

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

Sixth Session (New York, 1 to 12 August 2005)

Overview

- Completion of discussions on Articles 15 to 25.
- Greater involvement of civil society from new groups and regions.
- New Chairman, **Ambassador MacKay (New Zealand)**, moves the process along with expedience and sensitivity.
- Chair's text made available on 7 October 2005¹.

Background

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 (UN) 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 56/168 in December 2001, which established an AHC "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".

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 meeting 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 have, in the past, been led by a Coordinator, whom the Chair appoints.

¹ <http://www.un.org/esa/socdev/enable/documents/chairtext.DOC> and <http://www.un.org/esa/socdev/enable/documents/coveringletter.DOC>

During the sixth session of the AHC, the Chair himself led all the formal and informal meetings. During the 10-day session, the informals were punctuated with formal plenaries at the end of every informal discussion on a given article. During these formals, any member/organisation of civil society had the opportunity to share his/her/its views on the Article the States had just discussed.

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 fourth AHC session, the plenary meetings chaired by country facilitators were not effective. Therefore, in the fifth and sixth AHC sessions, the country facilitators instead undertook bilateral and multilateral discussions with delegates and NGOs in order to aid the Coordinator/Chair 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**), the **fourth session** in summer 2004 (**A/59/360**) and the **fifth session** (**A/AC.265/2005/2**) in winter 2005. The **sixth session** of the AHC² took place at the UN headquarters in New York from 1 to 12 August 2005. The session was chaired by **H.E. Don MacKay (New Zealand)** who was elected **Chairman** of the AHC on 13 April 2005.

The **sixth session** consisted of 20 half-day meetings, each of which was originally assigned to the informal negotiations and formal plenary on each of the remaining 15 Articles, leaving a day or two at the end for the adoption of the Chairman's report. Under the effective guidance of **Ambassador MacKay**, the AHC successfully stuck to this ambitious agenda³, and completed informal discussions on **Articles 15, 24bis, 15bis**, and then **16 to 25**. The aim of the discussions, according to the **Chair**, was to concentrate on the substantive issues in the forum so as to get a good sense of delegates' views on those issues. The AHC's sixth session report **A/AC.265/2005/L.4** can be accessed at <http://www.un.org/esa/socdev/enable/rights/ahc6reporte.htm> .

The **Chair** repeatedly stressed the “need to apply pressure on ourselves to quicken the pace of work” and the need for this process to conclude within a reasonable amount of time. Every year without a completed convention is a year lost in the enforcement of rights of PWD. The **Chair** pointed out that in any negotiation it is possible to lose momentum as a result of a loss in continuity of participation. As members of delegations change there is a loss in institutional knowledge. These words of advice were evidently heeded by the members of the AHC because, as the **Chair** put it, “there was genuine dialogue and an effort to accommodate each other”.

The AHC made good progress during the **sixth session**, including discussing, in informal consultations, the provisions tackling concepts and ideas new to international law, such as reasonable accommodation, habilitation and living independently. Advances were also made outside the plenary sessions, “in the hallways”, and in consultations with the country facilitators for each article. Many facilitators helped to move the process forward by submitting revised drafts of their assigned article based on informal sessions with States and NGOs held during lunch hours, in early mornings or late evenings.

Moreover, the AHC welcomed participation from a broad NGO community during this session. In particular, funds from the UN Voluntary Fund on Disability facilitated attendance at the AHC by a number of new disabled peoples organisations.⁴ The International Disability Caucus (IDC), composed of 50 international, regional and national organizations of persons with disabilities⁵, spoke with a unified voice on virtually every article addressed

² See <http://www.un.org/esa/socdev/enable/rights/ahc6.htm>

³ Although some articles took more than a half-day to discuss, some took less, and the Committee was still left with days 9 and 10 of the sixth session to discuss structure, to hear the reports from the facilitators and to approve the Chairman's report.

⁴ <http://www.un.org/esa/socdev/enable/disunvf.htm>.

⁵ Arab Organization of Disabled People, Asia Pacific Disability Forum, Australian Federation of Disability Organizations, Bizchut, the Israel Human Rights Center for People with Disabilities, British Disability Council of Disabled People, Canadian Association for Community Living, Center for International Rehabilitation, Council for Canadians with Disabilities, Danish Organization of Disabled people, Disability Australia Ltd., Disabled Peoples International, European Disability Forum, Forum of People with Disabilities (Ireland), Forum for Human Rights of People with Disabilities (Costa Rica), Fiji Disabled People's Association, Handicap International, Hard of Hearing Federation, Ibero-American Network of Organizations of People with

during this plenary. Moreover, the IDC produced information sheets and draft texts for every article. This effort was appreciated by the State delegations, who often drew from the IDC texts when formulating their own positions. Throughout the discussions, there was the constant underlying knowledge that PWD are the key stakeholders and beneficiaries of this Convention; therefore, there was always great respect shown for the IDC position. The Chair commended civil society, saying that “they remind us what we are here for”.

Despite all this progress, the AHC still faces some challenges. Although there was a great deal of cooperation on the part of the States, who were willing to make certain concessions, there were some “major political issues”, which certain parties were unwilling to surrender. International cooperation, progressive realisation and reproductive health, for example, were topics that created deep-seated schisms within the AHC. The **Chair** noted that it was not within his mandate to bridge those gaps, although he would attempt to do so wherever and whenever those gaps were of a technical or technical-political nature.

In order to help the process along, the **Chair** announced that he would prepare a Chair’s text based on the Working Group’s text (WGT)⁶, taking into account the discussions at previous meetings, drawing from comments made at the **sixth session**, and incorporating the work done at the facilitator’s meetings. The text was made available on 7 October 2005.⁷

Chairman **MacKay**, in his final summary of the session, explained that up until the end of this sixth session “we have been expressing preferences”. From the next meeting onward, “we will need to express what is acceptable”. Throughout the two-week meeting, the **Chair** often came back to the phrase “perfect is the enemy of the good”. Once again in his final statement, he urged delegates to keep this in mind for the next session because the AHC is now charged with finalising a document that “it can live with”, rather than “one it loves”.

The **seventh** and **eighth AHC sessions** will be held in January and August, 2006, respectively, for 2 to 3 weeks each.

Drafting of the proposed Convention

The following analysis of articles should be read in conjunction with Annex I: Draft articles for a *Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities* of the Report of the Working Group to the Ad Hoc Committee. See <http://www.un.org/esa/socdev/enable/rights/ahcwgreportax1.htm>.

Article 15: Living Independently and Being Included in the Community

There was general agreement among the **AHC** that this Article should appear in the Convention and that the WGT was a good basis for discussion.

Regarding the **chapeau** and **subparagraphs (a) and (b)**, the EU expressed support for the Chair’s suggestion that the key to independent living is the right of people with disabilities to be included in the community. **Costa Rica** first proposed replacing the term “enable” with “facilitate” in the chapeau, which the **Chair** noted was a “softer” term and which the **EU** endorsed, and second, proposed the inclusion of that peoples with disabilities

Disabilities and their Families, Inclusion International, Inter-American Institute on Disability, International Disability Convention Solidarity in Korea, Japan Association of Hard of Hearing People, Japan Disability Forum, Korean Society for Rehabilitation of Persons with Disabilities, Landmine Survivors Network, Lebanese Council of Disabled People (LCDP), Lebanese Welfare Association for the Handicapped LWAH, National Association of Community Legal Center, New: National Council on Disability Italy, National Disability Council of Netherlands, National Disability Party, National Federation for Yemen Handicapped Societies, National Forum of Organizations Working with the Disabled, NAS Foundation of People with Disabilities (Egypt), National Rehabilitation and Development Center (NRDC), Norwegian People’s Aid-Lebanon, People with Disability Australia Incorporated, People Who, Polio Plus, Rehab Group, Rehabilitation International, Save the Children, Sudan Association for Combating Landmines (JASMAR), Support Coalition International, World Blind Union, World Federation of the Deaf, World Federation of the Deaf-blind, World Network of Users and Survivors of Psychiatry, World Union for Progressive Judaism

⁶ A/AC.265/2004/WG.1

⁷ <http://www.un.org/esa/socdev/enable/documents/chairtext.DOC> and
<http://www.un.org/esa/socdev/enable/documents/coveringletter.DOC>

should be able to choose “where and with whom they live”. The **Costa Rican** text thus reading: “PWD have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in an institution or particular living arrangement”.

Thailand proposed, and was supported by the **EU** and the Republic of **Korea**, the inclusion of the terms “full participation, freedom of choice and independent living” arguing that this formulation carries a more active meaning, altering the chapeau to read: “States Parties shall take effective and appropriate measures to facilitate PWD in their full enjoyment of freedom of choice, independent living and full participation as members in the community, including by ensuring that:”

New Zealand proposed that the **chapeau** be restructured, drawing from **Article 12.1** on the right to liberty of movement of *International Covenant on Civil and Political Rights* (ICCPR), and incorporating therein existing **subparagraphs 1(a) and 1(b)**.⁸ Most States preferred continuing discussions based on the WGT rather than adopting the **New Zealand** text as a base. **Jordan**, supported by **Mexico, Argentina, El Salvador**⁹, **Canada**¹⁰, **Jamaica**, the Republic of **Korea, Costa Rica** and **Serbia and Montenegro**, felt that paragraph (b) was redundant and proposed merging (a) and (b) to read: “PWD have equal opportunity to choose their place of residence and are not obliged to live in an institution or in a particular living arrangement”. **Japan** expressed the view that the contents of provision **15 (1) (b)** regarding the protection of PWD from living in institutions was already covered under **Article 10** and thus proposed the deletion of **paragraph 1(b)**.

Regarding **paragraphs (c), (d) and (e)**, **Japan** noted that these provisions referred to economic, cultural and social rights, which are subject to progressive realisation. Many States expressed a desire to include language on progressive realisation within this Article, but the **Chair** noted that a crosscutting provision could be included in **Article 4** on General Obligations that would apply horizontally to the entire convention. The **EU** gave its support to the inclusion of a general reference to progressive realisation in **Article 4**.

New Zealand proposed the inclusion of an additional provision **(c) bis** addressing the manner in which support services are provided; this was endorsed by **Canada** and **EU**. **Canada** proposed the inclusion of “and facilities” in **(c)** and **(d)**, as well as the addition of “and facilities and formats that are accessible and in plain language” to the end of **subparagraph (e)**. In response to the **Canadian** proposal, the **EU** felt that all issues relating to “access” should be addressed in one article, namely **Article 19** on Accessibility.

The interventions by civil society appealed to the right to self-determination and protection against deprivation of liberty. The IDC made a strong case that no one should ever be forced into institutionalisation nor should they be coerced into any particular living arrangement. The IDC was concerned that clauses such as “to the maximum extent of available resources” or “unless as necessary” would take away from the right to live in the community. The World Network of Users and Survivors of Psychiatry (WNUSP) had some very strong words for the AHC regarding the references to the “legitimacy of deprivation of liberty” implicit in **Article 10**¹¹, and admonished the AHC for legitimising a convention that still includes these notions, a convention that is supposed to protect the rights of PWD. WNUSP went on to clarify the importance for PWD to have supports that are not defined in a medical way or by reference to rehabilitation. **Article 15**, stated the representative, “should include prohibition on requiring medication for provision of any service”.

Article 15bis: Women with Disabilities

The plight of women with disabilities is not simply the sum of the barriers faced by persons with disabilities and the barriers faced by women; it goes beyond to utter neglect. Women with disabilities remain invisible and are without anchor in

⁸ Please see <http://www.un.org/esa/socdev/enable/rights/ahc6newzealand.htm> for New Zealand’s proposed text.

⁹ El Salvador wanted to append the merged paragraphs (a) and (b) with “except where necessary”.

¹⁰ **Canada** was also open to supporting the New Zealand formulation of the Chapeau.

¹¹ Draft Article 10 states in 1(b): “States Parties shall ensure that PWD 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 on disability.”

either the prevailing disability discourse or women's rights discourse. The aim of the AHC should be to lift women with disabilities out of invisibility.

With this statement, the Republic of **Korea** delegation prefaced its presentation of Article 15bis on Women with Disabilities (WWD)—an additional article whose draft text was originally proposed by the Republic of Korea during the third session of the AHC¹². The Republic of **Korea**'s contention was that the subject of WWD must be both included in a general way throughout the convention, and referred to in a separate article.¹³

Several delegations, in particular the European Union (EU), New Zealand, Australia, Serbia and Montenegro, Mexico, Japan, Norway, and Jordan, however, opposed the inclusion of a separate Article dealing specifically with WWD on the basis of 1) creating a list of “groups” that may yield the exclusion of those not specifically mentioned, and 2) creating legal uncertainty between the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and the present Convention.

The United Kingdom (UK) on behalf of the EU argued that the inclusion of a separate article on women would weaken the Convention as it would single out particular persons or groups; for example, it would detract from the general provisions on abuse¹⁴, leaving men at a disadvantage since they are also subject to violence and abuse. Moreover, although noting the shortcomings of CEDAW with respect to WWD¹⁵, the EU, rather than endorsing a separate article, supported the inclusion of a cross-cutting provision in **Article 4-General Obligations**—that reads, “States Parties undertake to take all necessary measures to ensure the full and equal enjoyment of all human rights and freedoms by women with disabilities on an equal basis with others, bearing in mind the general obligation to ensure equality between women and men”¹⁶, along with a preambular paragraph outlining States Parties' recognition of the particular disadvantages faced by women and girls.

Canada, unconvinced that a mere preambular provision would suffice in ensuring the rights of WWD, introduced a very detailed twin-track proposal that would include 1) a specific provision like that Article 3 of ICCPR on gender equality; 2) a specific reference to women in **Article 4**; and 3) references to WWD in key articles throughout the convention, namely in **Article 7** on Equality and Non-Discrimination, **Article 12** on Freedom from Violence and Abuse, **Article 14** on Home and Family, **Article 17** on Education, **Article 21** on the Right to Health and Rehabilitation, and **Article 22** on the Right to Work.

Many colleagues from civil society echoed the need not only for a separate article on WWD, but also for the inclusion of gender throughout the Convention. The IDC expressed the essential point that women do not represent a group, rather, they comprise more than 50 percent of the population; as such, all issues dealing with women must be seen as gender issues and not “women's” issues. Since there is no legally binding UN document that specifically includes women with disabilities, this Convention must render women visible in a way that will most effectively protect their human rights. The National Human Rights Institutions (NHRI) representative endorsed the mainstreaming proposal but also pointed to the need for the inclusion of WWD in **Article 6** on Statistics and Data and **Article 25** on Monitoring¹⁷.

Article 16: Children with Disabilities

Discussions on Article 16 posed a “bit of a dilemma”, said the Chair, as “all colleagues seemed to agree that draft Article 16 of the WGT was not an adequate article.” Each vocal delegation adopted one of two main views:

¹² For proposed text for draft **Article 15 bis** please see <http://www.un.org/esa/socdev/enable/rights/ahcstata15bistscompilation.htm>

¹³ This proposal was endorsed by **El Salvador, Morocco, Yemen, Israel, Kenya, Sudan, Chile, Uganda, Iran, South Africa, Peru, and India**.

¹⁴ See **Article 12** of Working Group Text on Freedom from Violence and Abuse.

¹⁵ CEDAW makes no specific reference to women with disabilities in its text.

¹⁶ Proposed language based on **Article 3** of the *International Covenant on Civil and Political Rights* (ICCPR), which affirms gender equality.

¹⁷ NHRI referred to the *Convention on the Rights of the Child* (CRC), stating that since Children with Disabilities (CWD) are only mentioned in **Article 23** of the CRC, it gives the impression that only this one article is relevant to CWD and that states parties do not have statistical and reporting obligations regarding CWD.

- 1) There should not be a separate article on Children with Disabilities (CWD), but that the issue should be mainstreamed in specific substantive articles and/or addressed in one of the text's general provisions, which govern the interpretation and application of the articles in the Convention; and
- 2) Not only should the issue of CWD be mainstreamed throughout the convention, but there should also be a separate article that addresses child-specific issues that cannot be dealt with alongside adult-oriented articles.

Among arguments in support for the former proposition, the following were stated: Because draft Article 16 was drawn largely from, but not identical to, Article 23 on CWD of the Convention of the Rights of the Child (CRC), the UK speaking on behalf of the EU, supported by Serbia and Montenegro and Norway, was concerned that this new text was confusing and would create competing obligations for States parties. This was echoed by New Zealand proposing that, since draft Article 16 added nothing to the body of international law, a much shorter thematic statement be included in Article 4—General Obligations—establishing that all existing rights in the CRC and in the proposed Convention apply to CWD, who should also be mainstreamed throughout the Convention and specifically in Articles 14 (Respect for Privacy, the Home and the Family) and 21 (Right to Health and Rehabilitation) of the Convention text.

Although Canada agreed with the UK that there was no added value in this article, its delegation proposed to include stronger general provisions to Articles 2 and 4 and to mainstream CWD in Articles 6, 12, 14 bis, 17, 21, and 24, all the while supporting a separate article on CWD provided that it does not duplicate existing provisions in another convention. This general twin-track position was endorsed by Costa Rica, Thailand, Philippines, Uganda, Yemen, Kenya, the Russian Federation, the Republic of **Korea**, the Holy See, and Israel. Several of these States, who were lobbied on the issue by child experts within the IDC, noted the importance of incorporating a stand-alone article on CWD in order to adequately deal with child-specific issues. The Chair, among others, duly noted that CWD are subject to discrimination on several levels not only because of their disabilities, but also as a result of their age, lack of autonomy and vulnerability. For this reason, as also asserted by Mr Jaap Doek¹⁸, and several NGOs, “a convention without a special article on, [and the mainstreaming of] CWD is incomplete.”

The IDC provided a passionate intervention outlining the case for the inclusion of a dedicated article on CWD. Children experience conditions and realities that become irrelevant in adulthood and these are the issues, *inter alia*, that must be addressed in Article 16:¹⁹

- 1) Birth Registration—many CWD do not “officially exist” because of failure to register their births and, consequently, are even more vulnerable to exploitation;
- 2) Right to Life/Violence—CWD are still more likely to be victims of killings and violence on the basis of their disability;
- 3) Information and participation—CWD are rarely informed of their rights (as enshrined in the CRC) and thus participate in a limited way in decisions that affect them.

The IDC also refuted the point made by the EU that States might focus -- to the exclusion of others -- on Article 16 when it came to reporting to an international body on the implementation of the rights of CWD under the Convention. The IDC (drawing on experience under the CRC reporting procedure on CWD under Article 23) argued instead that a separate article on children would provide an important focus for States reporting on their obligations in regard to CWD, and would not be an impediment in this process.

Despite the sometimes contentious nature of the discussion in the plenary there was no disputing by participants that all children, and in particular CWD, must unequivocally be protected against violations of their human rights and freedoms. Differing opinions on the methodology for achieving this end is what rendered the issue so controversial.

Other areas of discussion included a proposed text by Israel that made explicit reference to a child's right to self-determination, to informed consent and to legal representation and capacity based on their age and maturity.²⁰

¹⁸ Mr. Doek is the Chairperson of the UN Committee on the Rights of the Child. He addressed the AHC two days after Article 16 was discussed in the plenary at the request of many civil society groups to emphasize the importance of including a separate article on Children with Disabilities.

¹⁹ Based on a panel discussion paper by Jaap E. Doek, issued on August 3, 2005 at a side event on CWD.

The Holy See, supported by the Philippines, proposed a provision to protect the rights of the child “before and after birth”.²¹

After the formal and informal discussions, the Kenyan facilitator appointed to this issue followed up with States in bilateral consultations. Civil society, unwilling to let children “fall into a black hole between the two conventions”, continued to actively lobby those governments who took the hard-line position of non-inclusion of a separate article.

Article 17: Education

Discussions on inclusive education began the weekend prior to the commencement of the sixth Session of the AHC with a consultation session bringing together members of civil society and United Nations Educational, Scientific and Cultural Organization (UNESCO) representatives. This group of people dedicated to the establishment of an education system that is inclusive of and appropriate for people with all types of disabilities brainstormed a strategic plan for UNESCO's Education for All (EFA) Flagship, "Education for All: The Right to Education for Persons with Disabilities: Towards Inclusion"²², addressing issues of concern to children with disabilities. Disabled Peoples' International (DPI) took a leadership role in this meeting speaking on behalf of the international disabled community with respect to “Education For All”. Together, the assembled groups arrived at an action plan for the Education for All project and agreed on a unified message that would be shared with the AHC during this sixth Session²³, of which the main theme was inclusion.

Inclusiveness was, unmistakably, the thrust of the discussion on Article 17, because, as the chair put it, “education will clearly lay the basis for PWD as inclusive members of society”. Although Australia²⁴, Japan²⁵, the European Union²⁶ and Thailand²⁷ proposed constructive alternate texts for Article 17, there was a general agreement in the AHC to continue using the WGT as the basis of discussion.

As with most other articles, the issue of progressive realisation of economic, social and cultural rights came up, but it was noted that it could be addressed in an earlier general article that applied to the whole convention. Australia, Chile, the Russian Federation, Panama and Kenya supported the deletion of the reference to progressive realization in this article. India, China and Japan supported retaining it.

Regarding **Paragraph 1**, there was general support for the chapeau. There was, however, a general agreement to replace “children with disabilities” with “persons with disabilities” throughout this Article (with the exception of **subparagraph 1(d)**, where the word “child” would continue to be more appropriate, as in “take into account the best interests of the child, in particular by individualising education plans”) because education is a lifelong process and must be available to PWD throughout their lives. Costa Rica proposed the inclusion of the term “creativity” in **paragraph 1(c)**, which addresses development of the child's personality, talents and mental and physical abilities to their fullest potential.

Regarding paragraph 1(d), the AHC noted the important reference to “the best interests of the child”, and agreed that the paragraph should not use weaker language than that in the *Convention of the Rights of the Child*. Argentina suggested deleting 1(d) arguing that it is already covered in Article 16. There were also divergent views on whether or not to retain the reference to “individualized education plans”. Proposals included

²⁰ For Israel's proposed text, please see <http://www.un.org/esa/socdev/enable/rights/ahc6israel.htm> .

²¹ For the Holy See's proposed text, please see <http://www.un.org/esa/socdev/enable/rights/ahc6hollysee.htm>

²² The EFA Flagship was established to act as a catalyst to ensure that the right to education, and the goals of the "Dakar Framework for Action-UNESCO, 2000", are realized for individuals with disabilities. The EFA Flagship was formed by an alliance of diverse organizations, including global disability organizations, international development agencies, intergovernmental agencies, and experts in the fields of special and inclusive education from developed and developing nations.

²³ See <http://www.un.org/esa/socdev/enable/rights/ahc6contunagencies.htm> for UNESCO statement.

²⁴ See <http://www.un.org/esa/socdev/enable/rights/ahc6australia.htm>

²⁵ See <http://www.un.org/esa/socdev/enable/rights/ahc6japan.htm>

²⁶ See <http://www.un.org/esa/socdev/enable/rights/ahc6eu.htm>

²⁷ See <http://www.un.org/esa/socdev/enable/rights/ahc6thailand.htm>

suggestions on new terms, including “appropriate education plans”²⁸, “plans and methods”²⁹ and “special education needs”³⁰. New Zealand wanted the reference deleted altogether.

In regards to **paragraph 2**, Thailand proposed the addition of “quality” in subparagraph (a) so as to specify that the education be high quality. Most supported this proposal. Also, India, Uruguay, Mexico and the EU proposed the deletion or reformulation of “in their own communities” because of the reality that in many communities basic education is not provided and thus this is an obligation that would be difficult to fulfill. In paragraph 2(b), there were suggestions from Argentina, Chile and Macedonia to include a reference to the training of teachers with disabilities. Peru proposed the addition of “secondary education” to provision 2(c), and the AHC noted that the new text “free and compulsory primary and secondary education” did not create any new obligations for States to provide free and compulsory secondary education. Rather, the provision is a non-discrimination one and means that if a State did provide free and compulsory education to the general population, then it should also be provided to persons with disabilities.³¹

With respect to **paragraph 3**, the EU proposed its deletion, arguing that there was no need for a separate provision dealing with “alternative education” when there was a provision already specifying “accessible, effective and appropriate education and training”. Thailand provided an abridged version of the paragraph that states “States Parties shall ensure that blind, deaf and deafblind persons have the right to choose education in their own groups and settings, where they shall be provided with the same level of support and standards, consistent with other provisions in the article”. There was some support for this reformulation³² although New Zealand raised concerns that “in their own groups and settings” could be taken out of context and interpreted in a manner that could legitimate segregation and thus, warned against that particular formulation.

In regards to **paragraph 4 and 5**, Australia proposed their deletion and suggested replacing them with a new Article 17bis³³, endorsed by Norway. The EU proposed deletion of paragraphs 4 and 5 from WGT as the concepts therein had been incorporated into paragraphs 4 and 5 of the proposed EU text, endorsed by New Zealand. Costa Rica, Argentina and Jamaica argued for the retention of paragraphs 4 and 5 of the WGT.

The draft article was referred to Rosemary Kayess of Australia for further consultation with governments to try to advance agreement on the article. For a copy of the facilitator’s text produced at the end of the sixth session please see <http://www.un.org/esa/socdev/enable/rights/ahc6facilitator.htm> .

Article 18: Participation in Political and Public Life

Discussions on draft Article 18 revealed the general agreement that its provisions needed to be strengthened because the text, as written, is weaker than the language on political rights in articles of already existing human rights treaties.³⁴

New Zealand who had drafted and distributed an alternate text for Article 18 during the third session of the AHC decided that, in the interest of simplicity and to avoid confusion, they would set it aside and base all comments on the WGT. The delegation opened the discussion with several constructive proposals that were subsequently endorsed by many delegations.

²⁸ Costa Rica

²⁹ Russian Federation and Israel

³⁰ Mexico

³¹ A/AC.265/2005/L.4 Annex II

³² Jordan, Qatar and Yemen expressed interest in this formulation but preferred replacing “deaf, blind and deafblind” with “PWD”. Thailand agreed to this change.

³³ Australia text for **17 bis** reads:

States Parties shall recognise the right of all persons with disabilities to learn life and social development skills which facilitate their full and equal participation as members of the community. In realising this right, States Parties shall:

- a) *facilitate the learning of Braille, orientation and mobility skills, peer support and mentoring.*
- b) *facilitate the learning of sign language and the promotion of the culture which exists in the community of Deaf People.*

³⁴ For example, **Article 7** of the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW) provides stronger provisions for political participation for women; **Article 25** of the *International Covenant on Civil and Political Rights* (ICCPR) provides stronger general provisions for participation in political and public life.

There was general support for the strengthening of the wording in **Article 18** by replacing “recognise” with “ensure or guarantee” in the chapeau and, in **paragraph (a)** of the WGT, by replacing “actively promote an environment in which” with “ensure that”.³⁵

New Zealand proposed replacing “citizens with disabilities” with “persons with disabilities” throughout the Article³⁶, and add “on an equal basis with others” after “public life” in the chapeau of **paragraph (a)**. Subsequent to an explanatory intervention by the Chair, there was a general agreement that the addition of this latter phrase would ensure that States would not be granting any extra rights to persons with disabilities who are not citizens, if non-citizens were not entitled to a given political right.³⁷

In discussing paragraphs (a) (i), (ii) and (iii), although there was general support to keep the provisions of the WGT, some technical issues arose. In regards to **paragraph (a)(ii)**, Australia was reluctant to enshrine the right to secret ballot because, for some people such as the blind, the question of how to ensure true secrecy in a ballot still exists and, thus, this is a right that may not be attainable in the short to medium term. Australia therefore supported the “allowing” of assistance but proposed an alteration to the chapeau so the secret ballot is not “guaranteed”, as this could potentially contradict the provision of assistance where necessary.

Regarding **paragraph (a)(iii)**, New Zealand, with the support of a number of States³⁸, suggested that the provision as written felt somewhat heavy handed and suggested rewriting it with language that emphasised that the assistance be provided in a manner to allow for the free expression of the will of PWD.³⁹ Also, delegations wanted to emphasise the necessity of ensuring that all assistance be provided only “on the request of PWD and by a person of their own choice”.⁴⁰ Chile, supported by Yemen, Serbia and Montenegro, and the Russian Federation, proposed replacing “allow, where necessary” in paragraph (a)(iii) with “guarantee when necessary”.

New Zealand proposed the inclusion of a **paragraph (a) bis**, replacing **paragraph (b)(i)**, whose wording replicates that of **Article 7** of CEDAW.⁴¹ There was a general agreement to delete the term “as appropriate” from paragraph (b) as it might be misinterpreted as a qualifier. Argentina suggested using language from Article 25 of ICCPR as the basis for paragraph (b), thus replacing “public administration” with the broader term “public affairs”—a proposition that was widely supported.⁴² There was general agreement that paragraph (b)(ii) should include the international sphere as one in which PWD and their organisations could participate.

Concerning paragraph (c), a debate ensued as to whether its contents should be moved to **Article 4** dealing with general obligations or whether the concept of decision-making needed to be covered in **Article 18**. Chile, supported by India and Uganda, suggested that since **paragraph (c)** deals with participation in decision-making, it is too specific to be lumped under **Article 4**, which covers general obligations of States parties. The Chilean delegation proposed extending this provision to “all matters of public concern” rather than limiting it only to issues relating to PWD—a proposal endorsed by Chile and Yemen. The EU, Sudan, and Oman supported covering the provisions in paragraph (c) under Article 4.

Civil society was in general agreement with most of what had been discussed by the States. Specifically, the IDC voiced the absolute need for free will of PWD to drive any assistance provided in the electoral process, the imperative of enshrining the right to hold public office, and, most importantly, the necessity of mainstreaming gender within this Article to ensure that both women and men may enjoy equal access to all rights outlined herein.

³⁵ Proposal to strengthen Article 18 in accordance with ICCPR and CEDAW was endorsed by New Zealand, Chile, Argentina, European Union, Serbia/Montenegro, Australia, Israel, Mexico, Japan, Canada, Thailand, Costa Rica, Malaysia, India, Morocco, Russian Federation, Uganda, and Colombia.

³⁶ This wording is consistent with the term used in CEDAW and also reflects the reality in many states where some non-citizens (such as permanent residents) have the right to vote and therefore no lesser standard should be accepted for PWD.

³⁷ China, Sudan, Qatar and Yemen still supported the term “citizens with disabilities” even after the Chair’s intervention.

³⁸ Chile, Argentina, Kenya, Israel, Costa Rica, Russian Federation, Norway endorsed this proposal.

³⁹ The text proposed by New Zealand for 18(a)(iii) reads, “the provision to PWD of assistance which guarantees them the free expression of their will as electors”.

⁴⁰ No delegation spoke against this proposal.

⁴¹ For the New Zealand proposed text, please see <http://www.un.org/esa/socdev/enable/rights/ahc6nz.htm> .

⁴² Endorsed by EU, Mexico, Costa Rica, Russian Federation.

Article 19: Accessibility

The debate on Article 19 was rich and comprehensive due to the fundamental agreement that accessibility is an “underlying principle of the Convention”.⁴³ The Canadian delegation encapsulated the general sentiment of the discussion in saying, “the purpose of this treaty is the removal of obstacles and barriers impeding the full and effective participation of PWD in all aspects of human activity; the term accessibility goes beyond describing specific measures and is an overriding and organizing principle”.

The discussion on draft **Article 19** centred on how best to address accessibility within the convention, such that it is unambiguously ensured to all PWD in all aspects of human activity. The AHC agreed that accessibility must refer explicitly not only to “physical” accessibility, but also to other forms, including accessible information, and that the article should not slant toward one type of accessibility. Many delegations felt that elements of this Article could be shifted elsewhere or merged with other articles.

The majority of delegations were strongly in favour of moving the article on accessibility closer to **Article 7** on non-discrimination and equality.⁴⁴ Canada proposed that accessibility be included as a fundamental principle in **Article 2** on general principles⁴⁵, under **Article 4** on State obligations and under **Article 7** on equality and non-discrimination.⁴⁶

There was a growing movement toward merging **Article 19** on Accessibility and **Article 20** on Personal Mobility because of a perceived overlap between the two.⁴⁷

Some delegations were in favour of inserting mention of progressive realisation in the chapeau of **Article 19**⁴⁸, others were opposed to it and favoured addressing it in a more general manner⁴⁹. The Chair reminded the AHC of the existing provision in draft Article 4 that all economic, social and cultural rights could be realised in a progressive manner⁵⁰; moreover, he pointed out that accessibility falls under umbrella of economic, social and cultural rights, but it may also be one of those hybrid issues that touches upon civil and political rights.

The AHC engaged in extensive discussion on whether States should be obligated to ensure accessibility not only to public but also to private facilities, buildings and services and how this should be addressed within the Convention. Jordan made a constructive remark that helped push this discussion forward, stating that “what is important is not who *owns* the building or service, but who *uses* it”; it is this principle that should guide State obligations regarding accessibility. The facilitator’s consolidated text⁵¹, drafted after further consultation with

⁴³ As characterised by the Chair in his summary of the discussion on **Article 19**.

⁴⁴ Supported by Jordan, Liechtenstein, Norway, EU, Canada, New Zealand

⁴⁵ This was endorsed by Uruguay, Russian Federation

⁴⁶ For Canada’s specific proposal please see <http://www.un.org/esa/socdev/enable/rights/ahc6canada.htm>

⁴⁷ This merger was endorsed by Mexico, Thailand, Canada, Jordan, Chile, Uruguay, Argentina, Liechtenstein, Colombia, New Zealand, Qatar, and El Salvador. The European Union and Costa Rica felt that the merger of Articles 19 and 20 would be better addressed after the discussion on **Article 20**.

⁴⁸ Specific mention of progressive realization was supported by South Africa, China, Russian Federation, Oman, and Qatar. Malaysia was open to mention of progressivity either in this article or elsewhere in the convention.

⁴⁹ Several delegations, including the EU, Canada, Japan, Liechtenstein, New Zealand, preferred the mention of progressive realization in **Article 4** on general obligations in such a way that it applies in a cross-cutting fashion to the entire convention.

⁵⁰ As is done in **Article 4** of the *Convention on the Rights of the Child* (CRC).

⁵¹ Post-consultation facilitator’s text of **Article 19** reads:

Draft article 19- ACCESSIBILITY 1

1.States Parties to this Convention shall take appropriate and effective2 measures to ensure accessibility to the physical3 environment, housing, all forms of transportation, information and communications, including information and communications technologies, and to other services, to persons with disabilities on basis of equality with others, by identifying and eliminating [existing and preventing future] barriers4 , including inter alia architectural, sensorial and cultural barriers, in order to enhance the capacity of persons with disabilities to live independently and to participate fully in all aspects of life. [These measures shall include, inter alia:

(a) The construction and renovation of public buildings, roads and other facilities to which the members of the public have the access, including schools, housing, medical facilities, in door and out-door facilities, and workplaces;

(b) The development and remodelling of public transportation facilities, including vehicles, and of information and communications and other services, including electronic services.]5

States and civil society, reflects Jordan's proposal using language, which included the mention of "buildings, roads and other facilities to which members of the public have access".

A disability organisation, Mental Disability Rights International (MDRI), aptly noted in its powerful intervention that **Article 19** is the only provision in this draft convention that does not refer to "rights". As such, there was much support both from State delegations and civil society that this Article be slightly recast so that it makes specific reference to accessibility as a human right. There was a strong push from states including Canada, Chile, Jamaica, Thailand, Japan, EU⁵², Costa Rica, Colombia, El Salvador and the Russian Federation, along with civil society, to include specific references to principles of universal design as a measure to ensure the right of accessibility to all, thus eliminating not only present barriers, but also future barriers.

Article 20: Personal Mobility

Given that **Article 20** had been referred to during the discussion on **Article 19** on accessibility, the discussion was most focussed on what important elements were covered under this Article, which could be shifted elsewhere and which, if any, deserved mention in a separate article.

The AHC considered three main points under the heading of Personal Mobility: 1) accessibility in the broadest sense, as covered under **Article 19**; 2) personal mobility of the individual; and 3) liberty of movement in the civil and political sense.

Chile, New Zealand and others opined that the provisions of draft **Article 20** should be or have been covered elsewhere and that the Article could be deleted unless, of course, there were issues that could not sufficiently be addressed under other provisions within the Convention. Most delegations felt that the concepts of accessibility and personal mobility could adequately be covered under **Article 19** and elsewhere in the Convention, but that liberty of movement might need special mention. **Kenya** pointed out that, although liberty of movement as a broader human rights concept is covered under **Article 12** of the ICCPR, **Article 20** should enshrine the right to liberty of movement within this present disability convention.⁵³ As the Ugandan delegate asserted, there are some issues regarding movement across borders that are specific to PWD, for example, if the birth of a child with a disability is not registered, that individual will not be able to acquire a passport. Other delegations, including Jamaica, Canada and India suggested that liberty of movement has been or could adequately be covered under **Article 10** on Liberty and Security of the Person.

No official proposals were submitted by civil society on this Article.

2. States Parties shall take appropriate measures to, inter alia:

[(a) Provide in buildings and facilities to which the members of the public have the access the visual and tactile signaling, use of international accessibility symbols, signage in Braille and easy to read and understand forms to orient persons with disabilities;

(b) Provide qualified personnel to assist and guide persons with disabilities in buildings and facilities to which the members of the public have the access, including guides, readers and sign language interpreters, in order to facilitate accessibility to the above- mentioned buildings and facilities;]6

(c) Promote mobility for persons with disabilities by facilitating their access to suitable and appropriate accessibility assistive technologies;7

(d) Develop, promulgate and monitor implementation of minimum national standards and guidelines for the accessibility of buildings, facilities and services to which the members of the public have the access;8

(e) Promote the development, availability and use of universally designed goods, services, equipment and facilities to meet the specific needs of persons with disabilities and promoting universal design in the development of standards and guidelines;

(f)[Require] / [Encourage] private entities that provide facilities and services to which members of the public have the access, to [ensure full] / [take into account all aspects of] accessibility of the above- mentioned facilities and services for persons with disabilities;9

(h) Ensure that accessible information and communication technologies, including new information and communication technologies and systems, be designed, developed, produced and distributed at an early stage so that the information society becomes inclusive for persons with disabilities. Please see also <http://www.un.org/esa/socdev/enable/rights/ahc6facilitator.htm>

⁵² For EU proposed amendments to draft Article 19 please see <http://www.un.org/esa/socdev/enable/rights/ahc6eu.htm>

⁵³ Mexico, Chile Argentina, New Zealand, Russian Federation, Uganda and Costa Rica endorsed this proposal

Article 21: Right to Health and Rehabilitation

The issue of health is of central importance to all human beings; therefore, respect for human rights in the healthcare setting leads to overall health and well-being for the individual. For persons with disabilities, this is even truer.⁵⁴ The depth and comprehensiveness of the discussions on **Article 21** pointed to the AHC's understanding of the centrality of this Article in the lives of PWD.

There was general agreement in the AHC to separate draft **Article 21** into two articles: the first dealing with the Right to Health and the second dealing with Habilitation and Rehabilitation.⁵⁵ This schism was supported by the majority of the delegations⁵⁶, who agreed with the IDC that health concerns "the physical, mental and social well-being of individuals", whereas habilitation and rehabilitation "go far beyond the field of health and embrace a wide range of issues including education, social counselling, vocational training, transportation, accessibility and assistive technology".⁵⁷ Thailand, Brazil, Costa Rica and New Zealand were in favour of streamlining the concept of rehabilitation into other articles, including Article 15 on Independent Living, Article 17 on Education, Article 19 on Accessibility, Article 22 on Right to Work and Article 24 on Participation in Cultural Life, Leisure, Recreation and Sport, while, at the same time, retaining the elements of rehabilitation dealing with health outcomes within Article 21 on Health. There was, however, no consensus on the inclusion of health-related rehabilitation in Article 21; nonetheless, the facilitator's text on Article 21, re-drafted after further consultation, included such a reference.⁵⁸

Regarding language on the "right to health" and on the "right to habilitation and rehabilitation", there was an expressed need to define the term "health", and to decide whether to base the language on health in this convention on **Article 12** of the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵⁹ or on the WHO definition of health found in the **Preamble** of its Constitution dated July 22, 1946⁶⁰. In the **Chapeau**, the facilitator's text states, "States Parties shall take all appropriate and effective measures to ensure access for persons with disabilities to health services, including **health-related rehabilitation**".

In regards to subparagraphs (a) through (m), a strong sentiment arose that there was much duplication with other articles in the Convention text and that other sub-paragraphs were too prescriptive. There were consequently many proposals to streamline or delete subparagraphs. The **EU** proposed the deletion of **subparagraph (d)** and its relocation to **Article 21bis** on rehabilitation, the deletion of subparagraph (e)⁶¹, arguing that it has already been covered in (d), the deletion of subparagraph (f) and its inclusion as a general provision applying horizontally to the entire Convention, and the deletion of subparagraph (g), taking it up in Article 4. Mexico proposed the deletion of subparagraph (m) and its inclusion under Article 4. Japan proposed the deletion of subparagraph (l) dealing with privacy, arguing that it had already been covered under Article 14 on Respect for Privacy.

Under **subparagraph (a)**, the Holy See, supported by the USA and Costa Rica, proposed the deletion of "sexual and reproductive health services", although there was broad support for retaining it. New Zealand stated that in regards to 2 (a) and (b) it is important to ensure access to health related services, particularly with a view to ongoing services required by PWD. In subparagraph (b), New Zealand suggested also including "early

⁵⁴ International Disability Caucus Information Sheet on Article 21

⁵⁵ Such an approach would be consistent with United Nations Standard Rules 2 and 3, which distinguish between "rehabilitation" and "medical care".

⁵⁶ Separation of article into two was endorsed by Chile, Yemen, EU, Mexico, Australia, Israel, South Africa, Algeria, Colombia, Kenya, India, Russian Federation, Nigeria, Uganda, Ukraine, Norway, Yemen and Mali. Others such as Japan, Peru, Iran, **Jordan** and Jamaica remained flexible on the separation of **Article 21**

⁵⁷ International Disability Caucus Information Sheet on **Article 21** and **Article 21bis**

⁵⁸ See <http://www.un.org/esa/socdev/enable/rights/ahc6facilitator.htm>

⁵⁹ ICESCR establishes the right to health as a human right in **Article 12** as follows:

"The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of **physical and mental health**."

⁶⁰ The WHO definition of health is much broader than that of ICESCR and reads:

"Health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity." See <http://www.yale.edu/lawweb/avalon/decade/decad051.htm> for complete WHO constitution.

⁶¹ **Japan** also felt that this paragraph should be deleted based on its controversial nature (i.e. it suggests that disability is something that should be prevented).

identification and intervention as appropriate". Costa Rica highlighted the importance of singling out the provision of care of PWD in rural areas in subparagraph (c). Were subparagraph (f) to be retained, the Holy See proposed the addition of "compatible with respect for human dignity and value of human life". The EU proposed the merger of subparagraphs (h), (i) and (j), a suggestion that was broadly supported. Mexico, Japan, Canada, New Zealand and others supported the deletion of subparagraph (k), while the Holy See⁶² wanted to see it retained in the draft. The Holy See also wanted to add a provision (k)(bis) "Protect[ing] the motherhood of women with disabilities by developing and disseminating policies and programs for assistance based on the recognition of the particular needs of women with disabilities in pregnancy, childbirth and post-partum health care and child care", and a provision (k)(ter) protecting PWD from "being denied medical life-preserving treatment, as well as hydration, nutrition, necessary to preserve or sustain that person's life, regardless of method of administration or perceived quality of life", both of which were endorsed by Costa Rica.

Article 22: Right to Work

The right to work for persons with disabilities means the elimination of discrimination, greater integration into society, economic advancement and social equality. Recognising the central role of this Article within the convention, the AHC engaged in a full discussion on the specifics of developing the provisions under **Article 22**.

There was general support for a Canadian proposal that the AHC take a rights-based, non-discrimination approach to this Article and that the text of draft Article 22 not derogate from existing international instruments, such as the International Labour Organisation (ILO) Conventions.

Several States, including the EU⁶³, Israel⁶⁴ and Canada⁶⁵, proposed structural amendments that sought to streamline the Article and recast it in line with existing human rights language.

The AHC expressed its general preference to recognise the importance of access of PWD to an open labour market, in order to empower and enable them to participate fully in society.⁶⁶ The AHC, through informal consultations with the facilitator, Dan Oren of Israel, agreed on a chapeau that deals with general principles, including stronger rights-based language, and that the subparagraphs should deal with measures to realise those principles.⁶⁷

Paragraph (a) was deleted based on proposals from the EU, Israel and others to include the elements of this provision in the chapeau.

Regarding **paragraph (b)**, New Zealand and Serbia and Montenegro proposed the addition of a reference to "life-long training".

On the subject of quotas, the AHC debated the efficacy of the quota system in ensuring equal employment opportunity for PWD. Several States, including Australia, EU, Republic of Korea, Costa Rica, Holy See, Trinidad and Tobago, India and Israel, supported the deletion of the reference to "quotas". Japan, supported by Yemen, Brazil and Argentina, argued for the retention of the reference to quotas, asserting that they have worked well as an inclusive employment measure. The ILO suggested that quotas can be useful in setting the stage for affirmative action targets in the future and thus should not necessarily be altogether disregarded as an ineffective measure. The AHC agreed that further consideration on this topic was needed.

Another heavily debated "hot topic" was the issue of sheltered workshops. The IDC and the WNUSP spoke very strongly against the inclusion of any mention of "sheltered employment" arguing that it propagates segregation,

⁶² For complete proposed text of the **Holy See** please see <http://www.un.org/esa/socdev/enable/rights/ahc6holysee.htm>

⁶³ See <http://www.un.org/esa/socdev/enable/rights/ahc6eu.htm> for EU proposal for Article 22

⁶⁴ See <http://www.un.org/esa/socdev/enable/rights/ahc6israel.htm> for Israel's proposal

⁶⁵ See <http://www.un.org/esa/socdev/enable/rights/ahc6canada.htm> for Canada's proposal

⁶⁶ As stated in A/AC.265/2005/L.4, Annex II Report of the Chairman, p.17.

⁶⁷ The chapeau in the facilitator's text now reads: "States Parties recognize the right to work of all persons with disabilities of lawful working age, on an equal basis with others; this includes the opportunity to gain a living by work freely chosen or accepted, with a view to protecting persons with disabilities from poverty, in a labour market and work environment, whether in the public, private, or any other sector, which is open, inclusive and accessible to persons with disabilities. In order to safeguard and promote the realization of the right to work, States Parties shall take all appropriate steps including by way of legislation and shall in particular:"

leads to undesirable working conditions and derogates from equal employment opportunities for PWD. There was not, however, a clear understanding of the benefits, if any, of sheltered employment. States such as Serbia and Montenegro who were open to retaining such a reference clearly stated that any alternate form of employment outside the open labour market must meet the same employment protection laws and standards. South Africa called for the transformation of sheltered workshops into viable businesses. New Zealand spoke up against any such inclusion, stating that the prescription of any particular measures may actually weaken the employment provisions. The facilitator's draft of this provision has found a balance between the differing views.⁶⁸

Regarding "reasonable accommodation", there was general agreement that this should be included in this Article, but that there was need for further clarification of the term, as suggested by the ILO.

New Zealand pointed out that paragraph (h) was "very clumsily worded" and proposed introducing wording from ICESCR: "just and favourable conditions of work". The EU proposed moving this paragraph immediately after the chapeau. Mexico and Morocco noted the importance of making explicit reference in this paragraph to the "elimination of all forms of exploitation and discrimination in the workplace".

Article 23: Right to Social Security and Adequate Standard of Living

Statistical data has shown that persons with disabilities live as the poorest of the poor in society and that they are always over represented in the population living in poverty. As pointed out by the IDC, they face considerable barriers, including lack of adequate support, prejudice and discrimination, in pursuit of an adequate standard of life, one on an equal footing with others. For this reason, the AHC agreed on the importance of having this Article in the Convention.

Since the issues of social security and standard of living are addressed extensively in international law, there was general agreement that **Article 23** be redrafted to reflect language in other human rights treaties to ensure consistency between treaties.⁶⁹

Regarding structure, a suggestion proposed by South Africa at the third session of the AHC to reverse the order of paragraphs 1 and 2, such that "Adequate Standard of Living" come before "Social Security", was endorsed by

⁶⁸ The subparagraphs in the facilitator's text read:

- a. prohibit discrimination on the basis of disability in all matters connected with employment;
- b. require reasonable accommodation of persons with disabilities in the workplace and work environment;
- c. ensure appropriate representation for persons with disabilities in government ministries and require appropriate representation in the workforce of the public sector and of large private sector employers;
- d. protect the right of persons with disabilities in all forms of employment, to equal application of employment protection laws and standards, in particular equal remuneration for work of equal value;
- e. encourage employers to hire and retain persons with disabilities, by way of such measures as the promotion of affirmative action programs, and the provision of financial incentives and support;
- f. enable persons with disabilities to have effective access to general technical and vocational and career guidance programs, employment counseling and placement services, supplemented by information in accessible formats on rights and obligations under labour-related law and other forms of labour regulation;
- g. promote equal employment opportunities and career advancement for persons with disabilities in the open labour market, including opportunities for self-employment and starting one's own business and the promotion and provision of assistance in finding, obtaining and maintaining and returning to employment, including vocational and professional training and transition programmes;
- h. take all possible measures to replace alternative forms of employment with employment in the open labour market, and to the extent that alternative forms exist, ensure that they are adequately resourced, in conditions that provide opportunities for vocational advancement and facilitate the move into the open labour market and that employment protection laws and standards apply;
- i. promote recognition of the skills, merits, abilities and contributions of persons with disabilities to the workplace and the labour market, and combat stereotypes and prejudices about persons with disabilities in the workplace and the labour market.

⁶⁹ Specific mention was made to Articles 22 and 25 of the *Universal Declaration of Human Rights* (UDHR), Articles 26 and 27 of the *Convention on the Rights of the Child* (CRC), Articles 9 and 11 of the *International Covenant on Economic Social and Cultural Rights* (ICESCR).

large number of States.⁷⁰ Canada and Australia also endorsed the reversal of paragraphs 1 and 2, but went further by proposing the separation of the two concepts into two articles arguing that they represent different economic, social and cultural rights. MDRI, IDC and other civil society groups highlighted the human rights arguments that underpin the importance of separating Article 23 into two distinct articles.⁷¹

In regards to substance, the AHC discussed the accuracy and appropriateness of the term “social security” and felt that a broader term should be used. Objections to the term “social security” were based on different interpretations of the term from State to State. For example, Kenya noted that in much of the developing world huge percentages of the population work in the informal sector, thus precluding them from protection under “social security” provisions; therefore, “social protection” might be a more inclusive term.

As guidance to the AHC, the Chair provided reference to terminology on social security in various other instruments including Article 9 of ICESCR, which uses the same phraseology “right to social security, including social insurance”; Article 5 of the *Convention of the Elimination of Racial Discrimination* (CERD) that refers to “right to social security and social services”; Article 11 of CEDAW, which refers to “right to social security, particularly in cases of infirmity, ...old age, and other impediments to work”; and paragraph 7 e of the report of the Secretary General to the Commission on Social Development (E/CN.5/2001/2)⁷², which discusses “social protection” as being composed of “social assistance” and “social insurance”. Upon the Chair’s advice to consider all of these terms, alternate suggestions included “social protection”, “social support”, “social safety nets” and “social insurance”; however, the AHC noted that it needed to reflect further on this issue.

Regarding **paragraph 1 (a)**, Yemen proposed that services should be “free” to PWDs, New Zealand and Israel suggested providing compensation for extra costs arising from disability, most other delegations were committed to “affordability” of services and devices. Kenya, Thailand and others proposed specifying the types of services and devices (i.e. “social” and “technical”, respectively).

Regarding **paragraph 1 (b)**, there was general support for deleting references to special groups of persons with disabilities for fear of rendering the provisions exclusive to those groups only. Canada noted that the issue of considering the needs and perspective of persons with disabilities was already covered in paragraph 2 of Article 4 and that the AHC should minimize duplication; deletion of this phrase gained general support.

In regards to **paragraph 1(c)**, Japan, supported by Israel, EU, Argentina, Malaysia, India, Brazil, proposed deleting reference to “persons with severe and multiple disabilities” on the basis of the difficulty in defining these terms. Thailand suggested retaining the term and defining them⁷³, for example, under Article 3. Chile opposed the removal of this term. Norway pointed out that the critical aspect of this Article was the expense associated with the disability and not the severity of the disability per se. Costa Rica felt that this provision should be addressed to all PWD and in particular to those with severe disabilities. Regarding the reference to families in this provision, many States supported its retention and Senegal went as far as suggesting that family assistance be expanded to ensure that those “surrogate families” who care for PWD are also included among the recipients of financial state assistance.

There was general support to replace “governmental” with “public” in **paragraph 1(d)**, and to delete the rest of the subparagraph, from “including” until the end, because it was overly-prescriptive.

⁷⁰ New Zealand, Japan, Serbia-Montenegro, Jordan, Israel, Chile, Jamaica, Norway, Sudan, Mexico, Mali, Argentina, India, Uganda, Senegal, Namibia, El Salvador

⁷¹ While the articles are related in some aspects, they address very different rights that are not only formulated in different terms in international HR instruments, but also are interpreted in different ways by national and regional courts and regional and international human rights bodies. It is important that the right to an adequate standard of living, which is inclusive of many separate, individual rights (such as the right to adequate housing, which is in no way limited to the *social assistance* aspects of government policy) not be narrowed or confused or limited to the right to social security, assistance or protection.

⁷² There are **two predominant sub-categories of social protection**. *Social assistance* encompasses public actions that are designed to transfer resources to groups deemed eligible due to deprivation. *Social insurance* is social security that is financed by contributions and based on the insurance principle: that is, individuals or households protect themselves by pooling resources with a larger number of similarly exposed individuals.

⁷³ Uganda endorsed this proposal.

With respect to **paragraph 1(e)** on tax exemptions and benefits, many States, including Japan, Kenya, Chile, and Costa Rica proposed its deletion, or broadening, on the basis of it being too prescriptive. Others including the Russian Federation, wanted to retain the term “tax benefits”.⁷⁴ Thailand suggested the inclusion of “including their disability related spending” to the provision.

Regarding **paragraph 1(f)**, there were comments made by Sudan and Yemen that under some religious law, life insurance was not looked upon favourably and that any eventual provision regarding life insurance should not create a right to life insurance in those countries where it is prohibited. Uruguay, Norway, Costa Rica and Israel proposed that the reference to “health care” could be adequately covered under Article 21 on Health and Rehabilitation.

In regards to **paragraph 2**, there was a divide on the subject of access to safe water. Although many states supported the inclusion of a reference to the right to clean water, some states, including the USA, noted that this is not a right that is guaranteed in existing international law, nor in ICESCR, although it is covered under paragraph 1 of General Comment 15 of the Committee on Economic, Social and Cultural Rights.⁷⁵ Several States, including EU⁷⁶, South Africa, Norway, Mexico, Cameroon, Argentina, Canada, supported retaining the reference to clean water.

Article 24: Participation in Cultural Life, Leisure and Sport

Retaining this Article gained unanimous support from the AHC, although most were in favour of strengthening it. Several delegations proposed splitting the article into two parts: 1) Recreation and sport; 2) Culture. Some delegations, including Yemen, Jordan, Serbia and Montenegro, and Chile supported the complete split of the Article into two separate articles along the above-mentioned schism. The EU proposed a text⁷⁷, endorsed by Australia, Brazil, and Colombia, that kept the provisions of recreation and culture under one article but with a distinct separation therein. New Zealand’s proposed text⁷⁸ sought to further interlink topics of culture, recreation, leisure and sport under one article and was endorsed by Norway, Cameroon, Bosnia-Herzegovina. Costa Rica, South Africa, India, and the Russian Federation did not support separation of this Article in two. There was a general sense in the room that this Article as drafted was too prescriptive and too detailed; therefore, there were several proposals to broaden the scope of the article.

Regarding the chapeau of paragraph 1, there was general support to add “on an equal basis with others”. The EU proposed that, since paragraph 1(a) was more about the enjoyment of the right in general rather than a measure to implement a right, it would be better located as a stand-alone paragraph 1bis. The facilitator noted in his final draft text⁷⁹ that more consultation was needed on this point.

There was general support for the EU’s proposal to delete long lists of accessible formats, locations and activities in provisions (b), (c) and (d) under paragraph 1 for fear of leaving something out. Mexico proposed the inclusion of references to tourism throughout this Article, specifically in paragraphs 1(d), and 4(c) and (d), which was endorsed by Thailand, Brazil, Serbia and Montenegro, Trinidad and Tobago, Costa Rica, Chile, Oman and Yemen.

Regarding **paragraph 2**, the EU suggested replacing “intellectual property rights” with “copyright”. While there was no agreement on this proposal, Sudan and Trinidad and Tobago, preferred retaining the reference to “intellectual property”, stating that it is the broader term and incorporates “copyright”.

⁷⁴ Sudan proposed the addition of “except for those obligations ordained by some religious teachings”, explaining that there are certain things for which there can be no tax exemptions under religious law.

⁷⁵ “The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.” Para One of the Committee for Economic, Social & Cultural Rights, General Comment 15 on The Right to Water, Twenty-Ninth Session Geneva, 11-29 November 2002

⁷⁶ The EU proposed deleting the reference to water from its existing location and adding a new sentence to paragraph 2 stating “States Parties shall ensure that PWD have access to clean water on a basis with others”. Canada endorsed this proposal.

⁷⁷ For the EU proposal on draft **Article 24**, please see: <http://www.un.org/esa/socdev/enable/rights/ahc6eu.htm>

⁷⁸ For New Zealand’s proposal on draft **Article 24**, please see: <http://www.un.org/esa/socdev/enable/rights/ahc6newzealand.htm>

⁷⁹ For draft of facilitator’s text please see <http://www.un.org/esa/socdev/enable/rights/ahc6facilitator.htm>

Paragraph 3, dealing with minority groups within the disabled community, proved to be very contentious. Whereas Thailand was supportive of placing a strong emphasis on minority groups as well as extending the provision to other minorities, Mexico, Jordan, New Zealand and Norway proposed deleting references to specific groups, while the EU, Australia, Japan, Trinidad and Tobago, Sudan and India argued for the deletion of paragraph 3 altogether. The World Federation of the Deaf and the Korea Association of the Deaf advocated passionately for the inclusion of specific references to the deaf culture/communities and to sign language, arguing that the deaf will only be able to enjoy civil, political, social, economic and cultural rights when their linguistic identity is specifically acknowledged. Kenya and Sudan proposed the inclusion of the “right to practice the religion of their choice”. This was not supported by the rest of the States on the basis of the existence of this right under Article 18 of ICCPR and under Article 13 of this Convention. Canada was in support of using broader terms of inclusion for minorities and proposed a new draft of paragraph 3 based on the language in Article 27 of ICCPR. This compromise is reflected in the Facilitator’s text.

Regarding **paragraph 4**, the EU pointed out there is no existing right to participation in recreational, leisure and sporting activities within ICESCR or other international treaties, and thus proposed deleting the words “right to” in the chapeau. Thailand proposed the inclusion of “disability-specific sports” in addition to the mainstream brand, noting the importance of having the choice to participate in either or both, and was endorsed by Serbia-Montenegro, Mexico, China, Russian Federation and Canada. The IDC also spoke to the importance of including references to inclusion within both mainstream and disability-specific activities. Save the Children spoke very strongly on the imperative of including the “right to play” for children with disabilities; this was endorsed by Uganda, Canada and Macedonia.

Article 24 bis: International Cooperation

The discussion on **Article 24 bis** began with the Facilitator Mariana Olivera West’s introduction of a revised draft that took into consideration the different proposals and views expressed during the third session of the AHC. All States expressed the importance of international cooperation to this Convention; however, there was a divergence of views on how this topic should be addressed within the text.

The EU, laying out its commentary with a powerful statement on the vicious cycle of poverty and disability, agreed entirely that international cooperation would be a vital factor in the implementation of the convention. However, the EU underlined that international cooperation is indeed linked with implementation, and is not a specific right of individuals: human rights instruments do not deal with States’ obligations toward other States. Though there are references to international cooperation in other Conventions such as the CRC, that Convention does not set out obligations, but contains general references stating that implementation horizontally will not be possible without international cooperation. A separate article on international cooperation may actually hinder the implementation by allowing States to use lack of assistance from other States as a justification for non-compliance. Based on its belief that a separate article would be legally muddled⁸⁰ and potentially counterproductive, the EU proposed the inclusion of robust statements on international cooperation under Article 4. Serbia and Montenegro supplemented the above position in suggesting that since this Convention deals with individual human rights, it may be more appropriate to make a general reference to international cooperation in the tradition of Article 4 of CRC or Article 2.1 of ICESCR. Norway and Canada endorsed the EU position of including a more general reference.

Chile, responding to the EU’s concerns, stated that international cooperation was not about individual rights, but that international public law has always served to regulate the obligations of States and it was just a few decades ago that individuals were introduced as subjects of international law. This does not exclude a provision referring to relations among States and regulating the horizontal nature of international cooperation. Chile proposed both a reference in the preamble to international cooperation as well as a separate article to break down the particular nature of the obligation, which would be very useful. Jamaica, Nigeria (on behalf of the African Group), El Salvador, Yemen, Costa Rica, China, Peru, Sierra Leone, Mexico, India, and Qatar all supported the inclusion of a separate article on international cooperation. Civil society argued for the absolute need to include a separate article on international cooperation. The IDC noted that disability is not even mentioned in the most prominent international forum, namely the Millennium Development Goals; as such, this

Convention must address the reality, as stated by the World Bank, that 1 in 5 of the poorest people in the world is disabled.

The Chair pointed out that Rule 22 of the *UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities* provided detailed guidance that could be considered in the formulation of an action plan.

The proposal was referred to the Facilitator, who was requested to conduct further consultations.

Article 25: Monitoring

The AHC's discussion on Article 25 was notable in that several countries expressed support for the creation of national and international level monitoring mechanisms for the proposed convention. However, given the state of restructuring of the treaty bodies, most States reserved the right to propose a specific monitoring model until the release of an OHCHR report on possible innovative monitoring strategies for the convention that is being prepared for the seventh session of the AHC. Nonetheless, all delegations expressed the need for an effective monitoring mechanism that was "as good as" if not better than existing mechanisms. Senegal made a passionate appeal to the AHC saying, "we have just run a very long marathon, let us not get to the finish line out of breath", alluding to the imperative of investing a great deal more into the drafting of Article 25.

Costa Rica pointed out that this AHC has the unique opportunity to act as "guide and light for other conventions to advance the reform process". Norway wanted to remind the AHC that there "is already a lot of reporting going on within the UN: we have the Standard Rules upon which we are regularly asked to report and we also have an Action Plan". Israel, the only state to propose a specific structure, circulated a draft of Article 25 that closely followed that proposed by the IDC.⁸¹ There was a general agreement that PWD and their organisations actively be involved in the monitoring process.

Liechtenstein warned that the AHC, although keen on awaiting outcomes of the broader treaty body reform process, should not be held hostage by the timeframes imposed by these reforms. The AHC may have to "create something on its own that will be independent and innovative".

The comprehensive and detailed IDC proposal went far beyond the two exiguous provisions of draft **Article 25** of the WGT and included provisions on publicity, establishment and administration of a treaty-body committee, reporting by States parties, consideration of reports, relationship between the committee and other bodies, relationship between UN agencies and a coordinating committee on disability policy, individual complaints procedures, establishment of inquiry process, relations between the committee and national mechanisms, national action plans, national level focal point, ombudsperson and conference of States parties.⁸²

⁸¹ For Israel's proposal please see <http://www.un.org/esa/socdev/enable/rights/ahc6israel.htm>

⁸² For IDC proposal see: <http://www.un.org/esa/socdev/enable/rights/ahcstata25sscomments.htm#idc>