

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

Fifth session (New York, 24 January to 4 February 2005)

Background ¹

The negotiations on a **Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities** (the Convention) originated in an initiative taken by **Mexico** during the **World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance** in 2001. At that conference, Mexico introduced a proposal into the Programme of Action inviting the United Nations General Assembly to elaborate a Convention to protect the rights of persons with disabilities (PWD). At the 56th session of the General Assembly, Mexican President, **Vicente Fox**, reiterated the need for a convention and invited the General Assembly to establish an Ad Hoc Committee (AHC) to work on one. The General Assembly supported this initiative by adopting resolution 56/168² in December 2001, which established an Ad Hoc Committee "to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development". This action also came after many years of advocacy by the disability community for the inclusion of disability in the UN human rights legal framework.

The Convention, which could be presented for adoption to the General Assembly at its 62nd session in 2007, will create a legally binding framework for promoting the rights of the world's 600 million PWD. The main aim of the Convention is to guarantee PWD equal access to already established human rights and ensure that they have the tools to live their lives with dignity and enjoy equal enjoyment of all their human rights. In addition, the Convention introduces new concepts such as **living independently** and **reasonable accommodation**. It also addresses prejudices held against PWD and historical injustices such as forced institutionalisation and sterilisation.

The AHC's working methods

As in many UN processes, the AHC decided itself how to organise its work, and its way of working has changed over time. The two main types of meetings are the "informals" and "formals". For the most part, this distinction is used to allow the AHC to use different methodologies of work, for instance in terms of participation. Essentially, informals signify that the nuts and bolts work of negotiation is happening on the text.

At the beginning of the Convention process, "formals" were held in the Plenary room, led by the Chair or another Bureau member. On each agenda item, Governments spoke first, then international organisations, national human rights institutions and finally NGOs. Informals were held in smaller rooms with no interpretation, chaired by an appointee of the Chair of the AHC and with no participation by NGOs.

However, over time the working methodology for the informals changed. Informals now also take place in the Plenary room, with language translation and with the participation of NGO delegates, who are allowed to monitor, but not to speak. These informals are usually led by a Coordinator, whom the Chair appoints. Another change over time is that the Coordinator has suggested calling on expert advice from NGOs when required.

During the 5th AHC session, the informals were interrupted twice to allow for a 'formal' Plenary session -- which was chaired not by the Coordinator but held under the chairmanship of the AHC Chair -- to provide the modalities by which national human rights institutions and NGOs could share their views with the Plenary.³

¹ Please read this report in conjunction with previous reports of ISHR on the Ad-Hoc Committee. See www.ishr.ch

² Notably resolution 56/168 endorses the accreditation and participation of **non-governmental organisations** (NGOs) in the Ad Hoc Committee (AHC). Through **GA/RES/57/229**, a **voluntary fund** was also established, which supports NGO representatives wanting to participate in the negotiations. Also, to ensure the **accessibility** of PWD to the United Nations (UN) headquarters, **Canada, Mexico** and the **USA** co-sponsored decision **56/474**, which calls on the General Assembly to provide the necessary facilities to enable such access.

³ While interventions in the first session, according to some delegates, did not always provide the specific guidance and substance needed on some of the Convention's most crucial issues, NGOs made good use of the second formal session.

At the fourth AHC meeting, the Chair of the AHC appointed country facilitators, whose role is to help draft specific Articles. Though they are government representatives, they serve in a neutral capacity. However it was found that during the 4th AHC session, the Plenary meetings chaired by country facilitators were not effective. Therefore, in the 5th AHC session, the country facilitators instead undertook bilateral and multilateral discussions with delegates and NGOs in order to aid the Coordinator and develop new texts, including some new versions of Articles.

Introduction

Based on the many contributions made during the first two sessions of the AHC, a **Working Group** – composed of 27 governments and 12 NGOs - was established to elaborate a draft Convention (**A/AC.265/2004/WG.1**). The **third session** of the AHC was held in spring 2004 (**A/AC.265/2004/5**) and the **fourth session** in summer 2004 (**A/59/360**). The **fifth session** of the AHC⁴ took place at the UN headquarters in New York from 24 January to 4 February 2005. The session was chaired by H.E. **Luis Gallegos Chiriboga (Ecuador)**.

The fifth session consisted mainly of informal negotiations on Articles 7(5) to 15⁵, which were led by the formidable **Coordinator, H.E. Don Mackay (New Zealand)** whose “brilliant summaries” (according to the **Yemeni** delegate) enabled the informal sessions to move forward swiftly when proposals and suggestions became too many. The aim of the discussions, according to the Coordinator, was to clarify as many of the issues concerning the draft Articles as possible. The AHC’s fifth session report A/AC.265/2005/2, in which the report of the Coordinator is included, can be accessed at <http://www.un.org/esa/socdev/enable/rights/ahc5docs/ahc5reporte.pdf>.

The Coordinator repeatedly stressed the need to move the process forward as millions of people eagerly await improvements in their lives. Moreover many of those participating in the AHC meetings are facing financial challenges when coming to New York. However, the goal of the Coordinator to finish the informal negotiations in the first week was not met. On the contrary the AHC did not finish the informal negotiations of Article 15 during the second week. At one point the Coordinator noted, “We are discussing a lot without discussing anything”.

The AHC faces two major challenges. Firstly many delegations still remain ignorant to the injustices that PWD have experienced and continue to face. Thereby, the main goal of the Convention - to ensure the equal protection of PWD in full awareness that those human rights treaties in force have failed to address the specificities of the obstacles PWD face – is jeopardised. Secondly, the negotiations thus far have only adapted language from existing human rights treaties to the specific needs of PWD. The provisions tackling new concepts and ideas – such as reasonable accommodation - are still awaiting informal consultations and will obviously require more intense negotiations.

The 6th AHC meeting is to be held on 1 to 12 August 2005⁶, and the order of AHC negotiations will likely be as follows: finish Article 15, Article 24 bis International cooperation, Article 15 bis Women with Disabilities, and Articles 16-25.

Drafting of the proposed convention

Article 7: Equality and Non-Discrimination

The productive spirit unfortunately did not deter a few delegates from continuing to use patronising language when speaking about PWD.

⁴ See <http://www.un.org/esa/socdev/enable/rights/ahc5.htm>

⁵ The original plan was to devote the first week to informal negotiations on Articles 7 to 15 and spend the second week on the second reading of Article 16 ff.

⁶ The Sixth AHC is to take place at the UN Headquarters in New York in early August. The choice of date has been criticised due to immediately following a meeting by ECOSOC and thereby creating likelihood that delegates will be fatigued and possibly slowing down the process.

The discussion of **paragraph 5** of Article 7 -- on special measures aimed at accelerating equality of persons with disabilities -- which was still open from the fourth AHC - was "surprisingly complicated", said the Coordinator.

In regards to the appropriateness of using the term "special measures"⁷ in the disability context, **Costa Rica** and **New Zealand** supported the term. **Canada** proposed the text refer to "positive measures", which **Ghana (on behalf of the African Group)** and Yemen supported. **Jordan** supported the term "appropriate measures"⁸.

Following a question from the Coordinator on a need to explain the phrase from the last part of the paragraph 5 "but shall in no way entail as a consequence the maintenance of unequal or separate standards," which comes from CEDAW, 4.1, the **Office of the High Commissioner for Human Rights (OHCHR)** explained that the provisions in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and also in the Convention on the Elimination of all Forms of Racial Discrimination (CERD) are intended to address discrimination based on prejudice, not objective difference in ability. The language assures States that requirements would not be lowered. For example, switchboard operators might be required to speak three languages. A law requiring that blind people be hired for 10 percent of switchboard operator positions would not require reducing the language requirements.⁹

Japan proposed that the phrase from the last part of paragraph 5 be deleted and replaced with language such as: "those measures should be discontinued when they are no longer justified in light of the objectives of equal opportunity and treatment."

By the end of the informals, it appeared that there was general agreement that special measures need to be taken to ensure equality, but that those special measures should not establish unequal or separate standards for PWD.

Canada, Ghana (on behalf of the African Group) were vehemently opposed to deleting the provision – contained in the second half of the paragraph – dealing with the temporal scope of the measures. **Australia, Chile, Japan** and **Mexico** supported the temporary nature of such measures. **Costa Rica** warned that an elaborate provision could do more harm than good stating, "we are opening an umbrella when it is not raining". **Serbia and Montenegro** endorsed the **Canadian** proposal to include the term "on the basis of disability". **Russia** questioned the origin of the term "de facto equality", which is used in Article 4(1) of CEDAW.

Several Spanish-speaking delegations pointed out that "standards" had been translated to "regime" in Spanish; **Uruguay** urged that the AHC use "standards".

Mexico reiterated its suggested content for a new Article on equality of opportunities¹⁰. The **African Group (AG)** made a proposal for a new paragraph 5 bis (c) & (d)¹¹ to include language on States ensuring that the needs and concerns of persons with disabilities are incorporated into economic and social development plans and policies. The Facilitator, Mr. **Stefan Barriga (Liechtenstein)** circulated a proposal¹² on "Measures aimed at accelerating de facto equality of persons with disabilities shall not be considered discrimination on the basis of disability" after the debate had concluded.

Article 8: Right to Life

The Working Group text (WGT) was endorsed by **Australia, Costa Rica, the EU, Japan, Mexico, Norway, the Republic of Korea, Serbia and Montenegro** and **Thailand**. **Russia** welcomed a concise text modelled after the Covenants. **New Zealand** urged States to stick to the text in the International Covenant on Civil and Political Rights (ICCPR)¹³, a point that **Canada, Kenya** and **South Africa** endorsed. A suggestion to include "on a basis

⁷ See Footnote 28 of the WGT (A/AC.265/2004/WG.1). Article 4 (1) of CEDAW (Convention on the Elimination of all forms of Discrimination against Women) and Article 1(4) CERD (Convention on the Elimination of all forms of Racial Discrimination) use the term "special".

⁸ The term "appropriate" is used in General Comment 5 of the Committee on Economic, Social and Cultural Rights.

⁹ The relevant provision in CERD is 1(4)

¹⁰ See the Compendium at page 39 or <http://www.un.org/esa/socdev/enable/rights/ahc4da7.htm>

¹¹ For the African Group proposal see: <http://www.un.org/esa/socdev/enable/rights/ahc4da7.htm>

¹² The Facilitator's proposal reads: See: <http://www.un.org/esa/socdev/enable/rights/ahc5facilitator.htm>

¹³ Article 6 of the ICCPR

of equality with others” was endorsed by the **EU, Jamaica, New Zealand, Nigeria** as well as **Serbia and Montenegro**. The **Canadian** proposal to frame the provision as an individual right was endorsed by **Russia**.

The **Argentine** proposal to protect the “inherent” right to life was endorsed by **South Africa** and **Trinidad and Tobago**. Based on the formulation of the Convention on the Rights of the Child (CRC)¹⁴ **Kenya** endorsed the inclusion of language on measures to ensure PWD’s “survival and development” in this Article. The discussion on including so-called “special situations” of man-made and natural disasters which puts PWD at a particular risk was divided along political lines: **Syria** stated that the Article had to be more detailed. **Bahrain, Egypt, Iran, Jordan, Libya, Palestine** and **Yemen** endorsed the idea of referring to “armed conflict” or “foreign occupation” or both. **New Zealand** reiterated the need for brevity and warned of the dangers of such listings. Citing the likelihood of weakening the text by inclusion of further language, **Costa Rica** suggested that a provision on “special situations” be placed elsewhere, which **Jamaica** endorsed.

In light of the December 2004 earthquake and tsunami in southern Asia, **India** suggested a reference to natural as well as man-made disasters, whereas **Thailand** highlighted the fate of those persons who become disabled through disasters as well as the situation of PWD during disasters.

Canada and **New Zealand** rejected the **USA** proposal to include language on the “perceived quality” of life¹⁵. **El Salvador** wanted to include “life begins with conception”, which the **Holy See** endorsed. **Jordan** wanted to insert language on the need for special protection during pregnancy and birth.

National Right to Life endorsed the **USA**’s proposal and stressed the need to protect life “from conception to natural death” during the formal session of the AHC. Stating that “there is no dignity without worth”, the *International Right to Life Federation* endorsed the proposal of the **Holy See** to echo language from the UN Charter and include “worth” wherever the term “dignity” was mentioned.

In cooperation with the **Facilitator, Mr. Eduardo Calderón** (Ecuador), the Coordinator drafted a proposal¹⁶, which seemed to be agreeable to all. In addition a new **Article 8 bis** was proposed, the placement of the provision is to be discussed at a later stage: “States Parties recognise that in situations of risk to the general population persons with disabilities are especially vulnerable and shall take all feasible¹⁷ measures for their protection”. States Parties commented stated that they would consider the new proposal on Article 8 bis, **Palestine** insisted that the provision had to include a reference to “foreign occupation”.

The *World Federation of the Deaf-blind* reminded States of paragraph (2) of the *International Disability Caucus* (IDC) draft, which includes the right to “*survival and development*”, which is crucial for PWD as they are otherwise deprived of developing a quality of life equal to the general public. As the Geneva Conventions did not afford sufficient protection to PWD it was necessary to emphasise the challenge disasters pose to PWD and their need for protection had to be recognised.

Article 9: Equal Recognition as a Person before the Law

The Coordinator pointed out that the WG approach was to look at Article 9 as a whole and that individual paragraphs cannot stand alone: 9(a) states that PWD have rights before the law; 9(b) states that PWD have full legal capacity on an equal basis with others; 9(c) and 9(d) both acknowledge that there are circumstances in which PWD will require assistance to exercise their legal capacity, and require the provision of that assistance; and 9(e) and 9(f) ensure that PWD are not denied the right to own or inherit property or control, and that they are not deprived of their property.

The WGT of **paragraph (a)** recognising PWD as individuals with rights before the law equal to all other persons was endorsed by **Australia, Brazil, China, Colombia, Costa Rica**, the **EU, Iran, Kenya** (representing the African Group (AG)), **Thailand** and **Uruguay**. Initially the **Canadian** proposal¹⁸ for Article 9 gained some

¹⁴ Article 6(2) of the CRC

¹⁵ For the USA proposal on “*perceived quality of life*” see: <http://www.un.org/esa/socdev/enable/rights/ahc5usa.htm>

¹⁶ The proposal of the Facilitator: <http://www.un.org/esa/socdev/enable/rights/ahc5facilitator.htm>

¹⁷ The term “*feasible*” derives from Article 38(4) of the CRC.

¹⁸ The Canadian proposal: <http://www.un.org/esa/socdev/enable/rights/ahc4da9.htm>

momentum as Australia, the EU, Japan as well as Serbia and Montenegro endorsed it. In addition, the African Group (AG) proposal for Article 9¹⁹ was endorsed by **China** and **Libya**. However, after **Costa Rica** pointed out that there were some fundamental philosophical differences (and not just drafting differences) between the WGT and the Canadian proposal, and others expressed support for the WGT, the Coordinator felt it best to use the WGT as a basis for discussion.

The Coordinator's assertion that in light of Article 7 one could possibly do without paragraph (a), was supported by **Mexico** and **Venezuela** while **Trinidad and Tobago** suggested cross-referencing to Article 7. **Kenya** proposed to insert "equal" before the term "rights" and **Australia** stressed that one has to ensure that a comparison be inserted in the text to ensure that "equality" has meaning.

Furthermore there was debate over the use of the term "recognition" as **Libya** and **Yemen** wanted to use stronger language, citing that recognition was a process. Pointing to existing human rights treaties²⁰ delegations were cautious to change the wording. There was also discussion on stressing States Parties' obligations, which **Libya** and the **Philippines** supported and **Canada** opposed.

The debate on **legal capacity** – covered in **paragraph (b)** – brought to the surface underlying misconceptions on one of the main issues of the Convention. Countries opposed to including language on safeguarding full legal capacity for PWD underlined their stance by making unnecessarily insensitive statements, using patronising language. The **Coordinator** stressed that legal capacity was a significant concept that the Convention could not afford to lose. **Thailand** emphasised that any limitation of legal capacity would mean that disability is literally imposed on persons and would at the same time mean a reversion to the medical model²¹. Furthermore the **Thai** delegate pointed to the necessity to distinguish between legal capacity and the exercise of legal capacity. **Jamaica** underscored the historical background of the issue by highlighting that the legal capacity of women until recently depended on the male spouse. In response to the "assumption of incapability" towards PWD over the centuries, this Convention must recognise legal capacity for PWD as a right, separate from the ability to exercise the capacity, which is dealt with in 9(c).

The **EU**, **Costa Rica**, **New Zealand** and **Serbia and Montenegro** explicitly endorsed the full legal capacity of PWD. **Libya**, **Norway** and **Syria** stated that particularly in light of mental disabilities there should be limitations to full legal capacity. **Iran** and **Kenya** wanted some reference to exceptions provided by national legislation. **India** and **Yemen** stated that the singling out of "financial matters" should be removed; **Kenya** suggested it be moved to paragraph (e).

The **Canadian** proposal for 9 (b)²² was endorsed by **Australia**, **China**, **Costa Rica** and **New Zealand**. The **Costa Rican** proposal for 9 (b)²³ was endorsed by **Argentina**, **Brazil**, **Libya**, **Mexico** and **Russia**. Citing translation issues both **China** and **Russia** queried the exact meaning of the term "legal capacity" as well as the "capacity to act", which will be looked into further by the AHC.²⁴

Regarding **paragraph (c)**, which relates to the circumstances in which PWD will require assistance to exercise their legal capacity, after lengthy discussions on the proposals of Canada²⁵ and New Zealand²⁶ and combinations thereof, the Coordinator and the Facilitator, Ms. **Rebecca Netley (Canada)** then made a proposal for the paragraph²⁷. The discussion continued based on this proposal and statements revolved around the need

¹⁹ The proposal of the African Group: <http://www.un.org/esa/socdev/enable/rights/ahc4da9.htm>

²⁰ Article 6 of the Universal Declaration of Human Rights (UDHR) and Article 16 ICCPR

²¹ One aim of the Convention is to help shift the paradigm of disability from a medical model to a social model and human rights approach. The medical model focuses on a person's individual characteristics, whereas the social model of disability includes accessibility, barrier-free environments, and addresses any circumstance that prevents a person from participating in society and living in dignity.

²² The Canadian proposal for paragraph (b) Article 9: <http://www.un.org/esa/socdev/enable/rights/ahc4da9.htm>

²³ The Costa Rican proposal for paragraph (b) Article 9: <http://www.un.org/esa/socdev/enable/rights/ahc5contgovs.htm>

²⁴ The term "legal capacity" is used in Article 15(2) of CEDAW.

²⁵ The Canadian proposal for paragraph (c) should be posted soon at:

<http://www.un.org/esa/socdev/enable/rights/ahc5contgovs.htm>, the old Canadian proposal is available at:

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

²⁶ For proposals made by New Zealand see: <http://www.un.org/esa/socdev/enable/rights/ahc5newzealand.htm>

²⁷ The first proposal of the Coordinator and the Facilitator for Article 9 reads:

for protection against **conflicts of interest** and the provision of **legal safeguards** to ensure the exercise of full legal capacity. A provision close to that of the ICCPR²⁸ was sought and **Liechtenstein** pointed out that Article 26 thereof also needed to be considered given that “recognition” is a precondition for “equality”. While the **Coordinator** stated that there would be no agreement on the issue at the fifth session of the AHC, he responded to some States requests to specify the definition of the capacity to act and measures ensuring assistance to exercise it with a more detailed proposal²⁹ for paragraph 2, which also combines the paragraph with paragraph 3.

In the discussion of paragraphs (d), (e) and (f), **Costa Rica** noted that most issues are covered in the new draft’s phrase “in all fields”. **New Zealand** pointed to an overlap with Article 15 (5) in relation to PWDs rights to administer property.

Subsequently the issue of access to justice emerged as an area in need of special protection. The **Chilean** proposal on including access to justice in the Convention³⁰ was welcomed inasmuch as many delegations agreed to a separate provision on the issue, particularly **Australia, Chile, Costa Rica, Japan, Jordan Liechtenstein, Mexico**, the United Arab Emirates (**UAE**) and the **USA**. The language proposed by **Australia** “pursuant to the principle of equality before the law, States should guarantee adequate access to justice for PWD”, appeared to gain momentum. The **Coordinator** and the **Facilitator** also provided a proposal, which reads: “States Parties shall ensure effective access to justice for PWD on an equal basis with others, facilitating their effective role as direct and indirect participants in all legal proceedings, including investigative and other preliminary stages”.³¹

In her statement in the formal session, the **Special Rapporteur on Disability, Sheikha Hessa Al-Thani**, underscored the importance of recognising the full legal capacity of PWD stating that PWD are “subjects of right and not objects of protection”. Any provision for substitute decision-making should be based on the principle of dignity. Her statement was echoed by the **National Human Rights Institutions (NHRI)** representative, which emphasised the need to address long held stereotypes such as disability being equated with incapacity to act.

The IDC opposed any language on qualifying or limiting legal capacity of PWD and urged States Parties to draft an “aspirational, forward-looking, pro-human rights Convention”. The *World Network of Users and Survivors of Psychiatry (WNUSP)* underscored the necessity to recognise full legal capacity and called for supported decision making³², which is accorded safeguards to protect against abuse.

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1. States Parties reaffirm that PWD have the right to recognition everywhere before the law.
(This language derives from Article 6 UDHR and Article 16 ICCPR respectively).
 2. States Parties shall recognise that PWD have legal capacity on an equal basis with others in all fields.
 3. States Parties shall ensure, in the extent possible, that where support is requested to exercise that capacity: the assistance is proportional to the degree of support required and tailored in the person’s circumstances, that such support shall not undermine the legal rights of the person and shall respect the will and preferences of the person, and shall be free from conflict of interest and undue influence.

See also: <http://www.un.org/esa/socdev/enable/rights/ahc5facilitator.htm>

²⁸ Article 16 of the ICCPR

²⁹ The second proposal for paragraph 2 of Article 9 reads:

2. States Parties shall recognise that PWD have legal capacity on an equal basis with other in all fields and shall ensure, to the extent possible, that where support is required to exercise that capacity that:
 - a. The assistance is proportionate to the degree of support required and tailored to the person’s circumstances, that such support shall not undermine the legal rights of the person and shall respect the will and preferences of the person, and shall be free from conflict of interest and undue influence. Where appropriate, such support shall be subject to regular and independent review.
 - b. Where States Parties provide for a procedure, which shall be established by law, for the appointment of personal representation as a matter of last resort, such a law shall provide appropriate safeguards including regular review of the appointment and of decisions made by the personal representative by a competent, impartial and independent tribunal. The appointment and conduct of the personal representative shall be guided by principles consistent with this convention and international human rights law.

³⁰ See: <http://www.un.org/esa/socdev/enable/rights/ahc4chile.htm>

³¹ See also: <http://www.un.org/esa/socdev/enable/rights/ahc5facilitator.htm>

³² Supported decision-making is different from substituted decision-making, which allows for restriction of the right to make decisions, on the basis that a person has difficulty in doing so. Many PWD feel substituted decision-making is against their

Article 10: Liberty and Security of the Person

The **Coordinator** stated that discrimination against PWD prevailed, despite the provisions in the ICCPR. It thus had to be the aim of this draft Article to safeguard against any discrimination. In particular they should not be deprived of their liberty (whether in medical facilities or prisons) on the basis of their disability. Paragraph 1 of Article 10 of the WGT, which addresses the right to liberty and security of the person, was endorsed by **Costa Rica, Jordan, Russia and Thailand**; the **EU** endorsed paragraph (a)³³ and **Kenya** paragraph (b).³⁴ The debate over a qualification of discrimination by including terms such as “solely” (enabling the Article to read that persons with disabilities cannot be denied their liberty “based solely on disability”) continued. The insertion of the term was supported by **Japan, Norway, Uganda and Yemen** and opposed by **Kenya and Thailand**. The **EU** suggested to use “*exclusively*” instead, which **Japan, Norway, Russia and Uganda** supported and **Kenya** as well as **Mexico** opposed. **Australia** indicated that it sympathised with the underlying concept to include a qualification such as “solely” and made a proposal, referring to footnote 35 of the WGT³⁵. **Jordan’s** proposal to delete “without discrimination based on disability” was questioned by the **Coordinator** as well as **Russia**. The **Coordinator** felt that the intent of the provision – to ensure that ICCPR rights are guaranteed for PWD – would be lost.

The **EU, Mexico and South Africa** supported that the provision should apply to all forms of deprivation of liberty, not just the criminal justice system.³⁶ Both **Mexico and New Zealand** highlighted the issue of involuntary institutionalisation; the placement of the language on this issue still has to be discussed. **Russia, South Africa and Yemen** made references to including the term “*security*” in the title; however, the **Coordinator** had indicated that he was not going to discuss titles in the course of the Fifth Session.

Following a proposal by **Canada** the chapeau of **paragraph (2)** was extended to include language on “minimum standards” in cases of deprivation of liberty, which the **EU, New Zealand and Thailand** endorsed. **Mexico** made a proposal to insert “including in civil, criminal, administrative and other contexts”. **Jordan** as well as **Serbia and Montenegro** endorsed the **Holy See’s** suggestion to bring the text of **paragraph (2)(a)** in conformity with the UN Charter and include “*and worth*” after the term “*dignity*” in that States shall ensure that any PWD deprived of liberty be treated with humanity and respect for their dignity and worth. Based on an IDC proposal³⁷ **Canada** proposed to replace language takes into account the specific “needs” of PWD; with phraseology referring to “reasonable accommodation”, which **Australia, Serbia and Montenegro and Uganda** endorsed; **Brazil** as well as **Costa Rica** were sceptical as to the appropriate placement of the concept of “reasonable accommodation”. **Costa Rica** reiterated its proposal on (2)(a), which proposes language on “fully respecting their rights in conditions of equality”.³⁸ **Colombia** pointed to the resource limitations of the prison system in developing countries.

In **paragraph (2)(b)**, which relates to States providing to PWD adequate information in accessible formats as to the reasons of their deprivation of liberty), **New Zealand** promoted the inclusion of principles of protection of

interests, and represents a punitive and paternalistic approach to people with disabilities rather than accommodation for difference and equal effective enjoyment of rights.

³³ The WGT 1 (a) reads: “States Parties shall ensure that persons with disabilities enjoy the right to liberty and security of the person, without discrimination based on disability”

³⁴ The WGT 1 (b) reads: “States Parties shall ensure that persons with disabilities 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 on disability”.

³⁵ The Australian proposal is available at: <http://www.un.org/esa/socdev/enable/rights/ahc5australia.htm>

³⁶ Footnote 35 of the WGT : The jurisprudence of the Human Rights Committee (see, for example, General Comment 8) notes that States interpret deprivation of liberty too narrowly, so that it applies only to the criminal justice system. The right to liberty and security of persons, however, applies to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness or intellectual disability, vagrancy, drug addiction, educational purposes, or immigration control. The Ad Hoc Committee may wish to consider: a) whether civil and criminal cases should be dealt with separately; b) whether the text needs further elaboration on civil cases of deprivation of liberty; and c) whether, for criminal cases, the clauses in this text dealing with procedural matters need strengthening (see also Article 9 of the International Covenant on Civil and Political Rights).

³⁷ The IDC proposal reads in part as follows: “are entitled to receive reasonable accommodation, including with respect to process, communication, language and facilities”.

³⁸ The Costa Rican proposal can be found on p. 24, A/AC.265/2004/5

persons under criminal detention, which was supported by **Australia** and **Canada**. There was some debate among **Australia**, **Canada**, **Iran**, **Kenya**, **Libya**, **Russia**, **Uganda**, **Thailand** and **Yemen** as to how promptly information on the reasons for deprivation of liberty should be given. Some delegations argued that it might not be possible to provide information in accessible formats "immediately" such as in the case of a deaf person's need for a sign-language interpreter. For example, States should not have to train all police officers to know sign language and communicate in that language at the time of arrest and detention of a deaf person. **Yemen** saw the **EU** proposal "as soon as possible" as problematic. The **Australian** proposal³⁹, which – per other⁴⁰ human rights instruments - uses the term "promptly", gained momentum.

The debate on **paragraph (2) (c)(ii)** which relates to the fact that PWD must be able to seek regular review for their deprivation of liberty, focused on the frequency of the review of the deprivation of liberty. **China** wanted to drop the term "regular", while **Canada** and **Morocco** supported its inclusion. **Japan** took a middle path and wanted to remove the term while retaining the concept. **New Zealand** sought to qualify cases of criminal conviction, to which international standards should apply. **Canada** endorsed that idea. The **EU** made a proposal⁴¹, which reads "and be provided with adequate information in accessible formats as to their legal rights and the reasons for the deprivation of their liberty", which the **Coordinator** found to be very close to the WGT. However, the **EU** argued that it sought to distinguish three issues, namely access to court, remedies and the right to be heard.

India queried the underlying concept of the review mechanism in regards to a deprivation of liberty in **paragraph 2 (d)** as it did not appear to derive from the ICCPR. The **Coordinator** clarified that the source was the CRC⁴². **Mexico** referred to the ICCPR⁴³ to support its proposal that legal assistance should be provided "without costs" for those PWD who lack the means. The **EU** made a proposal⁴⁴ for a separate paragraph reiterating fair trial principles. **Jamaica** and **Yemen** stated that the already agreed language of other human rights treaties and international standards covered these respectively. The discussion then moved to ensuring the direct and personal involvement of the accused in court proceedings at all times. After some discussion it was agreed that the term "*fair hearing*" would encompass international standards sufficiently. The issue of **compensation** for unlawful deprivations of liberty is also to be covered in paragraph (d). **Canada** made a proposal based on the relevant provision of the ICCPR⁴⁵, which reads that: "Any person with a disability who has been a victim of unlawful deprivation of liberty shall have an enforceable right to compensation". **Kenya** suggested the AHC make that proposal briefer, which **Jordan** endorsed.

Finally, **Morocco** endorsed the **Colombian** proposal⁴⁶ for **paragraph 2 (e)** on dealing with benefits to assist in reincorporating PWD after unlawful deprivation of liberty.

The **Facilitator** and the **Coordinator** proposed a new draft for Article 10⁴⁷ based on the discussion.

In a formal session the *WNUSP* supported the WGT and warned of falling back into the "medical model" of disability.

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

Norway described the Article as an "amalgam" in which the prohibition of torture, informed consent and the issue of forced intervention were combined. Much of the discussion revolved around the possibility of moving

³⁹ The Australian proposal for (2)(b) reads as follows: "*Provided promptly with adequate accessible information as to their legal rights and reasons for deprivation of liberty*".

⁴⁰ The Australian delegation referred to the ICCPR and the CRC respectively.

⁴¹ The EU proposal reads as follows: "*and be provided with adequate information in accessible formats as to their legal rights and the reasons for the deprivation of their liberty*".

⁴² Article 25 CRC provides for "*periodic review*" of the treatment of a child aimed at treating the physical or mental health of the child.

⁴³ Article 14 ICCPR

⁴⁴ The EU proposal reads as follows: "*receive a fair hearing and to be provided with a prompt decision on the lawfulness of the deprivation of liberty*."

⁴⁵ Article 9(5) ICCPR

⁴⁶ Colombian proposal for 10 (d) see: <http://www.un.org/esa/socdev/enable/rights/ahc5colombia.htm>

⁴⁷ For the Facilitator's proposal see: <http://www.un.org/esa/socdev/enable/rights/ahc5facilitator.htm>

parts of the draft to more relevant Articles, such as Article 10 and 12 (Freedom from Violence and Abuse). The **Coordinator** pointed out that prisons are accepted as places for people who pose a threat to society or themselves. However this fact has to be balanced with the understanding that deprivation can never be based on disability, and with the historical injustice of locking PWD up as a “*quick solution*”. The **EU** endorsed the WGT for paragraph (1) on the legislative, administrative, judicial, educational and other measures that States should take to prevent PWD from being subjected to torture or cruel, inhuman or degrading treatment or punishment. **Morocco** wanted to add “*medical*” to the measures listed in paragraph (1). **Yemen** suggested the AHC use “health” instead while **Russia** was opposed to including the term. The Russian delegation stated that there was no need to specify “forced intervention” as it was covered by the definition of torture in the CAT. The **Coordinator** in turn suggested following the wording used in the ICCPR⁴⁸.

Uganda endorsed the WGT of paragraph (2) on dealing with forced intervention, scientific experimentation and forced institutionalisation of PWD. The **EU**, **Jordan**, **Norway** and **Yemen** suggested that the provision dealing with these issues be deleted. Arguing that forced intervention is a form of torture, **Chile** insisted the paragraph be retained, while **China**, **Jordan**, the **Republic of Korea**, **Russia** and **Yemen** contemplated to place it elsewhere. There were also various suggestions to merge this provision with other draft provisions. The **Costa Rican** argument that forced intervention should be moved to Article 10 due to its legal nature was “interesting”, said **Mexico**.

Suggestions were also made to add language to the term “free and informed consent” in paragraph (2) which states that States Parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned. The **Republic of Korea** suggested “prior” because it is used in bio-medical ethics. **Jordan** and **Uganda** argued against the insertion. **Trinidad & Tobago** endorsed the **Russian** proposal to include “clearly expressed” consent. The **OHCHR** clarified that all these issues. For example, the phrase “prior consent” has been increasingly used but the general understanding is that “consent” includes prior consent as well as the ongoing maintenance or non-withdrawal of that consent at a later stage. “Clearly expressed” is not normally used and should be understood as a component of the need for consent. However, the OHCHR suggested it might be useful to explicitly refer to it in the context of an instrument trying to tailor the standards specifically to the circumstances of disability. In particular, the Human Rights Committee jurisprudence refers to the need for special protection in regard to scientific or medical experimentation in the case of persons not capable of giving “valid consent”⁴⁹. **Australia**, the **EU** and **New Zealand** supported the view that free and informed consent is an easily understood phrase and there is a broad jurisprudence around the concept.

In regards to the second part of 11 (2), which prohibits “forced interventions and institutionalisation aimed at correcting, improving or alleviating any actual or perceived impairment”. **Thailand** proposed to add “or other experiments” in paragraph 2, which **Morocco** and **Yemen** endorsed. The **UAE** proposed that language “based on scientific evidence” be integrated in this provision, noting that scientific evidence could be used to prove that the experimentation or intervention would not harm PWD or their families. After a lengthy debate the **Coordinator** concluded that there was support for including a provision in the Convention that PWD shall be protected from forced intervention aimed at correcting and alleviating an impairment, but placement of it remained an issue. The **Facilitator**, Ms. **Carina Mårtensson (Sweden)** and the **Coordinator** proposed a draft⁵⁰ based on the discussion.

In a formal session the **WNUSP** highlighted that any information given to PWD for informed consent had to be accessible and had to be fully disclosed, which did not always happen due to paternalistic attitudes towards PWD. There is no need for a separate provision on medical interventions, as the situation of PWD was the same as for all persons. The **WNUSP** called for the absolute prohibition of torture and suggested that “forced sterilisation” be covered under the same provision as “forced intervention”. The representative of **Support Coalition International** made an effective statement describing her experience with involuntary treatment, which – in her opinion – is a form of torture. She urged States Parties to actively promote the dignity of PWD.

⁴⁸ Article 7 ICCPR

⁴⁹ See General Comment Number 20 on Article 7 of the ICCPR by the Human Rights Committee.

⁵⁰ For the Facilitator’s proposal see: <http://www.un.org/esa/socdev/enable/rights/ahc5facilitator.htm>

During her intervention the representative of **NHRI** consulted the **OHCHR** to clarify the meaning of the term “torture”, which has expanded⁵¹ and stressed the need to prohibit any form of torture.

Article 12: Freedom from Violence and Abuse

The idea of merging the proposed provisions with related Articles continued until the Coordinator asked the **OHCHR** for clarification. The OHCHR explained that in regards to torture and domestic violence, a distinction has evolved in (international law) between what is viewed as the public (torture) and private (domestic violence) spheres. The distinction is reflected in the terms the treaties use to establish the level of obligations of states with regard to prevention, punishment and compensation.⁵² After **Kenya, Liechtenstein** and **New Zealand** urged for a streamlining of the Article, the **Coordinator** and the **Facilitator**, Ms. **Ivana Grallová (Czech Republic)** tabled a proposal on Article 12⁵³.

It was agreed that the reference to “families” in **paragraph (1)** (in the phrase that details the need for States to prevent violence and abuse to PWD by ensuring support for PWD and their “*families or caregivers*”), should not be mentioned after **Australia, Canada, the EU, Russia** and **Yemen** opposed the inclusion. Moreover **Jamaica, Serbia and Montenegro, Thailand** as well as **Trinidad and Tobago** stated that it was not the best place.

Special mention in this Article of the protection of women and girls was supported by **Canada, Jamaica, Serbia and Montenegro, the UAE** and **Yemen**. The **South African** proposal to create a separate paragraph was endorsed by **Costa Rica, Norway, Panama, the Republic of Korea, Serbia and Montenegro, Syria, Thailand** and **Uganda** and underscored by the **Coordinator’s** observation that women were not afforded special protection against violence in CEDAW. **Kenya** was cautious on a separate paragraph and **Russia** appeared to favour mentioning the issue in the preamble. The **UAE** wished to see special mention of children and the elderly. **Syria** wanted language on “armed conflict” mentioned and **Yemen** requested language referring to “war time”.

The debate over the list in paragraph (1) of forms of ill-treatment and abuse that PWD face both within and outside the home continued. With regard to the list, Mexico raised the issue of whether to include “abduction”. **New Zealand** highlighted that the last phrase “sexual exploitation and abuse” could be extended to include “economic abuse”. The **EU** was opposed using “economic and sexual exploitation” together. The **Coordinator** pointed out that the CRC mentions several forms of exploitation.⁵⁴

The discussion on the facilitator’s proposal for **(1) bis** revisited many previously raised issues and concerns on **forced institutionalisation**. The proposal reads: “In particular, States Parties shall protect PWD from all forms of medical or related interventions, [inter alia sterilisation or abortion] carried out without the free and informed consent of the person concerned. (All such involuntary interventions shall be illegal, except as provided for in subparagraphs (1.ter) to (1.quat)”.

Australia called the suggestion for a separate paragraph “wise” and **Canada, the EU, Israel, Japan, Norway, Russia** and **Serbia and Montenegro** endorsed the idea. As the debate over issues of consent and therewith legal capacity restarted some delegations suggested that consent to medical interventions ought to be covered in the relevant Article on the right to health. Overall it was agreed that PWD should be treated equally to others on this matter. **Liechtenstein** was asked to draft language⁵⁵ reaffirming the physical integrity of PWD.

⁵¹ The OHCHR referred to General Comments 20 & 21 of the HRC as well as General Comment 14 of the CESCR Committee and the provisions of CAT.

⁵² This construction has continually been challenged and critiqued by women's human rights activists, also because it neglects a gender specific dimension.

⁵³ For the facilitator’s proposal see: <http://www.un.org/esa/socdev/enable/rights/ahc5facilitator.htm>

⁵⁴ “*Economic exploitation*” in Article 32 of the CRC, “*sexual exploitation*” in Article 34 CRC, and “*other forms of exploitation*” in Article 36 CRC.

⁵⁵ The Liechtenstein proposal reaffirming physical integrity reads as follows: “*States Parties shall take all appropriate measures to protect the integrity of PWD on a basis of equality with others and shall in particular [...]*.” The language derives from Article 3 of the European Charter and does not specify “*mental and physical integrity*” as both the Facilitator and the Coordinator feared that the term “mental” could have unintended consequences.

New Zealand made a proposal⁵⁶ for Article 12 bis, which includes language on the application of legal safeguards in regards to involuntary treatment and a consent requirement. **Argentina** suggested that “all forms of forced intervention” should be prohibited, which **China** endorsed. **Yemen** supported the special mention of sterilisation, based on the history of PWD being sterilised against their will and then supported the deletion of the paragraph. **Uganda** highlighted the “removal of organs” as an issue of special concern, particularly to PWD living in abject poverty.

Yemen reflected the debate over **(1) ter**⁵⁷ very well when asking, “what the hell is 1.ter?” While several delegations agreed that the issue of capacity is covered in Article 9, others – including **China**, the **EU**, **Norway** and **Singapore** - wanted to retain it. The proposed **(1) quat**⁵⁸ was largely seen as unnecessary, **Liechtenstein** summed up the views by stating, “if the danger is so imminent, how can one obtain consent anyway?” The **Coordinator** agreed that para 1 (quat) created more difficulties than it solved.

Thailand stated that **(1) quin**⁵⁹ largely took care of concerns raised in (1) bis and **Jamaica** made a proposal to insert “on an equal basis with others”.

The debate on **paragraph (2)**, which addresses the measures States should take to prevent abuse against PWD, and to ensure support for them and their families, including through the provision of information revolved around whether language on the “family” should be specially mentioned. **Jordan**, **Trinidad and Tobago** and **Viet Nam** supported its inclusion. The **UAE** proposed, “support groups”. **Brazil** supported “caregivers” and **Jamaica** and **Iran** endorsed “caregivers and families”. **Thailand** pointed out that the two are not necessarily the same and reminded delegations that the term “accessible” should be included everywhere the term “information” is used. The **Coordinator** stated that the issues in **paragraph (3)**, which addresses the situation of PWD in situations of emergency, including armed conflict, were identified and will be dealt with elsewhere. Prior thereto, **New Zealand** had requested that the provision be deleted since it viewed it as repetitive.

The scope of monitoring of facilities and programmes, both public and private, where PWD are placed together, separate from others, was the dominant issue in the debate on **paragraph (4)**. **New Zealand** highlighted that places where the public is absent are historically those where PWD have been abused. Canada recommended a broader approach towards monitoring, so that it covers situations where PWD receive and access services as well, in anticipation of Article 15 (Living Independently). In this regard it proposed as an alternative International Disability Caucus language for this Article, which in paragraph (f) will “ensure that facilities and programs, both public and private, where PWD live or receive services, are effectively monitored”.⁶⁰ **Jordan**, the **Republic of Korea**, **Serbia and Montenegro** and **Thailand** endorsed the Canadian suggestion. **Morocco** and **Yemen** endorsed “regular” monitoring, while **Honduras** supported “regular and effective” monitoring.

The **Philippines** made a proposal⁶¹ for **paragraph (5)**, which, in part, addresses how States should take appropriate measures to promote the physical and psychological recovery of PWD who are victims of violence or abuse. **Philippines** proposed rephrasing the paragraph to read: “States Parties shall take all appropriate measures to promote physical and psychological recovery, rehabilitation and social integration of PWD who are victims of any form of violence and abuse. Such recovery and reintegration shall take place in an environment that fosters the health, self respect, worth, dignity and autonomy of the person.” The facilitator’s proposal for **paragraph (6)** (which deals with, *inter alia*, ensuring the identification, reporting, referral, investigation, treatment and follow-up of instances of violence and abuse by States, as well as the provision of protection services) was acceptable to the **EU**, **Kenya**, **Russia** as well as **Trinidad and Tobago**. The **EU**, **Israel** and **Jordan** wanted to see the prevention aspect strengthened, however, the **Coordinator** and **Russia** felt that it was sufficiently covered in the earlier part of the Article.

⁵⁶ The New Zealand proposal for Article 12 (1) see: <http://www.un.org/esa/socdev/enable/rights/ahc5newzealand.htm>

⁵⁷ The facilitator’s proposal for (1) ter read: “Where a person lacks the capacity to give or withhold informed consent, an intervention may only be carried out where the consent of his or her legal representative or a competent court or authority has been obtained prior to intervention” .

⁵⁸ The facilitator’s proposal for (1) quat read: “This shall not prejudice any such intervention necessary to prevent an imminent danger to the life or health of the person concerned or to the life or safety of others”.

⁵⁹ The facilitator’s proposal for (1) quin read: “All such interventions shall be carried out in the best interest of the person concerned, in accordance with the procedures established by law and with the application of appropriate legal safeguards” .

⁶⁰ See <http://www.un.org/esa/socdev/enable/rights/ahc5docs/ahc5idcaucus.doc>

⁶¹ The Philippine proposal should be available soon at: <http://www.un.org/esa/socdev/enable/rights/ahc5contgovs.htm>

During the formal session *National Right to Life* supported the deletion of paragraph (1)bis because genuine, life-saving interventions could be jeopardised.

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

The general discussion of Article 13 echoed a major theme of the Convention: accessibility. As government services, which provide information, are increasingly privatised, the question of how the obligation to provide accessible information can be ensured, becomes a crucial issue⁶². The **Thai** delegate explained the various assisting technologies available and stated that no additional costs are incurred if accessible design – such as Extensible Markup Language (XML)⁶³ - is used from the start. There are devices that can convert documents into accessible formats immediately, however, due to little demand, the prices for such devices are still high. He lamented to fellow delegates "we risk killing the spirit of the Convention if we fail to make information available, accessible".

It was noted that the facilitator's text of the Chapeau differed from the chapeau of the WGT in that it did not mention Braille. The WGT for the **chapeau**, which reads that "States Parties shall take appropriate measures to ensure that persons with disabilities can exercise their right to freedom of expression and opinion through Braille, sign language, and other modes of communication of their choice, and to seek, receive and impart information, on an equal footing with others, including by..." was endorsed by the **EU** and **New Zealand**.

In answer to a question by **Thailand**, the Coordinator said that the facilitator's text did not include Braille because Braille augments other languages, whereas Sign is a separate language. The inclusion of Braille was endorsed by **Brazil, Serbia and Montenegro, Thailand** and **Yemen**. **Uganda** suggested adding "tactile" language. **Costa Rica** supported replacing "seek to impart" or "share" information (in that PWD should be able to exercise their right to impart or share information), in the chapeau with the term "disseminate," which is a broader concept leading to the right to information. The **Coordinator** suggested that using the language of "impart" better follows language in other human rights instruments.

India suggested inserting language on PWD being able to exercise their "freedom of thought" in addition to their freedom of expression and opinion, an addition **Kenya** endorsed. **Honduras'** proposed that the reference to "choice" of modes of communication should be replaced with "*as required*" or "*as necessary*".

The paragraphs following the chapeau refer to some of the measures that States should take in regard to the protection, promotion and fulfilment of the rights under this Article. Delegations first looked at **paragraph (a)**, which deals with providing public information to persons with disabilities, on request, in a timely manner and without additional cost, in accessible formats and technologies of their choice, taking into account different kinds of disability. **New Zealand** suggested that States provide "publicly available information" instead of "official public information" because not all-official information is publicly available to the general population. This position was endorsed by **Serbia and Montenegro**. The **EU** proposal to state that public information is provided "with no additional costs" for States was endorsed by **Canada, Serbia and Montenegro** and **Yemen**. **Russia** had concerns about both the language concerning additional costs as well as the provision on "public information" generally.

In **paragraph (b)**, which addresses the need for States to accept and facilitate the use of alternative modes of communication, including sign language, Braille and augmentative alternative communication by persons with disabilities in official interactions, **New Zealand** proposed that the provision include the phrasing that States accept the use of "a variety of modes of communication" in their official interactions – as used in the chapeau - which **Norway** as well as **Serbia and Montenegro** supported. The **EU** objected to this language as "too general" and suggested "alternative modes and means of communication". **Thailand** wanted to adapt the *IDC* draft so that 13(b) could read: "variety of languages, scripts, modes and means of communication, including ICT"⁶⁴. **Chile** supported the recognition of sign language as an official language, which **Japan** did not want to

⁶² Human rights treaty bodies have commented on the role of the private sector, incl. General Comment 5 on PWD of the CESCR Committee

⁶³ XML is designed to improve the functionality of the Web by providing more flexible and adaptable information identification.

⁶⁴ The *IDC* draft for Article 13 can be found at <http://www.un.org/esa/socdev/enable/rights/ahc5contngos.htm>

emphasise too much. **Kenya** believed that it was the role of government to “recognise and facilitate” this rather than “*accept and promote*” when it comes to PWD and their modes of communication.

The **Japanese** proposal to include **paragraph (c)**, which addresses educating PWD to use alternative and augmentative communication modes, in Article 17 (Education) was endorsed by **Colombia**. The **EU** made proposals to include “promoting opportunities for training to use alternative communication modes and means” as well as “promotion of opportunities for training”. In **paragraph (d)** on States obligations to undertake research and development of new technologies for PWD, **Thailand** proposed to add “following to the maximum extent possible, the internationally recognised accessibility standards” at the end. **New Zealand** suggested moving this paragraph to Article 4, which **Thailand** endorsed. **Yemen** supported retaining the reference to “research”, especially in view of the importance of scientific research for PWD.

Several delegations addressed the redundancy of **paragraph (e)**, which deals with promoting ‘other’ forms of assistance to PWD to ensure their access to information. The **EU** wanted to maintain the first part but saw the second half covered in other provisions. The **Costa Rican** proposal to delete the paragraph in its entirety was endorsed by **Jordan, Kenya** and **New Zealand**. **Thailand** suggested that the provision be included in Article 19 (Access), which **Colombia** supported.

The proposal to use “*urging*” in **paragraph (f)** in regards to “urging” private entities that provide services to the general public to provide information and services in accessible and usable formats for PWD was endorsed by **Mexico, New Zealand, the Philippines, Serbia and Montenegro, Uganda** and **Yemen**; the **EU** was opposed and suggested “*encourage*”, although **Israel** felt that the term was not strong enough to make the mass media oblige. With various delegations proposing a merger of the paragraph with paragraph (a), **Uganda** urged to keep “information” and “services” separate. **Guatemala**, highlighted the necessity for pharmaceutical companies to explain the medications for *all* people.

The discussion on **paragraph (g)** on encouraging the mass media to make their services accessible to persons with disabilities brought up issues specific to the Internet. **Costa Rica** endorsed the Coordinator’s proposal to create a separate sub-paragraph. **Canada** proposed access to Internet is included in Article 19 (Access). **Yemen** insisted that “mass media” encapsulates the term “*information*” and **Jordan** stated that “means of communication” encompassed the Internet. The **UAE** said that the Internet is too broad and hard to define in one term. **Israel** wanted to expand the technologies covered to include phones.

Brazil, Chile, South Africa, Thailand and **Yemen** supported the retention of **paragraph (h)**, on the promotion of a national sign language. **China** and **Colombia** endorsed the **EU** and **UAE** proposal to delete the provision. State Parties have difficulties in accepting a plurality of “official” languages as most countries’ constitutions proclaim a single official national language. The remaining **paragraphs (i)** (on promoting access for persons with disabilities to the new communication technologies and systems), **(j)** (on providing accessible information to PWD about mobility aids, devices and other forms of assistive devices⁶⁵ and technologies) and **(k)** (on taking all appropriate measures to ensure that accessible information and communication technologies be designed, developed, produced and distributed at an early stage so that the information society becomes inclusive at minimum cost) are to be merged and placed in Article 19.

The World Federation of the Deaf explained the evolving concepts of “modes” and “means” of communication. Language can be expressed through speaking, writing, or signing. People can speak, write, sign, or use tactile sign, all of which are “means”. But “means” is not “language”. Communication is a process. “*Mode*” means methods, such as cued speech, or augmentative modes of communication. The recognition of national sign languages was necessary to stop “linguistic colonialisation” which has already diminished the variety of sign languages. Furthermore, language on recognition was necessary to ensure that the various services attached to a language, such as interpreters, research and dictionaries are maintained, allowing deaf people to enjoy their human rights on an equal basis with others. The tendency that the children of deaf people serve as their main interpreters requires counteraction.

⁶⁵ Assistive devices include any device that disabled children (or adults) might use to help them learn and function more effectively.

The World Blind Union echoed the informal discussion on the responsibilities of the private sector, reminding States that information on pharmaceutical products had to be accessible for PWD. The **NHRI** pointed to various general comments of the treaty bodies, including General Comment 5 of Committee on Economic Social and Cultural Rights, which has highlighted the role of private entities.

Article 14: Respect for Privacy

New Zealand summed up the issue of privacy by stating that all persons present in the room were able to decide for themselves what they wanted to have for breakfast and which television programme they wanted to watch, a choice that many PWD – particularly those living in institutions – did not have. The discussion quickly focused on the privacy provision in the ICCPR⁶⁶ and the **Coordinator** highlighted that despite the guarantees therein, the privacy of PWD is often interfered with. It was therefore agreed that the text should follow established human rights instruments⁶⁷, which **Australia, Japan, Jordan, Russia** and the **USA** supported. Given the history of discrimination against PWD, the need to specially mention PWD living in institutions was discussed. The **EU** proposed to change the language in paragraph (1) which foresees that PWD, “including those living in institutions”, shall not be subjected to arbitrary or unlawful interference with their privacy. The EU proposed to change this phrase to “regardless of living arrangements”, to circumvent any language on “institutions” which **Canada, Jordan, Russia** as well as **Serbia and Montenegro** endorsed. **India** expressed scepticism about the change.

With regard to protecting against any interference with the privacy of “correspondence”, **Liechtenstein** urged the AHC to update the outdated term and it was agreed that wording from the most recent human rights treaty⁶⁸ “correspondence or other communication” was to be used. **Australia, Canada, Mexico, Russia** and **Serbia and Montenegro** agreed that privacy protection afforded to “medical records” should be covered in Article 21 – right to health. The **EU**’s suggestion to emphasise the “freedom of choice” in personal matters was endorsed by **Serbia and Montenegro** but questioned by **Australia**.

The WGT text was endorsed by **South Africa**. The **Holy See** warned that “too many details create too many problems”, which the US echoed later in the debate stating that “less is more”. It was decided to split the Article into privacy and family provisions, which **Australia, Canada, Costa Rica, Holy See, India, Japan, Morocco, Serbia & Montenegro**, the **UAE** and **Yemen** endorsed.

The chapeau of **paragraph (2)**, which deals with how States shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage and family relations, was endorsed by the **EU, Jordan** and **Russia**. The **Australian** proposal to follow the language of CEDAW⁶⁹ was approved by **Canada, Colombia, India, Russia** and **Thailand**. **New Zealand** suggested broadening the scope to “their private life, including marriage and family relations” rather than “all matters relating to marriage and family relations”. **Singapore** in turn proposed to include a qualifier on social conventions and religious traditions. The goal of ensuring equality for PWD, which **Australia** succinctly highlighted at the beginning of the debate – and **Uganda** later underscored - got lost in a heated debate over the inclusion of the terms “sexuality” and “other intimate relationships” in **sub-paragraph (a)**, which address that persons with disabilities are not denied the equal opportunity to experience their sexuality, have sexual and other intimate relationships, and experience parenthood. **Bahrain, Egypt, the Holy See, Iran, Jordan, Libya, Qatar** and **Yemen** expressly wanted the provision deleted whereas **Japan** strongly supported it stating, “the simple fact that PWD have sexuality should be respected”. **Australia, Kenya** and **Norway** agreed to insert a qualifier that any family related matters should only be “in accordance with national laws” at the end of (a), which would serve to emphasise equality without requiring a change in domestic law. **Honduras** pointed out that this was necessary for countries where in case of a legal conflict international laws prevail. **India** supported the qualifier in light of some issues multi-cultural societies face. The **Islamic Republic of Iran**, which stressed the impact of such international regulations on multi-religious countries, also supported India’s point. **Thailand**, however, cautioned that such a qualifier should be a matter of last resort. The delegate of **Kenya** reminded States Parties that the provision is “about non-

⁶⁶ Article 17 ICCPR

⁶⁷ Article 17 ICCPR, Article 16 CRC and Article 12 UDHR. Note that these provisions explicitly refer to “*honor and reputation*”, which the WGT did not mention specifically.

⁶⁸ International Migrant Workers Convention of 1991

⁶⁹ Article 16 of CEDAW

discrimination and not about encouraging rampant sex” and the **Coordinator** once again pointed to historic injustices that PWD had been treated differently on this issue in every country.

The **Yemeni** delegate repeatedly voiced concern that the provision as it stands lends support to having extra-martial affairs and stated that this was the first time the terminology “sexual relations” was used in an international instrument. The delegate accepted the **Coordinator**’s reference that the *Standard Rules*⁷⁰ contained the terms “sexual relationships”. **Thailand** endorsed this stance, however, **Egypt** and **Syria** underscored that the *Standard Rules* was not a consensus document. The **New Zealand** delegate gave a number of examples⁷¹ for the usage of the debated terms such as “sexual relations”. The **Coordinator** later suggested that “physicality” be used to circumvent the contested “graphic language”.

A qualifier on national customs in family relations was supported by **Niger** and **Syria**. **Libya** and **Syria** wanted the WGT to be amended and to have the term “legal” inserted alongside “marriage”. The **Japanese** proposal to insert “on an equal basis with others” in the sub-paragraph of paragraph 1 was endorsed by **Kenya** and **Thailand**. **Norway** wanted “parenthood” moved from sub-paragraph (a) to sub-paragraph (c) (which deals with the number and spacing of children) and **Honduras** wished to replace parenthood with “reproduction/procreation”. The **Coordinator** summarised that there was no agreement on the language of sub-paragraph (a) and “less explicit” language was needed, however there was no disagreement over the underlying approach, namely that PWD were entitled to practice their sexuality on an equal basis with others.

The **EU** proposal to use language from the ICCPR⁷² for **sub-paragraph (b)**, which protects the right to marry, was endorsed by **Colombia**, **Iran**, **Jordan**, **Russia** and **Yemen**. The **Jordanian** proposal to use language from the 2004 Doha International Conference for the Family was endorsed by the **Holy See**, **Qatar** and **Yemen**. The **Facilitator**, Mr. **Luvuyo Ndimeni (South Africa)**, was asked to formulate language accordingly.

The dominant concern in **sub-paragraph (c)**, which addressees the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children on an equal basis with other persons and to have access to information, reproductive and family planning education, and the means necessary to enable them to exercise these rights, was the likelihood of the provision opening the door to legitimising abortion. The **Holy See** and **Syria** wished to delete the paragraph, while **Colombia**, **El Salvador**, **Japan** and **Jordan** had concerns that could possibly be accommodated by inserting “in accordance with national law”. The **EU** did not wish to see the term “sterilisation” used but was not sure whether the **New Zealand** proposal that PWD have “equal opportunity to retain their fertility” was acceptable. **Uganda** wanted the issue covered in the Convention due to the history of ill-treatment of PWD but wanted “on equal basis” deleted as it is already in the chapeau. **Costa Rica** wanted to retain that phrase. **Canada** underscored the importance of the provision and endorsed the WGT. The **Coordinator** emphasised that the provision should clearly not be an endorsement of abortion.

In **sub-paragraph (d)**, which grants PWD the same right to guardianship as others, the “best interest of the child” should be emphasised said **Australia**, **China**, **Costa Rica**, the **EU**, **Japan**, **New Zealand**, **Syria** and **Thailand**. Concerns of Islamic countries where “adoption” is not foreseen were taken care of by using language from CEDAW⁷³. **China** suggested the AHC also use the concept of “responsibilities” in family relations as used in the CEDAW provision, which **India** and **Russia** endorsed. **Serbia and Montenegro** endorsed the **EU** proposal to make the provision a separate paragraph (3) and lastly **Zambia** did not approve of the **Indian** suggestion to include “counselling” for PWD on family related affairs, both for PWD who become parents as well as parents of a child with a disability, unless it is clear that the counselling is strictly voluntary.

The **EU** proposal⁷⁴ for **sub-paragraph (e)**, which ensures that a child will not be separated from parents on the basis of disability, was endorsed by **Canada** and **Serbia and Montenegro**. **Yemen** pushed for a deletion of (in)directly, (in the context of language stating that the child shall not be separated from PWD on the basis either

⁷⁰ Standard Rules on the Equalization of Opportunities for PWD, Rule number 9 on family life and personal integrity, GA 1993/96 can be found at <http://www.un.org/esa/socdev/enable/dissre00.htm>

⁷¹ The New Zealand delegation cited Paragraph 96 of the Beijing Platform for Action, the Beijing +5 documents as well as the Cairo Programme for Action of 1994, Paragraph 7.2.

⁷² Article 23 (2) & (3) of the ICCPR

⁷³ Article 16/1/f of CEDAW, see also Article 21 of CRC

⁷⁴ The EU proposal can be found at: <http://www.un.org/esa/socdev/enable/rights/ahc5eu.htm>

directly or indirectly of their disability) which **Canada, China, the EU, Japan, Mexico and Russia** endorsed. There was discussion over the grounds for separating a child from its parents on the grounds of either being disabled. **Australia** proposed to use the term “the existence of a disability should not be ground for removal of a child”. **Jordan** warned of the usage of patronising language and stressed the need that the authorities in charge understand “the subjective reality of PWD”. **Russia** suggested that the “best interest of the child” be restated in the paragraph, which **Thailand** and **Yemen** endorsed. The **Russian** delegation also wanted more general wording on the competent review authority overseeing a possible separation of the child from the family, which **Uganda** endorsed. **Syria** proposed to include “regular” review.

The discussion on **paragraph (f)**, which provides for information aimed at changing the stereotypes of PWD in regard to family matters, centred around the difficulty of finding a balance between addressing issues generally and being more specific on those where PWD have historically been very discriminated against. Many countries, **Australia, Chile, Japan, Mexico and Serbia and Montenegro** endorsed the retention of the provision and some indicated flexibility on the placement. The **EU** made a proposal on paragraph f⁷⁵, which **Namibia** endorsed. **Jordan** and the **Holy See** wanted the paragraph deleted because it was redundant. **Liechtenstein** proposed a middle path by suggesting that the issue be revisited in the discussion of Article 5, which deals with such crosscutting issues and to contemplate the inclusion of a list that stresses areas of particular concern.

The general view, articulated by **Australia, Canada, Costa Rica, Holy See, India, Japan, Morocco, Serbia and Montenegro, the UAE and Yemen**, was that Article 14 be split into two, with a new Article 14 (bis) covering home and family. The **USA** made a specific proposal⁷⁶ for splitting Article 14, with one paragraph focusing on the right to marry and the other on spacing of children.

In a formal session of the AHC, *United Families International* endorsed the **Jordanian** stance that paragraph (a) should be deleted, stating that “sexual immorality should not be declared a human right”. The *Right to Life Federation* added that paragraph (c) should be deleted as it had the potential of creating a new “right to abortion”.

Article 15: Living Independently and Being Included in the Community

The **Coordinator** highlighted that the concept of living independently – which is not an endorsement of the independent living movement⁷⁷ – is designed to enable societies to break away from the historic notion that PWD are best situated in institutions, a point **Jordan** particularly underscored. **New Zealand** suggested language from the ICCPR⁷⁸ – which addresses racial segregation – as a starting point.

The WGT was endorsed in general by **Australia, Brazil, Mexico, Norway and Yemen**. The **EU** made a proposal for the chapeau⁷⁹, which **Canada, Norway** as well as **Serbia and Montenegro** endorsed. The proposal of the **Republic of Korea** that PWD “enjoy independent living and inclusion in the community” gained momentum and was endorsed by the **Philippines** and **Serbia and Montenegro**. Based on various proposals⁸⁰, the **Coordinator** and the **Facilitator, Ms. Valerie Meyer (New Zealand)** made a proposal⁸¹ for the chapeau. It reflected the **Thai** suggestion to use “*participation*” instead of “inclusion” in the community as the term is more active, a notion **Costa Rica** and **Israel** endorsed. The **EU** was opposed to that. The Facilitator’s proposal also included the **Republic of Korea’s** suggestion to add “on an equal basis with others” to the chapeau to accommodate the tradition of extended families that exists in some nations, which **Brazil, Mexico, Norway and Yemen** had endorsed. Initially opposed to the terminology because it could weaken the provision, the **EU** later signalled flexibility.

⁷⁵ The EU proposal can be found at: <http://www.un.org/esa/socdev/enable/rights/ahc5eu.htm>

⁷⁶ The USA proposal for Article 14 bis can be found at: <http://www.un.org/esa/socdev/enable/rights/ahc5usa.htm>

⁷⁷ There has been confusion in the AHC about the phrase because in some countries “*independent living*” is a service model, while in others “*independent living*” means to govern their own lives by their own will and does not always mean separation from families.

⁷⁸ Article 12/1 ICCPR

⁷⁹ The EU proposal can be found at: <http://www.un.org/esa/socdev/enable/rights/ahc5eu.htm>

⁸⁰ Mainly the proposals from New Zealand and Norway

⁸¹ The Facilitator’s proposal for Article 15 can be found at: <http://www.un.org/esa/socdev/enable/rights/ahc5facilitator.htm>

In **paragraph (a)**, which protects the right to choose the place of residence, **Russia** suggested to reflect language from the ICCPR to underscore the “choice” element in the provision, a stance **Israel** and **Yemen** had also stressed. After **Brazil**, **Costa Rica** and **Russia** had urged the placement of **paragraph (b)** (on the issue that PWD are not obliged to live in an institution or in a particular living arrangement) in the more relevant Article 10, the AHC decided to move the paragraph there. **New Zealand** proposed to include a chapeau for **paragraph (c)**, which foresees access to support facilities, to emphasise the progressive realisation of the provision and **Yemen** wished to broaden the scope of **paragraph (d)**, which aims at equalising access to community services and adapting those to the needs of PWD. **Thailand** in turn wanted stronger language in **paragraph (e)**, which guarantees access to information on available support services. Discussion on this Article is to continue at the next session of the AHC.