

## **Special Protection of Human Rights of Children II.: Legislative History of the UN Convention on the Rights of the Child**

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### **ABSTRACT**

It took a long journey to recognise and regulate children's rights institutionally. Today, numerous organisations are promoting measures that exclusively regulate the position of children; that is, acts which indirectly affect children's rights. The intent of these acts is not uniform in terms of whether they are legally binding or not, and neither is their relevance, however, it is certain that once this process has been initiated, the manner in which children and their positions will be perceived will become permanently set. Regarding family law, that is, child law, the most significant act to be passed was the adoption of the UN Convention on the Rights of the Child in 1989.<sup>1</sup> The Convention stems from years of research. The early stages of the work on a document dealing with children's rights were prompted by advances in perceiving children as separate individuals, and by the accelerated consolidation of the International Human Rights Law.<sup>2</sup> In the 34th session of the UN Commission on Human Rights in 1978, the degree to which children suffered during armed conflicts and other forms of aggression was specifically stressed, along with the need to protect them and their position. In the same session, the Polish delegation submitted a draft proposal for the Convention on the Rights of the Child (Polish draft), which was based on the 1959 United Nations Declaration on the Rights of the Child. Shortly afterwards, a working group was formed that dealt with the proposals submitted by various States or organisations. More than ten years would pass before the working group submitted the final draft (although the initial plan was that the Convention be adopted in 1979), which was first adopted by the UN Human Rights Commission and the Economic and Social Council. Thereafter, it was submitted to the UN General Assembly for adoption, where it was adopted by acclamation.<sup>3</sup> The Convention on the Rights of the Child represents a unified and coordinated document, whereas the rights proclaimed in the Convention represent a synthesis of efforts to ensure the child's best possible quality of life. Although the final regulation of children's rights and its attempt to improve the overall position of children are undeniably motivated by a noble idea, it was certainly not easy to implement it.

1 Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990. Available at: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_44\\_25.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_44_25.pdf).

2 Detrick, Doek and Cantwell, 1992, p. 19.

3 Janoff, 2004, p. 170.

**KEYWORDS**

children's rights, convention, children's rights history

## **1. Development of the Idea of the Convention on the Rights of the Child**

In the not-too-distant past, one man believed that children had the same rights as adults and that they should be treated that way. This man dedicated his life to children who had no one but him. Although some people believed that the life of that grown man could outweigh the lives of children, he demonstrated what it meant to have a heart and to see children for who they really are - beings who represent the future and foster hope for a better world. Although he went by the name Janusz Korczak, his birthname was Henryk Goldszmit. He was born in Warsaw on 22 July 1878 or 1879. He was a doctor, educator, writer, thinker, and for many children, a protector, faith and hope for a better tomorrow. Korczak became a legend when he chose to die alongside Jewish children who were sent from the orphanage to the Treblinka death camp. Although he refused to be spared and chose to share the destiny of the children he cared for, the magnitude of this man resides in the 40 years of life and work dedicated to education and care for the children, so immense that it must never be forgotten. Today, the world is indebted to Korczak for the inestimable value of discussions on children's rights. His work and achievements occurred before and after WWI, and this period may be considered pivotal in the development of education and of essential importance for children in general. At this time, education and care for children began to play a vital role in creating a better society.<sup>4</sup> Most of the educational traditions that are considered innovative and "alternative" today, were developed during this period.<sup>5</sup> Korczak completed his medical studies at the University of Warsaw and worked as a doctor at Barson and Bauman Children's Hospital between 1905 and 1912. Subsequently, Korczak was offered the position of orphanage director at the Orphanage for Jewish Children, *Dom Sierot*, where he lived until the end of his life. In addition, he helped to find the Nasz Dom Orphanage for Polish children in 1919. Both institutions relied on systems that were largely based on the development of the children residing there and their social lives. Korczak focused on child psychology and pedagogy, but his findings remain important guidelines to this day. His primary belief, unconventional and ahead of the time in which he lived, was that children deserve the same respect as adults. Thus, he believed that children and adults must become equal and thus be treated equally.

4 Hartman, 2009, p. 13.

5 Ibid.

‘Children are not the people of tomorrow but are people of today. They have a right to be taken seriously, and to be treated with tenderness and respect.’

Korczak’s pedagogical ideas and thoughts on children’s rights are most clearly explained in his most important publication *The Child’s Right to Respect*. The book was first published in 1928, by when Korczak had a sixteen-year experience in running the orphanage. However, in this book, unlike in *Rules of Life* or *How to Love a Child*, he does not refer that much to practice, but to indisputable principles and values, commanding, or better say, demanding that a child has the right to respect. Asserting that children are equal to adults, he emphasised that there are ‘no children – there are only people’, and as such, they have the same civic, societal, and cultural rights.

Even during that era, Korczak fought passionately for children’s rights and believed that it was necessary to implement the Convention. The Geneva Declaration, adopted by the League of Nations in 1924, was disappointing.

‘The lawmakers of Geneva confused obligations and rights. The tone of the Declaration is one of persuasion, not of insistence: it is an appeal to goodwill, a request for kindness.’<sup>6</sup>

For Korczak, children’s rights were mandatory immediately and not in some speculative future. He stressed the need to respect all rights of children, including the right to receive love and respect.<sup>7</sup> In the honour of his 100<sup>th</sup> birth anniversary, UNESCO deemed 1978/79 “the Year of Korczak”. This overlapped with the United Nations’ proclamation of the International Year of the Child. Korczak’s impact on the adoption of the Convention on the Rights of the Child was undeniable and by no means insignificant. His ideas and teachings were highly advanced, although some of his ideas appear to be ahead of their time, even today.

‘The Convention on the Rights of the Child owes much to Poland. The Convention’s vision of the child as a subject of rights is inspired by the writings, work and life of Janus Korczak, a Polish paediatrician, educator and writer who reminded the world that children are not people to be, but people of today with rights and dignity, conscience, feelings, reason and opinions. It was Poland that on the occasion of the International Year of the Child (1979) proposed the drafting of the UN Convention, which was led by Polish lawyer Adam Lopatka.’<sup>8</sup>

The idea of creating the Convention on the Rights of the Child was the next logical step in a direction that had begun a few decades earlier. The adoption of the Declaration on the Rights of the Child led to the need to issue another international document on children’s rights that would define them more precisely and oblige countries to

6 Korczak, p. 34.

7 He particularly elaborated on this idea in his texts: *How to Love a Child* and *The Child’s Right to Respect*. The first one was written during First World War and the second in the 1920s.

8 The Special Representative of the Secretary General on violence against children Marta Santos Pais on the commemoration of the 25th Anniversary of the UN Convention on the Rights of the Child in Warsaw, Poland, November 2014. Available at: <https://violenceagainstchildren.un.org/news/poland-and-convention-rights-child-celebrating-vision-janus-korczak-put-child-dignity-first>.

respect those rights.<sup>9</sup> Almost all member States of the Warsaw Pact criticised the mild tone of the original version of the Declaration and called for another document which underlined the paramount importance of the state.<sup>10</sup> In its report, Hungary expressed its concern about the Draft Declaration, ‘the value of the Declaration will greatly diminish as it is to be feared that its contents will remain only desires, and will not give birth to world-wide, actual protection of the rights of children’.<sup>11</sup> Israel made a similar point stating that ‘the operative part of the proposed General Assembly Resolution should contain (at least) a voeu for conventions to be drafted defining more precisely the obligations to be undertaken by States towards children, both nationally and internationally’.<sup>12</sup> However, Poland insisted that the only adequate solution would be to adopt a binding document—that is, a convention.<sup>13</sup> However, the countries did not see the need to adopt the Convention on the Rights of the Child. This was expected, as several countries were not in the position to guarantee children even the basic right, which is the right to life.<sup>14</sup>

The Holy See also supported active work in the field of children’s rights.<sup>15</sup> In his address at the 34<sup>th</sup> session of the General Assembly of the United Nations, his Holiness Pope John Paul II pointed out that there is no better future for the children of this world but one in which respect for human rights becomes a reality.<sup>16</sup> He further explained in his address in 1984, ‘Concern for the child is concern for that *better future*’. As it was pointed out later, the Church always believed that assisting and investing in the development of children was nothing more than investing in a better future. On the occasion of the Synod of Bishops held in the Vatican in 1980, the Holy See issued a Charter of the Rights of the Family and presented it to the international community. The document was issued to indicate the areas where the rights of a family were not respected and express the immense trust and faith of the Church in the institution of family, ‘*which is the natural community of life and love*’.

The first important step was taken more than 15 years after the adoption of the Declaration, when the UN General Assembly, at its 106<sup>th</sup> session, on 21 December 1976 unanimously adopted the resolution deeming 1979 the International Year of the Child (IYC) to mark the twentieth anniversary of the Declaration of the United Nations.<sup>17</sup>

‘*Convinced* that an international year of the child could serve to encourage all countries to review their programmes for the promotion of the well-being of children

9 Balcerek, 2015, pp. 184 – 195.

10 Lindkvist, 2019, p. 214.

11 Draft Declaration of the Rights of the Child: Comments by Governments, January 12, 1959, E/CN.4/780 (1959), 8, Available at: <https://digitallibrary.un.org/record/639167?ln=ar>.

12 Ibid., p. 9.

13 Ibid., pp. 17-18.

14 Hanyś, 2015, p. 186.

15 Ioannis Pauli PP. II, 1979, Available at: [https://www.vatican.va/content/john-paul-ii/en/speeches/1984/april/documents/hf\\_jp-ii\\_spe\\_19840426\\_unicef.html](https://www.vatican.va/content/john-paul-ii/en/speeches/1984/april/documents/hf_jp-ii_spe_19840426_unicef.html).

16 Ibid.

17 UN General Assembly, Question of a Convention on the Rights of the Child, 20 December 1978, A/RES/33/166, Available at: <https://www.refworld.org/docid/3b00f1764.html>.

and to mobilize support for national and local action programmes according to each country's conditions, needs and priorities ... Aware that, for an international year of the child to be effective, adequate preparation and the widespread support of Governments, non-governmental organization[s] and the public will be required.'

Accordingly, the general goals were defined as those pursued by the IYC. In this regard, among other things, creating conditions and environments where the special needs of children would be considered essential, and those in power to make decisions should lead the way on this matter. The same resolution calls for governments to improve the position of children, specifically the most vulnerable.

Although today, the International Year of the Child is considered as a milestone towards the final adoption of the text of the Convention itself, its importance is far greater. Notwithstanding their initial opposition to the idea of creating a Convention on the Rights of the Child<sup>18</sup> following the declaration, many countries revoked their opposition, and the idea of the rights of the child finally acquired importance in international politics.<sup>19</sup> Examining and analysing the International Year of the Child is important as it offers insights into differences in attitudes and views on the Convention on the Rights of the Child among member countries at that time. The ICY was first declared to centralise the need and awareness of promoting children's well-being.<sup>20</sup> Certain questions regarding children had been completely unaddressed up until that moment, whereas the scale of some other problems had not been evident.

Curiously, at the time the IYC was declared, no one recognised the possibility of any form of international cooperation which could ultimately result in adopting the Convention, a legally binding document dealing with children's rights. Many refrained from using the term *rights* and opted for the concept of the *needs* of the child. Even within the UN Human Rights Commission, the idea of a new Convention on the Human Rights of the Child was not seen as something plausible.<sup>21</sup> Even more surprising was Poland's proposal of the Convention in 1978, in the manner of the IYC, to ensure a legally binding character for the principles contained in the 1959 Declaration. The idea was to adopt the final text of the Convention by the end of 1979, which would assign meaning to the entire idea of declaring an IYC.<sup>22</sup> By proposing the Convention, Poland aimed to shape the way the world perceives children as subjects of their own rights. Its endeavour was to implement the pedagogical idea of Korczak, which was largely successful.<sup>23</sup>

18 Bueren, 1998, p. 13.

19 Holzscheiter, 2010, pp. 151–152.

20 Black, 1986, p. 360.

21 Lindkvist, 2019 p. 205.

22 Letter from Eugeniusz Wyzner to the Director of the UN Division of Human Rights, January 18, 1978. UN Doc. E/CN.4/1284 (1978).

23 Hanyś, 2015, p. 189.

## **2. Warsaw Conference on the Legal Protection of the Rights of the Child**

The declaration of the International Year of the Child prompted the International Commission of Jurists (the organisation with headquarters in Geneva) to contact the International Association of Democratic Lawyers of Eastern Europe in an attempt to mitigate differences among these countries. This was the first time any steps towards cooperation of any type between these two legal associations had been undertaken. Consequently, in January 1979, the Warsaw Conference on the Legal Protection of the Rights of the Child was held at the Palace of Culture and Science in Warsaw, with the participation of the Polish Association of Jurists. The number of Eastern European participating countries was approximately equal to that of Western European countries. In addition to the aforementioned participants, the Conference was attended by many distinguished lawyers as well as representatives of the UN Secretariat for the International Year of the Child, the UN Division of Human Rights and the UN High Commissioner for Refugees.

The Conference resulted in two resolutions: Resolution in Support of the Adoption of the International Convention on the Rights of The Child and Resolution in Support of the Implementation of the United Nations Declaration on the Preparation of Societies for Life in Peace.

In the first resolution, the participants confirmed ‘that mankind should always give of its best to every child’, and in this manner, every child should be provided with the conditions to grow and develop fully, while love, understanding and a sense of safety should be recognised as essential to this process. Moreover, the participants highlighted the duty of adults to protect children in every way possible – above all, from “neglect, cruelty and exploitation”. Child protection represents “supreme moral imperative of society” and to make it real, it was necessary to give these norms ‘the status of norms under international law in the form of an international Convention on the Rights of the Child’. <sup>24</sup>

At the final plenary session of the Conference, participants from 19 countries in Eastern and Western Europe unanimously agreed on several fundamental principles. Specifically, it was determined that the state was responsible for providing support for the family; therefore, ensuring rights for children, in that regard, it needed to establish clear requirements that parents must comply with. Additionally, ‘the right of the child to be consulted about its welfare whenever the child is in a position to express such opinions’ must be respected by both the state and parents. The participants viewed sectors such as education, healthcare, recreation, and child labour as

24 Resolution in Support of The Adoption of an International Convention on The Rights of The Child, taken from: Legislative History of the Convention on the Rights of the Child, Volume I, Office of the United Nations, High Commissioner for Human Rights, United Nations New York and Geneva, 2007, p. 51.

particularly important and hence decided to include more detailed conclusions on the aforementioned children's rights in the Statement of Principles on the Legal Protection of the Rights of the Child.

### 3. The Beginning of the Work on the Convention

On 17 January 1978, the permanent representative of Poland to the United Nations Office at Geneva sent a letter at the behest of his government, addressed to the Director of the Division of Human Rights, proposing that the item "The Question of the Rights of the Child" be included in the agenda at the 34<sup>th</sup> session of the Commission on Human Rights.<sup>25</sup> As stated in the explanatory memorandum, the Government of the Polish People's Republic viewed the principles of the Declaration on the Rights of the Child as essential to improving children's rights worldwide and establishing different forms of international cooperation in this sphere. Additionally, the Government of the Polish People's Republic believed that 20 years after the adoption of the aforementioned Declaration, the conditions were created to undertake further steps in the direction of adopting a legally binding document, that is, the Convention.

This should be based entirely on the principles of the Declaration on the Rights of the Child. Poland's proposal was approved and the Commission on Human Rights included the question of the Convention on the Rights of the Child in its agenda.

The proposal submitted by Poland in 1978 was largely based on the Declaration on the Rights of the Child, considering that the Declaration was approved by many countries. Considering the opportunity to submit this type of proposal, Poland realised that the initiative in regulating issues in the sphere of human rights did not necessarily need to come from Western countries. The proposal was first submitted to the Commission on Human Rights, which passed Resolution 20 (XXXIV) on 8 March 1978<sup>26</sup> asking the Secretary-General to invite Member States, competent specialised agencies, regional intergovernmental organisations, and non-governmental organisations to offer their opinions, observations and suggestions for the draft Convention on the Rights of the Child. In compliance with Resolution 20(XXXIV), the Secretary-General forwarded the Draft Convention to the Member States, competent specialised agencies, regional intergovernmental organisations and non-governmental organisations, and asked them to submit their opinions by 31 October 1978. The feedback varied. Although a number of States enthusiastically welcomed the idea of adopting the Convention and sent messages of support, certain criticisms and objections were also

25 E/CN.4/1284, Letter dated 78/01/17 from the Permanent Representative of Poland to the United Nations Office at Geneva addressed to the Director of the Division of Human Rights. Available at: <https://digitallibrary.un.org/record/556715?ln=en>.

26 E/1978/34; Commission on Human Rights Report on the Thirty-Fourth Session (6 February-10 March 1978) Economic and Social Council Official Records, 1978 Supplement No. 4 United Nations New York, 1978, p. 122., Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G78/077/09/PDF/G7807709.pdf?OpenElement>.

launched, which can be classified into three categories. First, there were those who believed it would not be viable to adopt the Convention in such a short period of time as they believed it would be altogether wrong, since a serious task as this required a much longer period. Different views on when it was realistically possible to adopt the Convention resulted from profound ideological discrepancies in the perception of children's rights. Some representatives, such as those of the United Kingdom of Great Britain and Northern Ireland, proposed that the adoption of the Convention be postponed to consider the results of all the activities planned for 1979 regarding the International Year of the Child. A number of delegations emphasised that the provisions of the Declaration on the Rights of the Child were not applicable; that is, they cannot be included in the text of the future Convention, as the Convention was created 20 years ago, and hence the current conditions and problems differed considerably from those in the past. Poland was adamant that the 1959 Declaration on the Rights of the Child was sufficient; thus, it did not insist on introducing new rights but rather a framework which would ensure that the existing rights of the Declaration would become legally binding.<sup>27</sup> Another type of objections was aimed at the very content of the draft, or the fact that it mostly contained economic, social and cultural rights (the rights considered by most governments as not rights at all, but merely "good social policy"<sup>28</sup>), whereas some other important rights were left out, such as, the rights of children recruited and used in armed conflicts and the rights of minority children. Furthermore, there were objections to how the provisions were formulated as they were not clear or sufficiently specific. Finally, the designated mechanism for monitoring the implementation of the Convention was also criticised; that is, submitting reports solely to the Economic and Social Council was considered as radically insufficient.

Simultaneously, objections were raised to the precision of the wording, and it was demanded that the provisions contained in the text of the Convention be clear and unambiguous. As the President of Sweden pointed out: 'The 1959 Declaration contains certain general statements which do not have their proper place in the operative part of a convention which, being an agreement between States, should lay down concrete, mutual obligations.'<sup>29</sup> However, certain delegations, such as Mauritius, Morocco, Bulgaria, Byelorussian Soviet Socialist Republic and Hungary expressed firm beliefs that the draft presented by the delegation of Poland was a good and solid basis for the drafting of the convention and that by 'the early adoption of a convention on the rights of the child Member States may concretely demonstrate their sincere endeavor for wide and universal guarantee of human rights'.<sup>30</sup> In addition to general suggestions, representatives of the countries took this opportunity to communicate

27 E/CN.4/1324, Question of a Convention on the Rights of the Child: Report of the Secretary-General, Geneva: UN, 27 Dec. 1978. Available at: <https://digitallibrary.un.org/record/6629?ln=en>, pp. 15-16.

28 Cohen, 1989, p. 1449.

29 E/CN.4/1324, 1978, p. 16.

30 Ibid., p. 13.



their ideas and opinions on specific rights which the draft did not contain—rights they believed needed to be incorporated into the text of the Convention. Thus, Barbados requested that the right to life be more precisely defined, that is, ‘How far should this right go? Does the child include an unborn child or a fetus?’ The same question was posed by Portugal and many other States as well, which was one of the most delicate topics brought up during the course of work on the text of the Convention. The Federal Republic of Germany insisted on a solution to the question of ‘the protection of adopted children and children who are brought up by foster-parents’, while the German Democratic Republic stressed the need to formulate ‘principles on equality and non-discrimination in respect of children born out of wedlock’. There were several questions raised by the representatives of certain countries and proposed to be included in the Convention, such as the question of children in occupied territories, children under the apartheid regime, racial discrimination, abuse of children, age of criminal responsibility for children, child labour, children’s right to religious education, the right of children to consultation in matters affecting their well-being, and many others. Furthermore, a considerable number of representatives suggested that it was necessary to focus on the status of children in developing countries suffering from poverty, hunger and malnutrition.

The different views of different countries with respect to the given idea stemmed from the international political environment of the time. At the time of the IYC proclamation, on the political scene, the Cold War was being waged, which led to diametrically opposed Eastern and Western Bloc countries. Therefore, it is not surprising that Poland’s proposal was at that time interpreted as “the Eastern bloc initiative”,<sup>31</sup> which diminished their chances of approval right from the beginning. Although the Convention in its essence was a document which represented a humane endeavour in the first place and the work on the Convention on the Rights of the Child by its definition can only be non-political and as such it is there to unite, not divide, during the work on it, the rivalry between two ideological and political blocs appeared to be more powerful than the development of common values.<sup>32</sup>

Despite substantial criticism by member States, the UN General Assembly made its best efforts to adopt the Convention during the International Year of the Child. Nevertheless, considering that no agreement was reached among the States either on the text of the Convention or when the Convention may be adopted, the Commission on Human Rights decided to form a working group comprising representatives of member States tasked with further work on the Convention, aiming to create a new draft. The working group comprised representatives from twenty-three countries, including the United States, Great Britain and the former Union of Soviet Socialist Republics (USSR).<sup>33</sup>

31 Cohen, 2006, pp. 186-187.

32 Hanyś, 2015, p. 190.

33 Ibid., p. 188.

#### 4. The Working Group

In 1979,<sup>34</sup> working group meetings were held on five occasions when various suggestions were made. After the first year of meetings, on 5 October 1979 Poland submitted a revised text of the Convention (contained in document E/CN.4/1349), which the working group used as its basic working document to build on their further work.

At the beginning of their work, between 1979 and 1980, meetings were held infrequently, and the working group had only a limited number of hours for discussions. These sessions were held simultaneously with the Commission's meetings and open working groups convened by the Commission. This in itself impeded the work on the Convention. In 1981, the Commission on Human Rights allowed the working group to hold sessions several days before the Commission's session and approved the continuation of their work, even during the session. Later, the working group was granted consent by the Commission to hold one-week or, in the final stages, two-week meetings prior to the Commission's session, which considerably facilitated and advanced the work. In addition to these infrequent meetings, attendance was initially poor, revealing that most States did not consider the Convention as an urgent matter. Notably, the antagonism between the East and West at that time hampered collaboration. Western countries often opposed the proposals simply on the grounds that they came from the East, as the proposal of the Convention came from Poland.

African and Asian countries which were not sufficiently or prominently engaged in the activities of the working group, were always concerned that the Convention may overlook the problems they were facing. As it was pointed out, many important organizations were not included in the project during the first years, while simultaneously, the representatives of some of the non-governmental organizations did not wholeheartedly embrace the idea of creating the Convention. The delegates of the Holy See had a relatively positive attitude towards the concept of the Convention. In addition to the discord between the States that approved the draft and those that objected to it, it was rather unusual that certain organisations made no statement, took no position, or expressed no attitude on the given issue, and probably the most peculiar thing was the passive attitude of UNICEF.<sup>35</sup>

The situation assumed a different turn in the 1980s when interest in work on the Convention began to increase. Not only the UNICEF, but also the less developed countries, along with the Islamic States, joined the work of the group which paved the

34 The open-ended working group held meetings on 14, 20, 21, 22 and 26 February and 2 March 1979., E/CN.4/L.1468, Report of the Working Group, Geneva, UN, 12 Mar. 1979, Available at: <https://digitallibrary.un.org/record/6759>.

35 One of the possible reasons why UNICEF acted in such a manner is that this organisation had to steer away from rights that would be conflicted with the competences and mandate of UNICEF whose chief task was to address the needs of children in developing countries. In the end, UNICEF was actively involved in the work on the drafting of the Convention, particularly in the period from 1985/86, helping to ensure public interest in the given project. Lindkvist, 2015, p. 218

way for equal participation of countries from different parts of the world. Initially, the non-governmental organisations appeared rather indifferent to the matter, however, as they realised that no significant contribution to the work could be made on their end, in 1983, they decided to organise an ad hoc NGO supported by the Defense for Children International. This was the first joint effort of human rights organisations and organisations that help children. The ad hoc NGO was an informal association of approximately 30 international non-governmental organizations that are in consultative status with the UN Economic and Social Council. The collaboration between this group and government delegations during the drafting of the Convention represents a unique model for drafting international legislation, which had a powerful impact on the work and the final text of the Convention. As mentioned previously, James Grant, the Executive Director of UNICEF, had been included in the process of finalising the draft since 1986 and thereby additionally contributed to the quality of the overall work. The involvement of international organisations, such as the International Labour Organization, United Nations Educational, Scientific and Cultural Organisation (UNESCO), World Health Organization (WHO), and International Committee of the Red Cross (ICRC), became more prominent.

Interestingly, all decisions were made by consensus, which had its advantages and disadvantages. Although this decision-making process slowed down the work pace, every issue was thoroughly debated until all participants were satisfied with how the text was framed. This facilitated the process of future work, as no additional discussion or debate was required once the question of the Convention was brought before the General Assembly. Aiming to complete the work of the Convention by the 30<sup>th</sup> anniversary of the Declaration (and the 10th anniversary of the IYC), an alliance of non-governmental organisations and various UN bodies began to pursue this goal under a plan known as “Target 1989”.<sup>36</sup> Their joint efforts enabled them to obtain an additional week for drafting during the 1988 session of the Commission.

When the working group was attempting to agree on the text of the Convention, two treaties on fundamental freedoms had already been adopted to regulate different rights: the right to association; the right to religious freedom; and the right to seek, receive, and impart information. Not one provision of these documents limited these rights to adults. Thus, the fundamental freedoms guaranteed by the treaties were also applicable to children, but no awareness of this existed in people’s minds, therefore it was of crucial importance that these rights, that is, freedoms, were finally included in the text of the Convention. Additionally, work on unifying children’s rights helped raise awareness of the necessity of adopting a document of this type. Hence, inspired by the work of the Convention on the Rights of the Child, numerous regional conferences were held during 1988, in addition to those of the working group. In that respect, in Senegal the West African seminar on the draft convention occurred, on the occasion of which, “*Declaration of Dakar*”, was adopted ‘which stressed the need to take account of the cultural values of Africa’. In addition, the *Latin American Meeting*

36 Cohen, 1989, p. 1448.

*in support of the draft convention on the rights of the child* was held in Buenos Aires in September-October 1988,<sup>37</sup> and the Seminar on the Rights of the Child was held in Alexandria (Egypt) in November 1988, where certain recommendations were made and sent to the working group.<sup>38</sup> In addition, the Portugal's representative reported that Portuguese-speaking countries met in Lisbon under the auspices of UNICEF to study a draft Convention on the Rights of the Child, while the representative of Rätta Barnen International reported on the Seminar on the Convention on the Rights of the Child held in Stockholm in October 1988, organised by the Swedish National Committee of UNICEF and Rätta Barnen. Overall, work on the Convention took a long time. As pointed out, in the working group, consensus was required on all issues, which significantly slowed the work. The final text of the Convention was adopted after 11 years of collaboration and joint effort. During this period, numerous proposals by many countries were debated; although it was impossible to incorporate all the suggestions in the text of the Convention, it was of significant use to discuss all the issues considered relevant to the status of children. Some of these issues were delicate in nature, and thus required an extensive period to reach a final agreement. Probably the most difficult to agree on was the question of whether life began at birth, conception, or at some other point. Furthermore, the question of when childhood ends was also brought up. Considering that the question of life and when it began caused major dilemmas (much like it does today) and hindered the process of reaching a consensus, this question remained unsolved in the final version of the Convention. As far as the end of childhood is concerned, the Convention clearly defines it as ending at the age of 18 years, which was adopted by most legal systems. Agreement on the age of attaining adulthood was relatively easy to reach, whereas the beginning point of childhood and questions of whether protection should be provided for children even before their birth were left out. Thus, the issue of protecting an unborn child was not included as an integral part of the Convention on the Rights of the Child, either in Article 1 or Article 6. However, the Preamble of the Convention cited the Declaration on the Rights of the Child, where it is stated that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth*', based on which it may be concluded that the Convention provides protection for both a born and an unborn child. However, the advocates of the "before and after birth" wording, claimed that such a phrase was sufficiently neutral, as it does not deem the right to life to be absolute and beginning at conception.<sup>39</sup> Interestingly, this phrase was only incorporated into the text of the Convention shortly before work on the Convention was completed. In 1980, the representative of the Holy See, as agreed with other delegations, proposed a change to be made to the fifth paragraph by citing the Declaration of the Rights of the Child and

37 Legislative History of the Convention on the Rights of the Child, Vol. I, 2007, p. 197.

38 Ibid., p. 198.

39 Question of a Convention on the Rights of the Child, Report of the Working Group, E/CN.4/L.1542, Geneva, UN, 10.3.1980., §11, Available at: [http://uvalsc.s3.amazonaws.com/travaux/s3fs-public/E-CN\\_4-L\\_1542.pdf?null](http://uvalsc.s3.amazonaws.com/travaux/s3fs-public/E-CN_4-L_1542.pdf?null).

using the words – “before and after birth”.<sup>40</sup> As the Observer of the Holy See pointed out ‘a child and its life existed from the moment of conception...’ and ‘human life shall absolutely be respected and protected from the moment of conception’.<sup>41</sup> However, other delegations opposed this amendment, stating that the stance of the preamble should be neutral on matters such as pregnancy termination. The Holy See and other countries, such as Malta, Senegal and Ireland, succeeded in their efforts, and this formulation, taken from the Declaration, according to which protection is provided for children even before their birth, was incorporated into the Preamble of the Convention. The disagreements about the aforementioned issue, as well as the fears on behalf of the representatives of the High Contracting Parties, were all related to matters of pregnancy termination. Thus, member States were not ready to accept any type of phrasing which would include unborn children as well, fearing it may indirectly refer to the termination of pregnancy, which at that time was allowed in many countries. However, in the Preamble ‘special care and protection, including the respective legal protection both before and after birth’, does not imply the obligation to recognise the right to life for an unborn child, the way it was pointed out at the time of adopting the Convention. Its significance is mostly seen in its support for the existing practice of implementing measures to protect the foetus. Thus, simply the fact that there are laws in the national legal systems regulating the issue of pregnancy termination speaks in favour of the understanding that the foetus is not entirely deprived of legal protection. Considering the intricate differences in opinions on this matter, the working group strived for a solution that could be adopted by each member state of the Convention. Another factor that influenced finalising the decision was the attitude of the *Legal Counsel* that was sent the request by the representative of the United Kingdom for clarifying whether the Chair of the working group could incorporate into the *travaux préparatoires* the following formulation – ‘in adopting this preambular paragraph, the Working Group does not intend to prejudice the interpretation of Article 1 or any other provision of the Convention by States Parties’.

The *Legal Counsel* first remarked that introducing such a formulation would be most unusual, as this would mean that a text contained in the *travaux préparatoires* actually served to deprive the preamble of its standard purpose, which was to explain the purpose of the document more thoroughly. In this regard, it is unclear what type of conclusions States can make. However, as stated in this response, there does not exist ‘a prohibition in law or practice from making an interpretative statement; in the negative sense, intended here as part of the *travaux préparatoires*’.

Thus, in the final text of the Convention, the determination of the (legal) beginning of childhood is up to each national legislator, leading to an unusual epilogue to this question. Thus, Article 1 of the Convention does not regulate the question of when the right to life begins to be protected and guaranteed; the text of the Preamble

40 Legislative History of the Convention on the Rights of the Child, Vol. I, 2007, p. 285.

41 E/CN.4/1988/28, Report of the Working Group on a Draft Convention on the Rights of the Child, Geneva, UN, 6 Apr. 1988, p. 7, Available at: <https://digitallibrary.un.org/record/160660>.

States that protection is necessary even before birth, while preparatory work, in a way, negates the text of the Preamble.

There were vast differences among countries in terms of their traditions, cultures, religions and so on, and these differences were difficult to reconcile. Similarly, it was precisely because of the differences in how they understood religion in a particular state that they strongly opposed Article 14 of the Convention.<sup>42</sup> Thus, the representative of Yemen declared that ‘Under the laws of Yemen, a Muslim child must retain his or her Muslim religion’,<sup>43</sup> whereas the representative of Iraq alleged that ‘his delegation had reservations about Article 14 (1) of the convention, since freedom of religion was incompatible with Islamic law and Iraqi legislation’.<sup>44</sup> However, the representative of Jordan declared the ‘Article 14 of the Convention to mean that the child had the freedom to practice his or her religion, not to change it’, according to the interpretation of her delegation. It is clear that formulating provisions to meet the needs and adhere to the attitudes of all States is practically impossible. However, the text of the Convention represents a broad consensus on what obligations the family, society and the international community should have towards children. Another important aspect is that the Convention managed to set international norms, in a way that ‘Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child’. The Convention was the result of a compromise born out of mutual understanding.

As the work on the Convention was rather time-consuming, some of the initial proposals were adjusted in the final version as the circumstances changed over ten years. For instance, the provision of the revised Polish proposal related to adoption was initially intended to facilitate the adoption of children. However, over the course of years, considerable problems were detected; that is, there were certain illegal activities during adoption procedures in the case of both international adoption and adoption within one State. In this regard, the issue of adoption now required that priorities change – instead of facilitating the process of adoption as much as possible – now it was insisted that, first and foremost, adoption unfolds in the best interest of a child.

One of the most significant problems that certain States attempted to draw attention to during the working group’s entire work was the inequality between developed and developing countries. Thus, the representatives of Senegal pointed out on several occasions that if the Convention had universality as its goal, then it was necessary to consider the actual state of developing countries and the real possibility for them to apply the Convention practically. The delegation of Senegal fittingly asked ‘what

42 It is noteworthy that neither the first Polish draft nor the views received, addressed the issues raised in Article 14 of the Convention. This issue was discussed by the working group in 1983 and the text was adopted in 1984.

43 A/C.3/44/SR.44, Summary record of the 44th meeting: 3rd Committee, held on Wednesday, 15 November 1989, New York, General Assembly, 44th session, New York, UN, 4 Dec. 1989, p. 16. <https://digitallibrary.un.org/record/83689?ln=en>.

44 Ibid.

was the significance of the right to leisure to a starving and sick child?<sup>45</sup> The working group had to consider and affirm the right to life as well as the right to health and nutritional care.

In addition, there was a non-governmental organisation which drew attention to the document (E/CN.4/NGO/230),<sup>46</sup> which, among many other issues, dealt with scientific and technological development, that is, the procedure, which was successfully conducted, which may have an impact on children's rights. The first baby to be born through in vitro fertilisation was born in Great Britain in 1978. As it was stated in the aforementioned document, the assisted reproduction 'raises many legal, demographic, biological, medical and psychological issues affecting human rights'. Considering this, the International Humanist and Ethical Union pointed out 'that it might be timely for the Commission to consider examining this technical advance that is both near to the frontiers of science and involves the rights of the child'.

Finally, another delicate issue that required time and effort to build consensus was the minimum legal age for participation in armed conflict. It was extremely difficult to build consensus, as many States were in favour of prohibiting children entirely from being recruited and used in armed conflicts; thus, they argued that the minimum legal age for recruitment and use of children in hostilities be 18 years. In this regard, a few countries argued that Article 38(3), referring to the protection of children in the event of armed conflict, did not fully reflect their concerns and hence was not in accordance with the protection provided by International Humanitarian Law. Many countries welcomed the efforts initially made by Angola, Austria, India, Mozambique and Nordic countries to increase the minimum legal age for participation in armed conflicts. Clearly, it is beyond comprehension that the same article which stipulated the upper age limit of childhood as 18 years also allowed children aged 15 years to participate in armed conflicts. Although the alleged age was in compliance with Protocols I and II of 1977 to the Geneva Conventions, many countries believed that the Convention on the Rights of the Child was supposed to be used as a means of taking more impactful steps and initiatives towards bringing an end to the forced recruitment and use of children as soldiers and that it 'should offer children better protection than that offered by existing instruments and should be interpreted as a reinforcement of existing standards'. However, although the final text of the Convention retained 15 years as the age limit, the working group Chair referred to the provision of Article 41, implying that nothing in the Convention should affect any provision of either National or International Law that establishes higher standards than those defined in the Convention; thus, the application of this article itself will lead to improved and strengthened child protection systems in such situations.

45 E/CN.4/1985/SR.53/Add.1, Summary record of the 53rd meeting (2nd part), held at the Palais des Nations, Geneva, on Tuesday, 12 March 1985: Commission on Human Rights, 41st session, Geneva, UN, 26.4.1985, Available at: <https://digitallibrary.un.org/record/86894?ln=en>, p. 27.

46 E/CN.4/NGO/230, Written statement submitted by the International Humanist and Ethical Union, a non-governmental organization in consultative status (roster), Geneva, UN, 12. 2. 1979. Available at: <https://digitallibrary.un.org/record/6779?ln=en>.

After the last draft of the Convention was completed—the working group decided that the draft should have a second reading and thus was referred to the governments of all UN member States and international organisations for further scrutiny so that everyone would become acquainted with it and share their thoughts on the text of the Convention before it was officially adopted.

## **5. The Adoption of the Convention on the Rights of the Child**

While working on the Convention, the delegates of several States referred to the opinions of the organisations that worked on the protection of children and young people in the countries represented by the delegates. Sweden was one such example. As the work on the draft was nearing completion, a group of children entered the conference room where the working group held a meeting and handed over the petition on a poster, one meter wide and a few meters long, signed by more than twelve thousand children. The petition supported the Convention, and particularly Sweden's proposal to prohibit the recruitment of children in armed conflicts, that is, the use of children in hostilities. On several occasions, students from Canada listened to debates of the working group. Furthermore, the representatives of several French children and youth organisations indicated active interest in the draft of the Convention. An hour after the UN General Assembly had adopted the Convention on the Rights of the Child, thousands of children from worldwide gathered at the UN headquarters in New York for celebrations.<sup>47</sup> Although initially it appeared that the draft of the Convention was designed to consider the best interests of children living under normal conditions, the final text of the Convention contained provisions aimed at helping children in extremely difficult circumstances. In this regard, they were not forgotten, and protection was guaranteed to children living in conflict zones, children without parental care and children who were victims of abuse. The Convention represents a balance or compromise between the countries of the West and East, North and South, and as such, it considers the interests of children in developed countries, as well as of those in developing countries. Moreover, the Convention aims to develop children through adequate access to information, education, play, and free cultural activities as well as through the right to freedom of thought, conscience and religion. Finally, the Convention aims to ensure that a wide range of children's rights are respected while simultaneously recognising and valuing differences in different systems.<sup>48</sup> Interestingly, even those countries that did not participate in creating other international human

47 Introduction by Adam Lopatka, Chairman/Rapporteur of the Working Group on a draft Convention on the Rights of the Child, *Legislative History of the Convention on the Rights of the Child*, Vol. I., 2007.

48 The Secretary-General, Mr. Perez De Cuellar in: A/44/PV.61, Provisional verbatim record of the 61st meeting, held at Headquarters, New York, on Monday, 20 November 1989: General Assembly, 44th session, New York, UN, 28 Nov. 1989, pp. 9-10.



rights instruments, participated in the work on the Convention, which confirms the universal ratification of the Convention.

The Assembly's Convention has far-reaching implications. This is the first document to recognise that a child is an independent individual<sup>49</sup> and not simply a member of a family or group.<sup>50</sup> In addition, the Convention is equally aware of civil and political rights, and economic, social and cultural rights. Although it is difficult to ascertain whether some rights outweigh others, one of the most important provisions is that it obliges member States to respect all rights contained in the Convention without any discrimination. Ultimately, the Convention allows for the situations where children are the main protagonist, such as adoption, custody, the right to personal identity, but also many others.

The Convention on the Rights of the Child is unique among the documents regulating human rights. The day the Convention was signed the record was set for the number of signatory countries, although the Convention itself came into force six months later, which is faster than any other signed document that has come into force.<sup>51</sup> The most interesting aspect which makes the Convention on the Rights of the Child unique is that it was ratified by 191 countries. To date, this remains the only document regulating human rights that has had many ratifications in such a short period. Seven years after it was opened for signature, the only countries that did not ratify it were Somalia and the United States.<sup>52</sup> Although it was impossible to meet the requests and adopt the proposals of each country, a solution was achieved by adopting two optional protocols for the Convention. Those countries that believed it was necessary to provide a higher level of protection to children acceded to the optional protocols adopted within the Human Rights Commission: the Optional Protocols on the involvement of children in armed conflict (adopted by the General Assembly on 25 May 2000; came into force on 12 February 2002); on the sale of children, child prostitution and child pornography (adopted by the General Assembly on 25 May 2000; came into force on 18 January 2002) and on a communications procedure (adopted by the General Assembly on 19 December 2000; came into force on 14 April 2014).

49 Norway, A/C.3/44/SR.37, Summary record of the 37th meeting: 3rd Committee, held on Thursday, 9 October 1989, New York, General Assembly, 44th session, New York, UN, 15. 11. 1988, Available at: <https://digitallibrary.un.org/record/83697?ln=en>, p. 5.

50 Finland, A/C.3/44/SR.38, Summary record of the, 38th meeting: 3rd Committee, held on Friday, 10 November 1989, New York, General Assembly, 44th session, New York, UN, 20. 11. 1989, Available at: <https://digitallibrary.un.org/record/83696?ln=en>, p. 5.

51 Cohen and Kilbourne, 1998, p. 634.

52 Somalia took an important step in 2015 by becoming the 196th country to ratify the Convention on the Rights of the Child.

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