation. As the provision of "*reasonable accommodation*" is linked to the availability of resources, there is a particular reluctance on the side of developing countries.

## Article 4: General Obligations

Provided the Working Group text was slightly amended, it was generally acceptable to **Senegal** (on behalf of the **African Group**). **Canada** proposed to streamline the Working Group text. The **Netherlands** (EU) welcomed support for its Article 2(bis) (on the importance for States to consult with PWD and their representatives in developing and implementing policies to give effect to the convention) and accepted the suggestion to place it in Article 4(2), which is the provision where the Working Group text covers this issue. The EU rejected the Russian suggestion to delete the first part of Article 2(bis) as it reflected language from the Convention on the Rights of the Child.

**India** repeated its proposal to include a reference to family members, which **Venezuela** endorsed. **New Zealand** rejected the proposal citing that the convention aimed at protecting PWD. The **Republic of Korea** supported the EU proposal to take "*private*" out of Article 4(1)(e)<sup>21</sup>. **Malaysia** made various proposals, among them endorsing the inclusion of "*appropriate*" in Article 4(1)(a)<sup>22</sup>. **China** stressed the importance of including international co-operation, as proposed by Israel, in Article 4(3), which addresses State obligations in regard to the progressive realisation of economic, social and cultural rights.

The EU proposal to compile various non-discrimination provisions was endorsed by **Australia** and **Serbia and Montenegro** but was withdrawn by the EU. **Mexico** stated that discrimination issues were better addressed in Article 7. **Ethiopia** called for a provision securing access to legal remedies in the face of discrimination, and also suggested inserting language prohibiting legislation inconsistent with the convention. The integration of rights of PWD in national constitutions as proposed by the EU was endorsed by Yemen.

**Thailand** pushed for the inclusion of remedies as foreseen by Footnote 18 of the Working Group text; an idea rejected by **New Zealand**, which argued that a general provision on remedies does not have the international community's consensus. Furthermore, remedies for the violation of civil and political rights are already foreseen in the ICCPR and a distinction within the current convention would only create an unnecessary demarcation between civil and political rights and economic and social rights.

With regard to the issue of progressive realisation<sup>23</sup>, **China** welcomed the inclusion of the concept. **Canada** made a proposal to use language from Article 2(1) of the ICESCR, which India endorsed. **Thailand** stated that the concept should be included, provided it only applies to "*some*" of the economic and social rights. **New Zealand** made substantial proposals on this issue amongst them the suggestion to include language from Article 4 of the Convention on the Rights of the Child in Article 4(1) and making the *chapeau* of the current Article 4(1) a stand-alone paragraph, with the condition that "*within their jurisdiction*" be deleted<sup>24</sup>. The

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<sup>21</sup>(e) of Article 4 (1) reads: "*To take all appropriate measures to eliminate discrimination on the ground of disability by any person, organisation or [private — EU] enterprise*". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>22</sup>(a) of Article 4(1) reads: "*[To adopt (appropriate — Japan) legislative, administrative and other measures to give effect to this Convention, and to amend, repeal or nullify any laws and regulations and to discourage customs or practices that are inconsistent with this Convention — EU, China]*". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>23</sup> There seems to be growing consensus to include a clause on the "*progressive realisation*" of economic and social rights based on Article 4 of the Convention on the Rights of the Child and including elements from the ICESCR. The discussion on taking economic and social rights "further" in this convention is ongoing based on evolving standards in legislation. The African Charter on Human and Peoples' Rights for example makes no distinction between rights. This stance is also reflected in the views of the monitoring agency for this Charter, the African Commission on Human and Peoples' Rights (ACHPR). For example in the case of *The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria* [The Ogoni People Case], Communication No. 155/96, the ACHPR held that: "*all rights — both civil and political rights and social and economic — generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights. [...]*" (para. 45.) See further <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html>.

<sup>24</sup> This quote refers to the first paragraph of Article 4 (1), which reads: "*[States parties undertake (guaranteeing the exercise and enjoyment — Argentina) to ensure [the full realisation of all human rights and fundamental*

proposals were partly endorsed by **Australia** as well as **Serbia and Montenegro**. **Mexico** suggested, *inter alia*, that the legal recourse in relation to economic and social rights, as outlined by the Committee on Economic Social and Cultural Rights, be reflected.

The **ILO** suggested including "*adequately planned and resourced*" in Article 4(1)(c)<sup>25</sup> to ensure sufficient means for disability needs in social development programmes.

The **IDC** called for references to development co-operation and a provision for public monies supporting accessibility and related issues. A general reference to progressive realisation was rejected and with regard to remedies reference was made to the Committee on Economic, Social and Cultural Rights. Further paragraphs covering free legal assistance – including sign language and communication assistance – were necessary, as were provisions for PWD facing multiple forms of discrimination. **Landmine Survivors Network** (LSN) called for a paragraph on remedies, covering both sets of rights. **NHRIs** referred to the latest developments in jurisprudence on economic and social rights, which provide remedies.

Discussions led by the **Co-ordinator, H.E. Ambassador MacKay**, started on the inclusion of a reference to "*progressive realisation*", which seemed agreeable to most. The gist of the discussion is captured in the comment made by the delegate of **Sierra Leone** who stated that PWD want wheelchairs "*[and] you cannot provide these progressively*". There was preference to use language from Article 4 of the Convention on the Rights of the Child on progressive realisation, but Article 2(1) of the ICESCR was also considered. The Co-ordinator proposed that language from the ILO - "*States must make adequate planning and resource allocation in order to reach the full attainment of the rights*" - be included in informal negotiations. General Comment No. 3 of the Committee on Economic, Social and Cultural Rights, which outlines the nature of State obligations under the ICESCR, was also referred to. **Thailand** suggested including the principle of "*non-discrimination*". While the idea was supported, the actual wording and placement remained an issue.

With regard to a summary provision on including PWD in activities and decision-making, which affect them, there was vast agreement to include a provision in Article 4. The **EU** proposal to move the summary provision to Article 25 was welcomed by some. **New Zealand** stressed that the "*expertise and leadership*" of PWD had yet to be recognised. The **Indian** proposal to make a reference to families was met by supporters as well as sceptics. A more general discussion on the role of families/caretakers evolved, at the end of which the Co-ordinator doubted that the issue would be resolved<sup>26</sup>.

As for a provision on remedies, which **Thailand** suggested, there was opposition to its inclusion based on the coverage already provided in Article 26 of the ICCPR. At the same time, there was substantial support to make a reference to remedies in draft Article 9 (Equal Recognition as a Person before the Law). In this connection, **Lebanon** highlighted General Comment No. 3 of the Committee on Economic, Social and Cultural Rights, which outlines in paragraph 5 that the provision of judicial or other effective remedies is part of the promotion of rights.

The informals, led by the **Facilitator, Mr Ainchil** (Argentina), covered a vast amount of issues. On progressive realisation it was agreed to henceforth work with the following language: "*State parties shall undertake all appropriate legislative, administrative and other*

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*freedoms for all individuals [within their jurisdiction — Canada] without discrimination of any kind on the basis of disability. — Lebanon] (achievement of the purpose of the convention and the rights that are guaranteed by this convention — Lebanon)". From the report of the third session of the AHC (A/AC.265/2004/5).*

<sup>25</sup>(c) of Article 4 (1) reads: "*[To [mainstream — Thailand] (integrate — Thailand) disability issues into all economic and social development policies and programmes (including international co-operation — Thailand) (including specific allocation of resources to satisfy obligations towards persons with disabilities — Kenya)]". From the report of the third session of the AHC (A/AC.265/2004/5).*

<sup>26</sup> Deliberations on Article 4 highlighted the continued disagreement over the role of families in the convention. Particularly developing countries cite the need to include families based on the social composition of their societies, where the family is usually the sole caretaker of a disabled person. The industrialised countries stated that the convention aims to protect only PWD, while implicitly they are worried to give any "rights" to caretakers or family members respectively. They argued that not including families in the text would not mean that they would not be consulted. The Mexican suggestion to include families in the preamble appeared to gain momentum.

*measures for the implementation of the present convention. With regard to economic, social and cultural rights, State parties shall undertake such measures to the maximum extent of their available resources with a view to achieving progressive realisation and where needed within the framework of international co-operation".*

Progress was also made on the *chapeau* but there was agreement that much of the content depends on the final wording of Article 1. There was further discussion on the inclusion of the phrase "*within their jurisdiction*". As for language on "*customs and practices*" included in paragraph 4(a), points of view differed as to whether they could be "*harmful*" or needed to be "*combated*".

## Article 5: Promotion of Positive Attitudes

The **Mexican** proposal for a new title "*Creation of a culture of respect and inclusion*" was endorsed by **Chile**. The **African Group** suggested "*Promotion of Positive Attitudes towards Persons with Disabilities, Creation and Raising of Awareness*", which **Costa Rica** endorsed. **Malaysia** in turn submitted "*Inculcation and Promotion of Positive Attitudes Towards PWD*" as a new title.

**Japan** endorsed the Working Group text<sup>27</sup> and cautioned against weakening the text. **Lebanon** also endorsed the current text as did **Mexico**, the latter asking to refrain from a detailed text, which was likely to exclude relevant cases. The **EU** urged to streamline the text, which **Norway** endorsed.

**Cameroon** (on behalf of the **African Group**) proposed a new text for Article 5(1)(a): "*Raise awareness throughout society regarding disability in various forms and persons with disabilities and their needs, potential and contributions to society and foster a culture of respect for PWD and their human rights*". It further proposed a new sub-paragraph to read: "*Combat patronising, bullying, and neglect on the basis of perceived incapacity of children and adults in public service and society as a whole*". **China** proposed to include language encouraging assistance to PWD in achieving self-reliance and self-respect.

In Article 5(1)(b), **Costa Rica**, **Japan**, the **Republic of Korea** and **Thailand** opposed the term "*negative*" before "*stereotypes*", which Jamaica supported. **Ethiopia** proposed a reference to artistic work as writers, authors and composers portray PWD negatively. **New Zealand** highlighted the barriers for PWD created by society's attitude and behaviour and stated that this issue needed to be addressed in a separate paragraph. It supported the proposals to include "*fostering respect for PWD*" in Article 5(1)(b).

In sub-paragraph (c), **Chile** proposed the following new text: "*to promote a culture with respect to disabled persons as an object of law and compatible with the objectives of the convention*". Furthermore, Chile proposed new language for Article 5(2)(a): "*nurture public awareness campaigns and policies to promote attitudes that are receptive and positive towards the rights of PWD*".

The inclusion of families was supported by the **African Group**, **Chile**, **India** and **Malaysia**. **Costa Rica** suggested a new sub-paragraph obliging states to raise awareness about the Convention. **Bahrain** suggested a stand-alone paragraph on training and awareness raising, which **Lebanon** and **Yemen** endorsed. The **Netherlands** (EU) wanted to move the paragraph to Article 24(bis) (international co-operation). **Norway** also queried a better placement for the provision.

The **IDC** cautioned the use of patronising language in this article. It endorsed the reference to "*fostering respect for PWD*". With regard to the use of "*negative*" stereotypes, "*positive*" stereotypes such as "*blind people have perfect memory*" also have to be avoided. It rejected the inclusion of families in Article 5(2)(d)<sup>28</sup>. **DPI** emphasised the importance of

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<sup>27</sup>See working group text at <http://www.un.org/esa/socdev/enable/rights/ahcwgreporta7.htm>.

<sup>28</sup>(d) of Article 5 (2) reads: "*Working in partnership with persons with disabilities and their representative organisations (and families — Uganda) in all measures taken to give effect to the obligations contained in this article. — EU: see article 3 bis] — New Zealand]*". From the report of the third session of the AHC (A/AC.265/2004/5).

awareness raising as a pre-condition for the equalisation of opportunities for PWD.

At the outset, the **Co-ordinator, H.E. Ambassador MacKay** asked delegations to reconsider whether too much detail could lead to "*more is less*". In response, a number of delegations stated that the Working Group text was acceptable. Among the issues raised were the inclusion of "*training*" in (1) – the placement of which was not certain. There was some discussion on the use of the terms "*portray*" and "*image*" respectively in (1)(c), which prompted **Australia** to offer the proposal: "*to promote the capabilities and contributions of all PWD as members of society sharing the same rights and freedoms as all others and in a manner consistent with the overall purpose of this convention*". This draft appeared to be acceptable. The **EU** proposal to include "*respect for rights*" in (1)(a) as well as the **New Zealand** proposal to include "*in all areas of life*" in (1)(c)<sup>29</sup> were submitted to the Facilitator for further negotiations. The EU proposal to delete (2) seemed to gain support and **Venezuela** stressed the importance to include a reference to the role of the media in promoting positive attitudes.

The **Facilitator, Mr Rowe** (Sierra Leone), suggested "*States parties undertake to adopt appropriate and effective measures to*" for the *chapeau*. There was discussion whether "*appropriate*" should be replaced with "*immediate*". The discussion of Article 5(1)(a) revolved around the inclusion of the term "*actively*" and the meaning of the term "*culture of respect*". The **Philippine** proposal to include "*various forms of disability*" was generally opposed and placed in a footnote.

## Article 6: Data and Statistics

There was broad consensus to retain the provision as a separate article. **Eritrea** proposed a new title: "*Research and Information*" to reflect the use of both qualitative and quantitative data. **Kenya** endorsed the Ugandan proposal – "*Collection and Protection of Statistics and Data*". **Canada** stated that the *chapeau* should reflect the purpose of the Convention.

**Japan**, the **Netherlands** (EU), **New Zealand** and the **Republic of Korea** all made statements supporting a more concise and succinct text. **Australia** preferred guidelines over detailed provisions.

**Chile** highlighted the issue of poverty among PWD and suggested a text reflecting the "*linkage between poverty and disability*" for Article 6(2). **Venezuela** stressed the importance of ensuring access to communication, especially for deaf people. **Kenya** and **South Africa** spoke of the need to include provisions on data protection, privacy and confidentiality; the latter point was also stressed by **Guatemala**.

**New Zealand** basically endorsed the **EU** proposal<sup>30</sup> and suggested a few amendments, which **Serbia and Montenegro** endorsed. As for the placement of the provision, **Jamaica** and **Japan** voiced their flexibility. The proposal to place the Article as 25(bis) – made by the EU – was endorsed by **Canada, Costa Rica, Lebanon, the Republic of Korea and Thailand**.

The **ILO** highlighted the fact that PWD are invisible in many national censuses and emphasised the need for data gathering. The ILO supported a separate article and stressed that information on PWD should be gathered in the same way as for all people in a population.

The **United Nations Statistics Division** outlined the international standards for statistics, including the Fundamental Principles of Official Statistics.

**DPI** stressed both the importance of data collection and the protection of the rights of the subjects of statistical inquiry.

During meetings with the **Co-ordinator, H.E. Ambassador MacKay**, there was growing consensus that Article 6 had to be streamlined and should possibly be placed closer to the

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<sup>29</sup> (f) of Article (6) (1) reads: "[Adhere to established ethics regarding respect for anonymity and confidentiality in the collection of statistics and data — Mexico] (Establish regulations and mechanisms to safeguard disability statistics and ensure their adequate use — Mexico) — EU".

<sup>30</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4eu.htm>.

monitoring provision, Article 25. Many countries agreed to the **EU** proposal to delete (d), which concerns disaggregation of data and (e), which concerns data on access to public services, with some suggesting including parts of the language in the upper paragraphs. Consensus also seemed to increase on including a reference to the Fundamental Principles of Official Statistics, possibly in the preamble. There was strong support – in whole and in parts – to use the **LSN** draft<sup>31</sup>. The **Co-ordinator** suggested to draw on General Comment No. 5 of the Committee on the Rights of the Child, which states in paragraph 48: "*Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realisation of rights, is an essential part of implementation*".

The brief informals with the **Facilitator** reflected the issues covered by the Co-ordinator. **Israel** and **Mexico** introduced a new text<sup>32</sup>, which was supported by most of those States taking the floor. **Jamaica** requested that "*scientific*" principles should be added to the text, which was endorsed by some delegations.

## Article 7: Equality and Non-discrimination

The Working Group text<sup>33</sup> was generally acceptable to the **USA**, whereas **New Zealand** wished the text to be streamlined. **Mexico** reiterated its suggestion to draw a distinction between equality and non-discrimination. It made substantial comments on the issue but pointed out that the provision was dependent on the outcome of Articles 4 and 9.

**Australia** and **China** supported the inclusion of a definition of discrimination in the definitions article (currently Article 3); a stance **Thailand** supported provided that there is such an article. The **Netherlands** (EU) found a separate article on non-discrimination acceptable, which the **USA** supported. **Chile** in turn suggested using the discrimination definition of the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities<sup>34</sup>.

As for a listing of grounds of discrimination, **India** was opposed to the idea, **Norway** questioned its appropriateness and the **Holy See** found it to be "*problematic*"<sup>35</sup>.

**Canada** supported a non-exhaustive list and suggested including "*sexual orientation*", which is already mentioned in the preamble, as a ground of discrimination. **New Zealand** endorsed the idea; the **Holy See** saw no precedent in international law for it. Chile suggested including people living with HIV/AIDS in the listing. **New Zealand** stated further that the grounds of discrimination should be in line with the ICCPR.

The **Yemeni** proposal to include specific language referencing (but not describing) direct and indirect discrimination was endorsed by the **African Group**, **India**, **New Zealand**, **Norway** and the **USA**. The latter stated that the Working Group text was "*sufficient*". The **EU** argued for a clearer definition, while **Canada** and **China** rejected the inclusion. To resolve the issue, **New Zealand** proposed the following text "*discrimination shall include all forms of discrimination*". **India** stated it would reflect on the proposal but objected to the concept of "*perceived disability*", which it found to be problematic because it is hard to define, evaluate and operationalise.

There was general support to replace "*on an equal footing*" with "*on a basis of equality with others*" in Article 7(2)<sup>36</sup>. The **Canadian** proposal in (1) that "*persons are equal*

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<sup>31</sup> See <http://www.un.org/esa/socdev/enable/rights/wgdca6.htm>.

<sup>32</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4israel.htm> and/or <http://www.un.org/esa/socdev/enable/rights/ahc4mexico.htm>.

<sup>33</sup> See <http://www.un.org/esa/socdev/enable/rights/ahcwgreporta7.htm> for the Working Group text.

<sup>34</sup> (a) of Article 2 reads: "*The term "discrimination against persons with disabilities" means any distinction, exclusion or restriction based on a disability, record of disability, condition resulting from a previous disability, or perception of disability, whether present or past, which has the effect or objective of impairing or nullifying the recognition or exercise by a person with a disability of his or her human rights and fundamental freedoms*".

<sup>35</sup> Many countries oppose such a "shopping-list", as they argue that it is likely to have the effect of excluding rather than including PWD.

<sup>36</sup>The first part of (a) of Article 7 (2) reads: "*Discrimination shall mean any distinction, exclusion (, additional obligations or burdens — New Zealand) or restriction (, condition, act or policy — Israel) which has the purpose or*

*before and under the law*" was endorsed by the **African Group**. **Japan** saw no precedent for the text in Article 7(3)<sup>37</sup>. **New Zealand** suggested making a reference to General Comment No. 18 of the Human Rights Committee<sup>38</sup>.

**Chile** endorsed the term "*other aspects of vulnerability*" and **Canada** supported the **New Zealand** proposal "*additional obligations and burdens*" in (2)(a) as it strengthens the definition of discrimination. **Venezuela** pushed for inclusion of the duty or obligation before the law in Article 7 (1).

The concept of reasonable accommodation was endorsed by **Australia**, **Serbia and Montenegro** as well as the **EU**. The latter stressed that it was an individualised concept. **Canada** objected to the **Australian** proposal "*or by association with a person with a disability*" in Article 7(2)(b) as it may detract from the focus of the Convention, namely PWD.

**NHRIs** stressed the importance of equality and non-discrimination. It suggested including "*any act, criterion, provision, practice, policy, rule, arrangement or other treatment*" in Article 7(2)(a) in the sentence that describes what non-discrimination means for the convention. The **IDC** welcome the EU decision not to merge Articles 4, 5 and 7. It stressed the importance of defining reasonable accommodation and referred to General Comment No. 5 of the Committee on Economic, Social and Cultural Rights. Both the **IDC** and **DPI** stressed the need to address the rights of PWD subject to multiple forms of discrimination.

The lengthy meeting with the **Co-ordinator, H.E. Ambassador MacKay**, revisited most of the issues in the plenary debate, which only added substance sporadically. Some countries suggested to move the provision on equality up, to emphasise its importance. The idea of including a list of possible discriminations was abandoned; the proposal to use a list as in Article 2 of the ICCPR for the preamble was seen as unnecessary, given the wording of preambular paragraph (m).

As for a possible definition of disability, the **EU**, **Mexico** and **China** proposed to take wording from Article 1 of the Convention for the Elimination of all forms of Discrimination against Women. On the issue of discrimination, the Co-ordinator concluded that the wording would refer to both direct and indirect discrimination but would not define the terms. Basically, a very broad definition would encompass direct and indirect discrimination. There was also debate on systemic discrimination and the concept of perceived disability. Support for the inclusion of certain elements from Article 2 of the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities, such as "*record of disability, conditions resulting from previous disability, perception of disability, present or past*" appeared to grow.

The issue of "*bona fide occupational qualification*" will possibly be resolved with language from General Comment No. 18, para. 13, of the Human Rights Committee. With reference to the Advisory Opinion of the Inter-American Court for Human Rights, OC-18/03 on the judicial conditions and rights of migrants, **Mexico** made a substantial intervention to caution the use of such language. In the end, the Co-ordinator suggested to possibly include a reference to General Comment No. 18, para. 13, in the preamble.

The **EU's** text on "*reasonable accommodation*" seemed to garner support<sup>39</sup>. There was discussion on the meaning of "*unjustifiable hardship*" and "*disproportionate burden*" respectively. The first paragraph was negotiated to state "*States parties would undertake to take all appropriate steps to ensure reasonable accommodation is provided*". "*On an equal footing*" is to be replaced with "*on a basis of equality with others*".

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*effect of impairing or nullifying the recognition, enjoyment or exercise by persons with disabilities, [on an equal footing] (on a basis of equality with others — Canada), of all human rights and fundamental freedoms;]*". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>37</sup> Article 7 (3) reads: "[Discrimination does not include a provision, criterion or practice that is objectively and demonstrably justified by the State party by a legitimate aim and where the means of achieving that aim are reasonable and necessary. (and consistent with international human rights law — Japan, African Group, Canada) — Australia]". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>38</sup> The Human Rights Committee is the UN's monitoring body for the ICCPR.

<sup>39</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4eu.htm>.

## Article 8: Right to Life

Mali proposed to change the title to "*right to live*". It joined the **EU**, the **Holy See**, **South Africa** and the **USA** in supporting the Working Group text<sup>40</sup>. **Yemen** also supported the Working Group text, suggesting additional wording similar to Article 6(2) of the Convention on the Rights of the Child. **New Zealand** suggested an amendment at the end of that text to read "*on an equal basis with others*" to avoid preferential treatment for PWD. This found support from **Canada**, **Costa Rica**, **India** and **Thailand**. The **Holy See** cautioned against such language.

The **Costa Rican** proposal to make clear that the right to life applies to all and therefore to delete the reference to PWD was endorsed by **South Africa** and **Venezuela**. The inclusion of armed conflict and natural disasters as proposed by **Jordan** found support from **Chile**, **China**, **Kenya** and **Syria**; the latter also supported the **Palestinian** suggestion to include "*foreign occupation*". The **EU** said that the reference was important but should be placed elsewhere, which **Jordan** found acceptable. **Eritrea**, **Japan**, **Lebanon** and **Mexico** supported this idea, the **Chair** pointed out that there was a reference in preamble (p). **Canada** and the **USA** opposed the inclusion, as did **New Zealand**, which did not want any specific references at all.

**Kenya** supported the **Argentinean** proposal to "*reaffirm*" the inherent right to life of PWD rather than "*recognise*" it; citing that this would weaken the text, the **EU** and **Canada** opposed the change.

**International Right to Life Foundation** (on behalf of *US National Right to Life*, *UK Society for the Protection of Unborn Children* and *United Families International*) supported language safeguarding the right to life of PWD as the perception that their quality of life is not "*good enough*" makes infringements of the right likely. **Inclusion International** (II) spoke to the same point, stating "*we all arrive with nothing and we all leave something behind*". The **IDC** submitted a proposal under the title "Right to Life, Survival and Development"<sup>41</sup>.

## Article 9: Equal Recognition as a Person before the Law

**Chile** supported the suggested title "*legal capacity*". Various substantial amendments were proposed, the most discussed one coming from **Canada**<sup>42</sup>. It was supported by **Costa Rica**, **Trinidad and Tobago** and **New Zealand**, which suggested including language from the IDC draft<sup>43</sup>. Several countries welcomed the new text and endorsed it in parts, as did the **EU**, **Lebanon** and **Norway**. Suggestions by the EU<sup>44</sup> were commented on positively, and **Serbia and Montenegro** submitted a proposal based on both the Canadian and the EU suggestions.

Proposals were also submitted by the **African Group**<sup>45</sup> and **Costa Rica** – on access to justice. **Chile** and **Mexico** proposed to cover the issue of access to justice in a separate article. There was substantial agreement that the issue of legal capacity needed safeguards. Chile spoke of the need to protect PWD in this regard and India saw a need to address the issue of substituted decision-making. **Mexico** and **Lebanon**, however, were in favour of supported decision-making. Lebanon also stressed the need for a review mechanism for this delicate issue. **China** emphasised the different approaches taken by the varying legal systems and made reference to the Principles for the protection of persons with mental illness and the improvement of mental health care. **Australia** highlighted the issue of individuals who make decisions for a time when PWD are no longer capable to make them.

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<sup>40</sup> See <http://www.un.org/esa/socdev/enable/rights/ahcwgreporta8.htm> for the Working Group text.

<sup>41</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4idcupdate.doc>.

<sup>42</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4canada.htm>.

<sup>43</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4idcupdate.doc>.

<sup>44</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4eu.htm>.

<sup>45</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4africangroup.htm>.

The **IDC** reiterated its draft proposal<sup>46</sup>, which has four objectives and is modelled on a supported decision-making model. It welcomed the Mexican and Lebanese stance on surrogate decision-making. **DPI** emphasised the need to ensure access to legal and other procedures for PWD. **NHRIs** supported the Canadian proposal as well as the suggested split between "*legal capacity*" and "*access to justice*".

### Article 10: Liberty and Security of the Person

The Working Group text<sup>47</sup> was principally acceptable to **China**, **South Africa** and **Venezuela**. **Costa Rica** highlighted the importance of the article and **Canada** supported its inclusion.

The Canadian proposal to add "*solely*" in (1)(b)<sup>48</sup> was supported by **New Zealand** but rejected by **South Africa**. **Chile** proposed language to ensure "*due process*". The Colombian proposal for (2)(e), which requires specially adapted facilities for PWD who are detained or imprisoned, was endorsed by **Mexico**. **Venezuela** proposed to include reference to "*Braille and sign language*" in (2)(b). The **Mexican** proposal for a paragraph on revision of countries' legal frame (4)<sup>49</sup> was endorsed by **Namibia** and **South Africa**.

**Canada** supported the inclusion of a sub-paragraph on compensation. **New Zealand** also lent its support provided that language is consistent with Article 9(5) of the ICCPR. **Ethiopia** suggested language ensuring a speedy trial, citing that disability cannot be an obstacle to the pace of a criminal process. **Serbia and Montenegro** supported language relating to conditions of confinement of PWD.

The **EU** withdrew its proposal on forced institutionalisation and replaced it with a new suggestion<sup>50</sup>, which **Thailand** welcomed.

The **IDC** supported the separation of Article 10 into two parts. Compensation should be included and reflect the terms of the ICCPR. The IDC opposed the use of the term "*solely*" in (1)(b). An article on PWD under arrest and in detention was proposed as Article 10(bis). **DPI** supported both proposals, stating that the convention must "*explicitly*" address these issues.

### Article 11: Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

**Qatar** supported the Working Group text<sup>51</sup> as it is. As for (1)<sup>52</sup>, **Guatemala** and **Mexico** supported the text as it is and **Chile** endorsed the "*medical and scientific*" references in the provision. **South Africa** endorsed a Thai proposal, which broadens the scope of scientific experimentation covered by prohibition.

In (2), **Guatemala** endorsed the Working Group text. The **EU** reiterated its call to delete the second part, which **Mexico** supported and **Thailand** opposed. The **Thai** proposal including a general clause on experimentation - "*other forms of*" - was endorsed by **Venezuela** and **Yemen** proposed new language "*States parties shall prohibit scientific or medical experimentation in toto with regard to PWD*".

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<sup>46</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4idcupdate.doc>.

<sup>47</sup> See <http://www.un.org/esa/socdev/enable/rights/ahcwgreporta10.htm> for the Working Group text.

<sup>48</sup> (b) of Article 7 (1) reads: "*Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty shall be in conformity with the law, and in no case shall be based (solely — Canada) on disability*". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>49</sup> Article 10 (4) reads: "*The States parties shall commit to make a thorough revision of their legal frame, in criminal and civil matters as well as in execution of sentences, in order to take into consideration the different types of disabilities and adapt their legal frame to guarantee the respect of the human rights of the persons with disabilities who are deprived of their freedoms for the commission of a crime — Mexico*". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>50</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4da10.htm>.

<sup>51</sup> See <http://www.un.org/esa/socdev/enable/rights/ahcwgreporta11.htm> for Working Group text.

<sup>52</sup> Article 11(1) reads: "*States parties shall take all effective legislative, administrative, judicial, educational or other measures to prevent persons with disabilities from being subjected to torture (in all its forms — Algeria) or cruel, inhuman or degrading treatment or punishment (violence and abuse — India)*". From the report of the third session of the AHC (A/AC.265/2004/5).

The language on forced institutionalisation should be deleted, stated **Canada, China** and **Malaysia**. Chile stated that the issue was already covered in Article 12 and **Thailand** was content with the mention in Article 10(1)(b). **New Zealand** proposed to explicitly protect the "*right to refuse treatment and scientific experimentation*" and proposed new language on the "*right to free and informed consent*". There have to be safeguards for forced institutionalisation, which has to be kept to a minimum and needs to be based on law<sup>53</sup>.

**Mexico** submitted a modification for its proposal on monitoring in (3), which **Guatemala** supported. **China, India, Malaysia** and **Thailand** opposed the provision and **South Africa** and **Venezuela** prefer to have the issue covered in the section on monitoring. The reference to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which has not yet come into force, was problematic in the eyes of **Canada, China** and **South Africa**. **Venezuela** proposed a merger of Articles 11 and 12.

The **IDC** supported the Mexican reference to monitoring. It asked delegates to consider the usage of mind-altering drugs in the context of torture. Forced institutionalisation falls into the category of torture and other cruel, inhuman or degrading treatment.

## Article 12: Freedom from Violence and Abuse

**Canada** and **China** would like to see the provision more streamlined. **Bahrain** made a suggestion for a new title: "*The right not to be subjected to torture, cruel, inhuman or degrading treatment*". **New Zealand** stressed that there should be no valid exceptions to this right and stated provisions on the right to free and informed consent should be kept separate, as exceptions thereto were possible.

A vast number of States endorsed the **EU** proposal to move the first sentence of (1)<sup>54</sup> to the preamble: **Bahrain, Canada, China, Costa Rica, Japan, Lebanon, Mexico, New Zealand, Norway, Serbia and Montenegro, South Africa** and **Venezuela**. **Chile, Serbia and Montenegro** and **Venezuela** endorsed the proposal of the **Republic of Korea** to include "*abandonment*" in the listing. The **New Zealand** proposal on "*economic abuse*" was supported by **Chile, Lebanon, Mexico** and **Serbia and Montenegro**. The inclusion of "*abduction*" and "*harassment*" was supported by the **EU** and **Norway**. **Serbia and Montenegro** endorsed the **Mexican** suggestion on "*mental and physical abuse*". **South Africa** opposed the proposal of **China** and **Argentina** to delete "*sexual exploitation and abuse*".

In (2), discussion focused on including language on "*armed conflict*", which **Chile** and **Palestine** endorsed. **Costa Rica** approved the proposal but was still musing over the placement; provided that the issue would not be covered in a separate article, it should remain in Article 12. **Canada, Mexico, Serbia and Montenegro** and **South Africa** wished the concept to be placed elsewhere. **Syria** stated it was flexible with regard to placement. The **USA** opposed the inclusion of "*armed conflict*". **Sierra Leone** stressed that the focus should be PWD in armed conflict rather than disability as a result of armed conflict and urged a

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<sup>53</sup> States parties bring up various arguments to maintain forced institutionalisation based on law and only in special, monitored circumstances. However, many DPOs are relentless in their call to abolish any form of forced institutionalisation. They state that it is a violation of the common human rights standard regarding acts that are inhuman and degrading treatment and a deprivation of a person's dignity, liberty and right to self-determination. The Human Rights Committee has stated that deprivations of liberty include those due to "mental illness" or being held in psychiatric hospitals (General Comment No. 8, para. 9, and No. 21, para.2). The ICCPR does not only cover the dignity but also the mental integrity of the individual as per General Comment No. 20, para. 2. The Human Rights Committee also emphasises that no derogation from the provision in Article 7 is permitted, and that "*no justification or extenuating circumstances may be invoked to excuse a violation of Article 7 for any reasons*" (para. 3).

<sup>54</sup> First sentence of Article 12 (1) reads: "[States parties recognise — Sierra Leone] (Recognising — Sierra Leone) that persons with disabilities are at greater risk, both within and outside the home, of (abandonment — Republic of Korea) violence, injury or (mental or physical — Mexico) abuse neglect or negligent treatment, maltreatment or exploitation, including (economic and — New Zealand) sexual exploitation and abuse — Argentina] — China]". From the report of the third session of the AHC (A/AC.265/2004/5).

separate provision on this issue, which Jordan endorsed. The EU proposed new language for (2)<sup>55</sup>.

The deletion of (3)<sup>56</sup> was supported by **New Zealand**, **South Africa** and **Venezuela**. The inclusion of families was supported by **Venezuela**, opposed by **South Africa**. The **Republic of Korea** made a proposal on the need for education of PWD to ensure effective monitoring. **Mexico** wished to stress the role of "*education and training*" and **Lebanon** supported the inclusion of "*economic, sexual exploitation and abuse*". Substantial proposals were made by **Chile**<sup>57</sup> and **Venezuela**. The EU's Article 12(3)bis<sup>58</sup> was endorsed by **Chile**.

**Japan** wished to retain the provision on monitoring in the article, but **Venezuela** wanted to place it in the appropriate Article 25. The suggestion to include language on supervision in the Article in (4) – made by **New Zealand** – was endorsed by **Mexico**. The **Philippine** proposal to include rehabilitation among the measures taken to remedy the situation of a victim in (5) was endorsed by **South Africa** and **Venezuela** expressed support for including "*economic*" in that paragraph. With regard to "*forced sterilisation and abortion*", **Kenya** supported the provision but **Venezuela** did not. The EU proposed new language for (6)<sup>59</sup>. **Bahrain** suggested moving (2)(3)(4) to Article 11.

**Mexico** called for separate paragraph dealing with judiciary resources and **Israel** also wanted an additional paragraph safeguarding the accessibility of judicial procedures.

The **IDC** proposed a revised Article 12<sup>60</sup>, it expressed concern over the proposals permitting institutionalisation and forced interventions for PWD. **DPI** supported proposals on training and information to prevent incidences of violence and abuse. It supported the **New Zealand** proposal for (5)<sup>61</sup>.

### Article 13: Freedom of Expression and Opinion, and Access to Information

**China** was satisfied with the Working Group text<sup>62</sup>; **Canada**, **China**, **Jamaica**, **Thailand** as well as **Trinidad and Tobago** wished to see the concept of "*freedom of expression*" strengthened. **Canada** stated that the current draft looked more like an "*action plan*", a notion the **Republic of Korea** supported. **Japan** said that it would be hard to implement a provision, which touches on both public and private spheres.

The title suggested by **Costa Rica** was endorsed by **Venezuela** but **New Zealand** opposed it stating that there is no such right as the "*right to communication*"; Article 19 of the ICCPR should be used instead. **South Africa** rejected the **Israeli** title – "*the right of access to information*" - as too restrictive.

**Kenya** stated that the *chapeau* should include "*freedom of expression and thought*". **Liechtenstein's** proposal to include "*appropriate*" before "*modes of communication*" was endorsed by **Chile** and **South Africa**.

The inclusion of "*Braille*" in (a)<sup>63</sup> was supported by **Qatar** and **Venezuela**, whilst

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<sup>55</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4eu.htm>.

<sup>56</sup> Article 12 (3) reads: "[States parties shall also take all appropriate measures to prevent violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including (economic and — New Zealand) sexual exploitation and abuse (especially against children and women with disabilities — India), by ensuring, inter alia, support for persons with disabilities and their families, including the provision of information (and education about how to avoid, recognise and report instances of the above. States parties shall also ensure those working with persons with disabilities are trained to identify and prevent such instances — New Zealand) (and other appropriate forms of assistance and support. In such cases States parties shall take all appropriate measures to promote their physical and psychological recovery and reintegration into communities — India) — EU] (Such measures shall include the provision of appropriate information to persons with disabilities and their families — EU)". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>57</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4chile.htm>.

<sup>58</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4eu.htm>.

<sup>59</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4eu.htm>.

<sup>60</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4idcupdate.doc>.

<sup>61</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4nz.htm>.

<sup>62</sup> See <http://www.un.org/esa/socdev/enable/rights/ahcwgreporta13.htm>.

<sup>63</sup> (a) of Article 13 reads: "[Providing [public — EU] (official — EU) information — Japan] (Taking appropriate steps

concern over the inclusion of sign language as equated with alternative means of communication was raised by **Costa Rica, New Zealand, Norway, Uganda** and **Thailand**. **Japan** suggested a new opening phrase, which followed Article 2 of the ICESCR – an idea **China** endorsed. With regard to the EU's proposal in (a) to change "*public*" to "*official*" information, **Canada** and **Jamaica** raised concern and **Kenya** and **Thailand** insisted that "*public*" be retained. The **Netherlands** (EU) explained that "*official*" referred to the obligation of Governments for information for which they are responsible. **Serbia and Montenegro** and **Namibia** supported the EU proposal.

The **New Zealand** proposal<sup>64</sup> for (b)<sup>65</sup> was endorsed by **Kenya, South Africa** and **Venezuela**. The latter also endorsed the Mexican proposal<sup>66</sup> for the said paragraph. With regard to (c)<sup>67</sup>, **Mexico** made a new proposal<sup>68</sup> and **Yemen** reiterated its submission<sup>69</sup>, which found support from **Eritrea** and **Kenya**. **India** suggested that the issue of rehabilitation (d) be moved to a new article.

**Chile** supported outlining obligations for public entities to provide information and accessible services for people with disabilities in (f). The **Ugandan** proposal to include reference to promoting a national sign language in (h) was supported by **Trinidad and Tobago** and would be acceptable for **Namibia** with modifications. **Thailand** supported the proposal of the **Republic of Korea** to include a paragraph on access to political and electoral information.

The **IDC** presented a revised draft and stressed the need to ensure freedom of expression for all, including through the use of sign language, Braille, plain language, tactile forms of communication and other methods of an individual's choice. The **WFD** urged the AHC to recognise sign language as a natural language. It should be fostered at the same level as Braille and sub-titling.

#### **Article 14: Respect for Privacy, the Home and the Family**

**Canada, New Zealand, Mexico** as well as **Serbia and Montenegro** endorsed the Working Group text<sup>70</sup> with small amendments; **Serbia and Montenegro** stated that consistency with other human rights documents needed to be ensured. The proposal to split the article into two, namely one covering "*Respect for Privacy*" and "*Respect for Home, the Family and Intimate Relations*", was endorsed by **Australia** – which made an additional proposal<sup>71</sup> – as well as **Costa Rica** and **Kenya**. **Lebanon** highlighted the need to stress the principle of equality throughout.

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*to provide public information — Japan) to persons with disabilities, [[on request — Thailand, Kuwait], in a timely manner — Namibia] and without additional cost, (and without tax — Morocco) in accessible formats [and technologies [of their choice — EU, New Zealand], — Argentina] (and technologies appropriate to different disabilities — Argentina) taking into account different kinds of disability". From the report of the third session of the AHC (A/AC.265/2004/5).*

<sup>64</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4nz.htm>.

<sup>65</sup> (b) of Article 13 reads: "*Accepting (and promoting — Mexico) the use of [alternative — New Zealand] (a variety of — New Zealand) modes of communication by persons with disabilities in official interactions*". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>66</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4mexico.htm>.

<sup>67</sup> (c) of Article 13 reads: "*[Educating persons with disabilities] (Providing education programmes aimed at teaching persons with disabilities and their families [alternative — New Zealand] (a variety of communication modes — New Zealand) [and augmentative — New Zealand] — Costa Rica) (Providing education and learning — Jordan) (and non-disabled persons wishing to communicate with persons with disabilities — Lebanon) (their families and the general public — Trinidad and Tobago) to use [alternative — New Zealand] (a variety of communication modes — New Zealand) [and augmentative — New Zealand] modes (and providing opportunities for those concerned with persons with disabilities to be educated in augmentative and alternative communication modes — Yemen)*". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>68</sup> The Mexican proposal for Article 13 (c) reads: "*offering education, training to non-disabled persons wishing to communicate with PWD, their families and the general public, to use alternative communication modes*".

<sup>69</sup> The Yemeni proposal for Article 13 (c) reads: "*and providing opportunities for those concerned with persons with disabilities to be educated in augmentative and alternative communication modes*".

<sup>70</sup> See <http://www.un.org/esa/socdev/enable/rights/ahcwgreporta14.htm> for the Working Group text.

<sup>71</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4da14.htm>.

The discussion reflected the contemporary debate on forms of family relations and approaches to all issues related to sexuality and reproductive health. **Canada** and **Mexico** drew attention to the Cairo Outcome Document of 1994<sup>72</sup>, which the **Holy See** rejected as a non-binding text.

**Chile** suggested including unlawful attacks on honour and reputation in (1). Among various statements, the **Japanese** delegation proposed "*sexuality of PWD should be respected on an equal basis with other persons*" for (2)(a). **Malaysia** and **Yemen** would like to see customs safeguarded in this provision and members of the Like-Minded Group supported the concept of "*legitimate*" marriage under the same paragraph. **Namibia** suggested including protection for disabled women during pregnancy.

**Eritrea** endorsed (b) (on the rights of PWD in regard to marriage and family) as it is, and **China** suggested that in view of potential controversy reference to "*intimate relationships*" should be deleted. The debate focused on the issue of "*forced sterilisation*" in (b)bis<sup>73</sup>, which **Mexico**, **Thailand**, **Venezuela** and **Yemen** endorsed. In (c) (on rights of PWD in regards to having children and family planning), the **New Zealand** proposal including the phrase "*retain fertility*" was endorsed by **Kenya** and **Serbia and Montenegro**. **Bahrain**, **Qatar** and **Yemen** agreed that the term "*guardianship*" should be used in (d) – the Working Group text refers to guardianship, wardship, trusteeship and adoption of children. **Thailand** stated that the paragraph was not necessary, as these issues were covered in other conventions. The **New Zealand** proposal to include the "*best interest of the child*" found substantial support.

The **IDC** stated that the Working Group text was "*good*" and provided a revised draft. It ensures that caregivers should not be allowed to control personal assistance of PWD. The IDC also proposed language<sup>74</sup> on adult PWD who live with family members. Furthermore, it highlighted the issue of preferential treatment of non-disabled parents in custody disputes following divorce.

## Article 15: Living Independently and Being Included in the Community

**New Zealand** stated that there seemed to be a lack of understanding of the scope of the article and explained that – in light of the history of human rights abuses against PWD – it aimed to ensure that PWD have choices equal to others. The importance of "choice" was also emphasised by **Eritrea**, **Lebanon** and **Mexico**. **China** cautioned that lack of economic resources would limit the ability to fulfil some of the commitments for certain countries.

New titles were suggested by **Mali** and the **Republic of Korea**: "*Autonomy and Integration in the Community*" and "*Independent Living and Community Inclusion*" respectively. **New Zealand** based the right on Article 12 of the ICCPR and submitted a new proposal<sup>75</sup>. After the **EU** also made a proposal<sup>76</sup>, **Canada** found them to be quite compatible and suggested to synthesise them. **Israel** also made a new proposal<sup>77</sup>.

The importance of self-determination was stressed by the **USA** and **Thailand**, which urged the use of this concept instead of "*autonomy*". **Costa Rica** supported "*independent living*" as a lifestyle, as did other countries. **Kenya** requested broader terminology and opposed "*terms of art*", which **South Africa** endorsed.

**Bahrain** proposed a new *chapeau*<sup>78</sup> and **Chile** made a submission<sup>79</sup> to reference "*access*

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<sup>72</sup> The Programme of Action of the International Conference on Population and Development held in Cairo in 1994.

<sup>73</sup> The Costa Rican proposal for Article 14(2)bis reads: "*The rights of persons with disabilities to reproduction, prohibiting all practices aimed at involuntary sterilisation and/or inhibiting exercise of the right to reproduction on the basis of prejudices about PWD*".

<sup>74</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4idcupdate.doc>.

<sup>75</sup> See <http://www.un.org/esa/socdev/enable/rights/ahcda15.htm>.

<sup>76</sup> See <http://www.un.org/esa/socdev/enable/rights/ahcda15.htm>.

<sup>77</sup> See <http://www.un.org/esa/socdev/enable/rights/ahcda15.htm>.

<sup>78</sup> The Bahrain proposal for the *chapeau* reads: "*States parties will acknowledge the rights of PWD to live independently and to social integration. They are duty bound to take effective and appropriate measures to enable PWD to achieve that*".

to information" in (1)(a)<sup>80</sup>. The **Canadian** proposal<sup>81</sup> for (1)(f)<sup>82</sup> was restated and endorsed by **China, Lebanon** and **South Africa**.

The **IDC** and many NGOs spoke of the need to safeguard choices for PWD particularly in relation to living in communities. Related thereto is the issue of causes for and effects of institutionalisation, which was highlighted from various angles.

#### **Article 24(bis): International Co-operation**

There was substantial support for the inclusion of a provision on "*international co-operation*" from **Chile, Colombia, Costa Rica, El Salvador, Japan, Mali, Morocco, the Philippines, Tanzania, Thailand, Trinidad and Tobago, Uruguay, Venezuela** and **Viet Nam**. The **Mexican** proposal<sup>83</sup> was generally supported by these countries with **Chile, Costa Rica** and **Morocco** submitting amendments. Morocco addressed the issue of South-North co-operation, which **Costa Rica** and **Malaysia** endorsed.

**China** restated its proposal<sup>84</sup>, which the **Philippines** and **Viet Nam** commented on positively. **Canada**, the **EU** and **New Zealand** stated that the Chinese proposal had merit but that they were not entirely convinced of the need for such a provision. Emphasising the need to base a possible provision on existing human rights documents, **Canada** referred to Article 4 of the Convention on the Rights of the Child and Articles 22 and 23 of the ICESCR. Stating that a sharing of information and related matters would be welcome, the **EU** was joined by **Canada** and **Norway** in wishing to place a reference to international co-operation in the preamble. **New Zealand** stressed the fact that implementation was a primary responsibility of State parties and stated that the detailed proposal of Mexico was better fit for a resolution. In principle the interventions of **Canada**, the **EU**, **New Zealand** and **Norway** were supported by **Serbia and Montenegro** as well as the **USA**.

**Jamaica** emphasised the need to break new grounds with this convention and saw international co-operation as one such ground. **Mexico** also stressed the need for innovative means in this area. **Cuba** made a variety of suggestions to the proposals and **Lebanon** saw merit in a balance between the **Mexican** proposal on the one hand and the **Chinese** and **Vietnamese**<sup>85</sup> proposals on the other hand.

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<sup>79</sup> The Chilean proposal reads: "*PWD shall have access to information on support services that are available*".

<sup>80</sup> (a) of Article 15 reads: "*[Persons with disabilities — Jordan] have the equal opportunity to [choose their place of residence and living arrangements — India, New Zealand] (exercise their choice of living independently or with their family respecting social and cultural practices of family norms and be included in the community — India) (determine how, where, and with whom they live — New Zealand)*". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>81</sup> The Canadian proposal for (1)(f) reads: "*PWD who require assistance communicating have access to necessary and appropriate support to enable them to express their decisions, choices and wishes*".

<sup>82</sup> (f) of Article 15 reads: "*Support to the families who are taking care of persons with disabilities and also provide material and moral support and provide them with the necessary assistance to ensure the inclusion of persons with disabilities in society — Morocco*". From the report of the third session of the AHC (A/AC.265/2004/5).

<sup>83</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4mexico.htm>

<sup>84</sup> The Chinese proposal reads: "*States parties recognise that international co-operation is conducive to the implementation of this convention and undertake to take the appropriate measures in co-ordination with each other as well as with international and regional organisations, in particular:*

- a) *exchange and sharing of information especially that concerning progress and challenges in implementing this Convention;*
- b) *mainstream disability issues into co-operation programme framework;*
- c) *encourage the provision of technical and economic assistance to developing countries, including technology transfer, to enhance the capacities to effectively implement the Convention*".

<sup>85</sup> Viet Nam's proposal reads: "*States parties shall promote direct co-operation with international organizations, including bilateral, multi-bilateral organisations, and non-governmental organisations to strengthen capacity for the implementation of this convention. Fundamental issues are as follows:*

- a) *Development of national legislation, policies, programmes and projects related to the rights of PWD;*
- b) *Increasing public awareness on disability and the rights of PWD;*
- c) *Promoting research and application of assistive technologies for PWD and their organisations;*
- d) *Conducting training courses, workshops and research for the implementation of the convention;*
- e) *Strengthening capacity training provided for PWD for their enjoyment of the rights under this convention.*"

The **IDC** stressed the role international co-operation can play for advancing equality of PWD. Poverty as both a cause and consequence of disability could only be overcome if States provide equal opportunities. The IDC provided a draft text<sup>86</sup> and made reference to the same documents as **Canada**, namely Article 4 of the Convention on the Rights of the Child, and Articles 14, 22 and 23 of the ICESCR.

### Article 25: Monitoring

The **Republic of Korea** reflected the overall tenor of the discussion by stating that some international mechanism was necessary but problems with existing bodies should be avoided. A treaty body, which in whole or parts should mirror existing ones, was supported by **Chile, Cuba, India, Israel, New Zealand, the Republic of Korea, South Africa** as well as **Trinidad and Tobago**. States, such as **Costa Rica**, voiced concern over the budgetary implications, the well-known flaws of existing bodies and the need to adapt to the ongoing treaty reform – a point particularly stressed by **New Zealand**. **Malaysia** supported an implementation mechanism but opposed the automatically binding nature of recommendations, citing concerns for cultural differences.

**Bahrain** viewed monitoring as essential and stated that Article 25 represented the very minimum. The **Netherlands** (EU) called for a monitoring mechanism, which reflected the existing system while not replicating its weaknesses and outlined the basic principles of such a body. It stressed that such a body should accommodate constructive dialogue with and between States. The **EU** proposal was endorsed by **Albania, Jordan** and **Kenya** while the **USA** shared the EU's concerns.

**Cuba** called for the strengthening of national mechanisms, a point also raised by **Japan**, which called for a more positive approach to these institutions. **Chile, Jamaica, Mexico, and Venezuela** emphasised the need to build a bridge between national and international mechanisms and **South Africa** encouraged the inclusion of regional mechanisms. **Thailand** supported the proposals made by the **IDC**. **Mali** cautioned the AHC about NGO use of parallel reports to the treaty bodies.

Both **Mexico** and **South Africa** made substantial suggestions on the structure and composition of an international monitoring body, which **Serbia and Montenegro** gratefully acknowledged. **Yemen** joined their call for the inclusion of PWD in any such body. **Japan** also stressed the necessity to include the views of PWD and supported the idea of "*focal points*". **Canada** supported the inclusion of NGOs in the monitoring process.

**Australia, Canada, Japan** and **New Zealand** stated that despite their general support, they felt it was too early to discuss the details of Article 25. Canada also suggested to mainstream disability into existing bodies.

The **ILO** reflected the endorsement of an international monitoring body, which takes account of the current treaty body reform process. It referred to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families on the issue of involving all stakeholders.

**Amnesty International** (AI) emphasised that any monitoring body had to be grounded in existing human rights frameworks and must be guided by the principles set out in the Convention. **PWDA** suggested strengthening the national monitoring provisions of Article 25 as it is. **NHRIs** stressed the importance of maintaining the two levels of monitoring, namely domestic and international. They also emphasised the important role of NHRIs in guiding monitoring bodies. Speaking on behalf of a number of DPOs and NGOs, including the *International Service for Human Rights* (ISHR), the **LSN** outlined principles necessary for the body such as the expertise of members of the body, the competence to develop jurisprudence through general comments, the possibility of individual and collective complaints and follow-up procedures. **DPI** expressed its hope for a consensus on a comprehensive mechanism.

The **Special Rapporteur on Disability** endorsed the LSN statement and stressed the

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<sup>86</sup> See <http://www.un.org/esa/socdev/enable/rights/ahc4idcupdate.doc>.

vital importance of the mechanism, which should not fall under the standards of existing mechanisms.