

Covering Letter from the Chair

October 7th, 2005

Dear Colleagues

You will recall I indicated, at the end of our meeting in August, that I would now prepare a “Chair’s text” reflecting our work to date, streamlining the draft Convention in light of that, and making suggestions as to how some of the differences of view might be bridged. That text has now been completed, and I am submitting it to you.

Let me say at the outset that I have not attempted a wholesale rewriting of the draft Convention. We have made extremely good progress towards coming up with generally agreed language in many areas, as reflected in the Annexes to our meeting reports, and in those instances my approach generally has been not to tamper with that language. I have not tried to reinvent the wheel. Otherwise we will be starting all over again, and not building on the considerable progress we have made. After all, the text that we have to end up with is one that the Committee considers best, not what the Chair considers best, and that has been my fundamental guiding principle.

My approach has been to work through detailed notes of the discussion, which I have compared with the working group text and the texts that we came up with in the Annexes to our reports, particularly where various alternatives have been proposed, to see how (and if) particular differences can be bridged. You will recall that there were also many instances where we deferred issues with the intention that they are taken up elsewhere, and I have carefully tried to ensure that nothing has been lost. The other challenge has been to reduce the amount of duplication and detail, although I have been generally cautious in reducing detail where we appear to have generally accepted text that is detailed.

In the course of this work I have also referred to and drawn on the work of the facilitators, to whom I should once again like to express my appreciation. As you know, though, the facilitators’ texts are at diverse stages of refinement - many have not yet been reported back and discussed in detail in the full committee meetings or still leave many issues outstanding— so I have been cautious in drawing on those facilitator’s texts where there has been only a preliminary discussion of them. I have also kept in mind that in some instances it was quite specific issues that were referred to the facilitators’ groups for further work. It goes without saying that facilitators’ texts or revised

facilitators' texts that can command a greater level of support than our other texts, can contribute significantly to advancing our work.

Finally, by way of general comment, let me say that the Chair's text is a good-faith attempt to come up with a text that can bring us closer to general agreement. I hope that it will therefore be the basis for the next stage of our work, when we move to negotiations in January.

Colleagues therefore need to come to the January meeting prepared to negotiate on the basis of this text. In this respect, let me repeat the mantra that "the perfect is the enemy of the good". I would urge colleagues not to come to the January meeting with wholesale proposals for new language. We need to move past that stage. Please consider the Chair's text on the basis of what you can accept, not what you would prefer. Or, as some colleagues put it during our last meeting, "what you can live with, not what you love." Only by taking this approach will we be able quickly to conclude our work.

Accordingly, at the January meeting, I will be asking colleagues whether there is anything in the attached text that they absolutely cannot accept. Any suggestions for improvement or change that do not quickly draw a consensus will have to be forgone, or we will find ourselves engaged in a protracted process that has no end.

I would also remind colleagues that drafting issues can be taken up in the Drafting Committee that we will need to establish at the final stages of our process. Accordingly, we should not now be taking up time with purely drafting issues.

You will recall that at the end of our last meeting we had a discussion of the **structure** of the Convention. As we are now moving to a new stage of our work, I have therefore restructured it reflecting as best I can that discussion. I have also separated the Convention into four parts, consistent with the approach in other Conventions. I have not separated Civil and Political rights from Economic, Social and Cultural rights, as there were strong views that this should not be done. For ease of reference I have attached two charts comparing the old and new structures.

For the first time in our draft convention, I have included draft final clauses. These are drawn primarily from CRC and CEDAW. As these are purely technical provisions, they should not create difficulty.

I hope that the following commentary will assist colleagues in identifying some of the changes and suggestions I am making regarding specific Articles, and the reasons behind them. References to AHC4, AHC5, AHC6, mean the reports of the 4th, 5th, and 6th Sessions respectively of the Ad Hoc Committee. References to CRC are to the Convention on the Rights of the Child, CEDAW is

the Convention on the Elimination of All Forms of discrimination Against Women, ICCPR is the International Covenant on Civil and Political rights, IESCR is the International Covenant on Economic, Social and Cultural Rights, and CAT is the Convention Against Torture.

Preamble

Although there has not been a very detailed discussion of the Preamble, I have made some changes on the basis of the discussion so far. They relate to (e), (h), (i) and (o). I should note that I have not expanded the list in (m) as had been suggested by some, because the current list is identical to other treaties, and colleagues may therefore wish to retain it on that basis. The numbering of preambular paragraphs ((a), (b), (c)...etc) has been retained the moment for ease of reference, but this will be removed in the final Convention. As you know, it is the usual practice to finalise the Preamble last. I do not expect that the Preamble will prove controversial.

Article 1 - Purpose

This has been revised in light of the discussion. We will later need to consider, however, whether we need this Article *at all*. That depends on what we do with the title of the Convention, because the existing title actually contains the purpose of this Convention i.e. the “protection and promotion of the rights and dignity of persons with disabilities.” Article 1 may therefore be repetitive at least, and at worst potentially confusing if it sets out a “purpose” that is different from that contained in the title. I would also note that it is not the practice in other treaties to have a “purpose” provision, although some have a “scope” provision.

Article 2 - Definitions

I have slightly reordered the language in the definition of “Communication” so as to make it consistent with the order we agreed in Article 13 (which is now Article 21).

I have moved several definitions from the body of the Convention into this Article (see “Discrimination on the basis of disability” and “Reasonable accommodation”). Those definitions have had detailed discussion in the context of the relevant Articles.

We have not discussed a definition for “Accessibility”, and I suggest that we do not need one. We have a separate Article on this.

Views are divided as to whether it is necessary to define “Disability” and “Persons with disabilities”. I tend to think that we don’t, as this will be very difficult, and there is a risk that we will unintentionally exclude someone.

I should note that we had not been consistent throughout the draft convention in how we referred to persons with disabilities. In some instances we had referred to “all” persons with disabilities, in others not. I have deleted the word “all” from those provisions where it was found, which is consistent with the approach in other Conventions.

The definition of “Discrimination on the basis of disability” did not include the words “on the basis of disability”, so I have included that key element. I would also note that we had not been consistent in our usage of this term throughout the draft Convention; in some places we had used “on the basis of disability”, in others places we had used “on account of disability”, for example. I have made the text consistent, so that it uses “on the basis of disability”.

I have suggested a definition for “Universal design” and “Inclusive design”, which I think would be useful as these are not commonly understood concepts. The definition I have suggested is taken from the website of the North Carolina State University Center for Universal Design.

I have also suggested the inclusion of a definition of “National laws of general application”, and similarly, “national laws and procedures of general application”, and ‘national laws, customs, and traditions of national application’. The background and explanation for this is given under Article 23 (below).

Article 3 – General Principles

This has been revised, with a slightly reworded (c), and two additional paragraphs (f) and (g), which received a good level of support.

Article 4 – General Obligations

A recurring issue that came up in the discussion of many Articles was the inclusion of language relating to the progressive realization of economic, social and cultural rights. While the principle was accepted, it is repetitive and often difficult to include such language in individual Articles, since many of them contain a hybrid of civil and political, and economic social and cultural rights, including non-discrimination. I think there was general agreement to include a generic provision in Article 4 to cover this matter, and this is included as paragraph 2. I have drawn on the language from the facilitator’s group, and CRC Article 4 that takes a similar approach, and have also made it clear that non-discrimination is not for progressive implementation. You will recall that the latter point is a very important one for some delegations, and when I specifically put it to the meeting no one disagreed with it (see also report of AHC4, Annex II, para. 7).

By including this generic provision in Article 4 there should be no need to repeat the matter of progressive implementation in any of the subsequent Articles, which would be both messy and complex for the reasons noted above.

There were some questions raised in the facilitator's group about including the phrase "within their jurisdiction" in the chapeau to Article 4(1). As it causes difficulties for some, I suggest we delete it, as clearly States Parties cannot take action where they have no jurisdiction.

I have consolidated into paragraphs (1)(f) and (g), the elements contained in (old) draft Articles 13(d), 19(2)(e), 20(c), and 21(f) (see AHC4, Annex II, para. 9).

I have consolidated into paragraph 3, the elements contained in (old) draft Articles 5(2)(d), 6(c), 18(c), 19(2)(g) and 21(m) (see AHC4, Annex II, para. 10).

In both instances I have endeavoured to ensure that no elements have been lost.

You will recall that we had brief discussion of the need for a provision stipulating non-derogation from existing rights, and there was a suggestion that it might be incorporated in Article 4. I have accordingly incorporated such a provision, which is drawn from CRC Article 41 and CEDAW Article 23, into paragraph 4.

The draft Article is otherwise essentially unchanged from the Working Group text. You may recall that there was some discussion in the facilitator's group about the possibility of restructuring this Article, but that proved quite complex and did not progress. As we should now be focusing on substance, I believe that the working group structure for this Article should be generally acceptable, and my notes of the meeting support that.

I hope, therefore, that we can rapidly conclude this draft Article.

Article 5 – Equality and Non-Discrimination

This Article was considerably refined in the facilitator's group and in the main meeting. The text is now well developed.

As noted above, I have moved the definitions of "discrimination on the basis of disability" (AHC4, Annex V, paras. 22 and 23) and "reasonable accommodation" (AHC4, Annex V, para. 27) from this Article 7 to Article 2 on definitions.

As regards paragraph 2(a) of the Working Group text, some delegations proposed including denial of reasonable accommodation within the definition of "discrimination", on the basis of CESCR General Comment no.5. This would lead to a problem if "discrimination" is excluded from the scope of progressive

realization in Article 4(2), because in practice many States are unlikely to be able to provide reasonable accommodation immediately. I would also note that including denial of reasonable accommodation within the definition of “discrimination” was opposed by some delegations for other reasons, including because it would lead to uncertainty and lack of clarity.

There were proposals to expand the listing in paragraph 2(b) of the Working Group text, but these were opposed by some delegations as too detailed.

As regards paragraph (3) of the Working Group text (which does not appear in any other core Human Rights treaty and on which a consensus is clearly not possible), I suggest that the existence of the Human Rights Committee’s General Comment relating to Article 26 of the ICCPR should in itself go some distance to meeting the concerns of those delegations supporting this Working Group paragraph.

To avoid the “special”/“positive” measures dilemma, I suggest we delete the adjective as was supported by many delegations. This is not an issue of substance. I have suggested an abbreviated formula for this paragraph as a whole. By including only measures that are *necessary* to accelerate or achieve de facto equality, I hope we can meet the concerns of various delegations regarding this paragraph.

I expect, therefore, that this Article should be concluded quickly.

Article 6 – Women with Disabilities

You will recall that discussion was continuing under the auspices of the facilitator as to the need for a separate Article dealing with women with disabilities, or whether this could be covered in other parts of the draft convention. As this fundamental issue has not been resolved, Article 6 is contained in square brackets without text.

There was clearly agreement that disabled women are at a particular disadvantage and vulnerability and that their situation needs to be appropriately covered by the Convention. The divergence amongst states on this issue is mainly with respect to placement rather than substance.

I would urge delegations to come to the next session of the Ad Hoc Committee with flexible instructions which would enable them to reach agreement on this, whatever the outcome, so that they are able to join in whatever consensus appears to be emerging. This will then enable further discussion to take place, and for us to agree at the next meeting on the appropriate way of dealing with this and also on appropriate language. We cannot afford to be held up by such differences of approach.

Article 7 – Children with Disabilities

Here we face a similar issue, i.e. whether there should be a separate Article on children with disabilities, or whether the particular disadvantages and vulnerabilities of children with disabilities should be dealt with in a separate Article or alternative approaches. The Working Group text for this Article is based on Article 23 of the CRC. There has been an argument that the inclusion of a specific Article in the CRC on the rights of children with disabilities has to some extent been counterproductive, because States parties have normally reported on compliance Article by Article; i.e. due to the specific CRC Article on children with disabilities there has been a tendency not to mainstream disability throughout the CRC. At the same time, it is clear that inclusion of Article 23 has been influential and useful in highlighting and identifying issues faced by disabled children.

That said, the wording for Article 7 as found in the Working Group text did not receive a great deal of support, and it is clear that many delegations have problems with it. It did not receive general agreement as a good basis for our future work. I have therefore treated this Article the same way as Article 6, and left it blank (see also AHC6, Annex II, para. 27.

My general comments relating to Article 6 apply equally in respect of Article 7. I would urge colleagues to come to the next session with flexible instructions that would enable them to accept either a separate Article on children with disabilities or the alternative approaches, so that they can join in an emerging consensus. We cannot afford to be held up on this important issue because of disagreement as to the modalities for handling it

Article 8 – Raising Awareness Regarding Disability

The text has been redrafted to reflect the outcomes of the discussion in the committee meetings and in the facilitator's group. I have however deleted the phrase "and in a manner consistent with the overall purpose of the Convention" from the end of paragraph 1(c) (see AHC4, Annex III, para. 14), as it has no clear meaning in this context. As noted above, the previous paragraph 2(d) has been moved to Article 4(3).

There was concern that paragraph (2) of the working group text was overly prescriptive, and many delegations proposed the merging of paragraph (2) into paragraph (1). Others however were concerned that substance might be lost, as they deal with different concepts. I would therefore suggest that a compromise might be to use a slightly softened chapeau to this subparagraph.

I therefore hope that this draft Article can also be rapidly concluded.

Article 9 – Accessibility

In paragraph 2(d), I suggest we can use “ensure”, as the chapeau contains the qualification of “appropriate measures”.

I have inserted some additional subparagraphs into paragraph 2, reflecting the discussion at AHC5 (see Annex II, para. 89). Subparagraphs (f) and (g) are taken from the facilitator’s text on Article 13 (now 21) the relevant provisions of which it was agreed to take up under Article 19 (now 9). Similarly, the new subparagraph (h) is taken from Article 13(e) of the Working Group text (see AHC5, Annex II, para. 82). I would note that Article 13(j) of the facilitator’s text is now included in Article 4(1)(f)(ii).

Article 10 – Right to Life

I suggest that the language previously proposed in AHC5, Annex II, para.11, best reflects the discussion of this Article. I hope that we can quickly reach agreement on it.

Article 11 – Situations of Risk

You will recall the discussion relating to the need for the protection of persons with disabilities in situations of risk to the general population. I hope that the language that I proposed at AHC5 (see Annex II, para. 12) drawing on CRC Article 38(4), which is replicated in the attached text, can quite quickly provide a basis for consensus.

Article 12 – Equal Recognition as a Person before the Law

The main issue here was the legal capacity of all persons with disabilities. This particular issue clearly requires further consideration by delegations, and I have left square brackets reflecting this.

I would ask all delegations to come to the next session prepared to resolve this issue. We need to take into account the different legal systems, but I hope that delegations can be as flexible as possible, bearing in mind that guardianship or substitute decision-making for persons with disabilities has led to many injustices in the past. I hope it will be possible to resolve this matter by distinguishing between (1) the possession of legal capacity by all persons, and (2) the exercise of that capacity, which may require the provision of assistance in some circumstances. I note that CEDAW Article 15(2), for example, uses the term “legal capacity” and in the same paragraph refers to “exercising” that capacity; it does not refer to “capacity to act”. I therefore suggest that we stick to the term “legal capacity” as used in CEDAW, which would mean deleting the language in the last set of square brackets in the chapeau to paragraph 2.

As regards paragraph 2(b), you will recall that there was no agreement on the necessity for specific language on this in light of the provisions of 2(a) on assisted decision-making (AHC5, Annex II, para. 22). Paragraph 2(a) clearly envisages a wide spectrum of “assistance” depending on the circumstances of each case, which in the view of some delegations may make paragraph 2(b) redundant. I would therefore ask colleagues to consider whether 2(b) might not be deleted, and in the meantime I have placed square brackets around it, reflecting disagreement over the necessity for it.

Article 13 – Access to Justice

I have included this as a separate Article dealing with Access to Justice, as was supported by a number of delegations. As it is quite a brief Article, however, you may wish to consider whether its elements might not better be left in Article 12.

You will recall from AHC5, Annex II, para. 15, that that it was agreed that the issues in (old) Article 9(d), (e), and (f) of the Working Group text are to be addressed in other Articles of the Convention. I considered including them in Article 13, but they do not really fit here. Accordingly I have combined these elements and left them in Article 12.

Article 14 – Liberty and Security of the Person

You will recall that there was extensive discussion around the need for a qualifier such as “solely” or “exclusively” before the words “on disability”, in paragraph 1(b) (see AHC5, Annex II, para. 27). Some delegations strongly supported those words, but many opposed them. I suggest that the third alternative in square brackets in AHC5, Annex II, paragraph 28, should be an acceptable compromise, and think we came close to that point in our discussions. I have revised the text accordingly, and urge all delegations to accept this outcome.

In the chapeau to paragraph (2), I suggest we remove the square brackets, as there was considerable support for the bracketed language.

In paragraph 2(b), the word “promptly” is found in other Conventions (see, for example, ICCPR Articles 9(2) and 14(3)(a), and CRC, Article 40(2)(b)(ii)), and was widely supported in our discussions, and I suggest that we also follow that approach here.

I also suggest that we remove the square brackets in paragraph 2(c)(i), as I don’t think that the bracketed language creates major problems for delegations. I hope that we can also reflect the provisional agreement on paragraph 2(c)(ii) by removing the square brackets around it. I do not believe it should cause major problems for delegations.

You will recall that there was general agreement that there should be a provision for compensation for persons with disabilities in the event of an unlawful deprivation of liberty. I suggest that in paragraph 2(d) we draw on both of the square bracketed provisions relating to this, and ICCPR Article 9(5), and have included language accordingly.

Article 15 – Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

In paragraph 2, I suggest that we follow the formula used in the Convention Against Torture, Article 2(1), which refers to “legislative, administrative, judicial or other measures” and was supported by a number of delegations. It is not necessary to amplify it further, and doing so could create interpretive difficulties as against the CAT.

As regards the matter of monitoring of facilities and programmes (AHC5, Annex II, paragraph 42), I should note that the Committee subsequently incorporated this into Article 12(3) (AHC5, Annex II, paragraph 53 refers).

Article 16 – Freedom from Exploitation, Violence and Abuse

Given the difficulties we experienced in getting agreement as to the various forms of violence and abuse that should be listed, I suggest that we stick with the generic phrase “all forms of exploitation, violence and abuse” in paragraph (1). However, should colleagues insist that some form of listing is required, I suggest we use the listing in CRC Article 19(1).

Many colleagues gave considerable emphasis to the inclusion of “exploitation” in this Article. I therefore suggest that “exploitation” be included in the title, and that it be coupled with “violence and abuse” where that phrase appears throughout the Article.

In paragraph (2) I suggest that we remove the square brackets and also include reference to families and caregivers, since the latter part of that paragraph (i.e. providing information on how to recognize instances of violence and abuse) would logically seem to be directed at families or caregivers rather than persons with disabilities themselves. I would note that there was also considerable support during our discussion to including a reference to families and caregivers here.

In paragraph (3), the major issue was what facilities and programmes should be covered by it; there was concern that its scope should not be so broad as to cover banking facilities, for example, and the facilitator’s proposal seems to cover this well.

In paragraph (4), most of the language in square brackets was well supported in our discussion, although it was questioned whether including “worth” was appropriate in this particular context, and I suggest it should be deleted.

“Protection services” have been removed from the end of paragraph (5), since they are already covered in paragraph (4).

Article 17 – Protecting the Integrity of the Person

In paragraph (1), the qualification of “physical and mental” integrity was not strongly supported, and it could imply a right of intervention that does not otherwise apply. I therefore suggest we delete it.

Paragraph (4) is in square brackets, as there were quite strong differences of view as to whether it was necessary to include it.

Article 18 – Liberty of Movement

You will recall that there was agreement that language on liberty of movement should be included (see AHC6, Annex II, para. 76). There was no working group text on this. I have therefore included a more abbreviated version of the Kenyan proposal, which drew some general support from several other delegations but was not discussed in detail.

Article 19 – Living Independently and being included in the Community

In the chapeau, I suggest we use the word “facilitate”, which is then subsequently balanced by the stronger word “ensuring”, and that we use both “inclusion” and “participation” since both words were supported by quite a wide range of delegations.

As regards subparagraph (a) there appeared to be no difference of view over substance – i.e. that persons with disabilities should not be obliged to live in a particular living arrangement including institutions – but some delegations were concerned that saying that persons with disabilities are not obliged to live in an institution implicitly approved of the use of institutions per se. I therefore suggest that we not specifically refer to “institutions” here, as this is included in the generic term “particular living arrangement” anyway.

Article 20 – Personal Mobility

Although there was initially support for merging (old) Articles 19 and 20, this weakened as the discussion went on and several delegations subsequently supported the retention of a separate Article 20 as it deals with individual mobility rather than accessibility. While there was clearly agreement that the duplication between the two Articles should be removed, there was concern that elements might be lost in a merger of the two. I have therefore retained a

shorter Article 20, which contains those elements not already in Article 19 (now 9). If colleagues do want to combine both Articles that should not be too difficult.

I would note that training, which is dealt with in paragraph (c), comes up in a great many places throughout the Convention (see, for example, Articles 8, 9, 24, 25 and 26). I have not attempted a consolidation of the training provisions in Article 4, as some of them are quite specific, but colleagues might want to bear that possibility in mind).

Article 21 – Freedom of Expression and Opinion, and Access to Information

A wide variety of views were expressed regarding the various options in square brackets in paragraph (a) (see AHC5, Annex II, paras. 73-75). On the one hand it was considered desirable to ensure the widest provision of official material to persons with disabilities in accessible formats; on the other hand there was recognition that an unreasonable burden should not be placed on governments. I have suggested a compromise, which needs to be read carefully in light of the chapeau, and also the subsequent subparagraphs.

The elements contained in the previous paragraph (c), now appear to be adequately covered in Article 24.

The former paragraph (d) has been consolidated with similar provisions elsewhere and moved to Article 4 on general obligations (see AHC5, Annex II, para 81.)

I have moved the former subparagraph (e) to Article 9(2)(h), as there was quite a lot of support for doing this (see also AHC5, Annex II, para 82).

In the former subparagraphs (f) and (g) (now (c) and (d)), there was considerable support for “urging” as the middle ground between “encouraging” and “requiring”, and I hope we can quickly agree on this. I have also included reference to the Internet here, as there was strong support for this. (I have also included the Internet in 9(2)(f), as we are there dealing with technology whereas in Article 21 we are dealing more with content).

There was no agreement on the inclusion of a subparagraph regarding a national sign language, and I have therefore bracketed that provision.

Article 22 – Respect for Privacy

I have added a new paragraph dealing with privacy of medical information, which we deleted from Article 21 (now 25) on Health on the basis that it needed to be covered here (AHC6, Annex II, para 84 refers)

Article 23 – Respect for the Home and the Family

This Article raises a general issue, in this instance relating to personal and family issues that also comes up elsewhere. We have all agreed on numerous occasions during the discussions, that this Convention is not intended to pronounce on, change or attempt to influence the general rules that apply to the population as a whole in different countries and cultures on sensitive questions such as (for example) family planning issues (see AHC5, Annex II, paragraphs 94, 99, 100, and 110; AHC6, Annex II, paragraph 85).

What the Convention is intended to do on such issues is simply to ensure that persons with disabilities are treated no differently from others in the population. These provisions are essentially just non-discrimination clauses. In other words, on these issues, people with disabilities should be subject to the same values, rules and customs that generally apply to the whole population, and not a different set of standards. That understanding would allow each State Party to retain its own distinct values, traditions and cultures, and continue to determine its national laws and policies on such issues for itself.

There have been various proposals for amendments to achieve this understanding, such as to make these provisions “subject to national law/customs/traditions” etc. The problem with such an open-ended formula, however, is that if national law/customs/traditions permit persons with disabilities to be treated differently, then we are potentially legitimising or recognizing such differentiation of treatment. We therefore need a different formula. The phrase “national laws, customs, and traditions of general application” might be one approach. If we understand the phrase to mean “national laws, customs and traditions of application to society as a whole and which do not differentiate in respect of persons with disabilities” then the ability for States Parties to continue to determine their own standards is retained, and the purely non-discrimination approach of the provision is made clear.

When this issue has been raised during the discussions there has been no objection to the concept. I would invite delegations, therefore, to consider this phrase that, as you will have seen, I have defined in Article 2 to ensure that the point is adequately covered.

I would also note that in some instances the point can be captured by using the phrase “on an equal basis with others” as we have in the chapeau of paragraph 1 of this Article. You will recall that this was the intention behind adding this phrase into the chapeau, although there is now another proposal in square brackets to repeat the point in a different way in paragraph 1(a) and (c).

In paragraph 2, I suggest that we use the same formula used in Article 16(1)(f) of CEDAW.

In paragraph 3, as suggested earlier we should be using the same phrase consistently throughout the Convention, and therefore should say here “on the basis of disability”

There was discussion regarding the best placement of paragraph 4 (see AHC5, Annex II, para. 122), and I have included it in Article 8(2), which deals with combating negative perceptions and stereotypes.

Article 24 - Education

The report on this Article in AHC6 has a detailed account of the discussion in the committee meeting, and also the text discussed. The text for Article 17 (now 24) was subsequently much further developed in several meetings that the facilitator was able to convene on this Article. Although there was not time for this to be reported back in detail and discussed in the committee meeting, my sense is that the text from the facilitator’s group is regarded by many delegations as a considerable improvement. As the main changes are structural rather than substantive, I have therefore adopted this text as the basis for Article 24.

You will note that the promotion of the linguistic identity of the Deaf community (paragraph 3(b)) is already covered in Article 30(4). I have left both in for the time being, although colleagues might like to reflect on the most appropriate place for this reference.

Employing teachers with disabilities has come up on several occasions, not least by way of role models, and I have included this in paragraph 4.

Article 25 - Health

You will recall that there was general agreement that draft Article 21 (now 25) should be split into two, dealing separately with the right to health in Article 21 and habilitation and rehabilitation in Article 21bis (now 26) (AHC6, Annex II, para. 77). I have therefore drawn on the facilitator’s text for this Article and for Article 26, as the facilitator’s group was able to refine this over several meetings.

I suggest that in the chapeau we use “recognise” since this is found in other conventions such as ICESCR (Article 12(1)) and CRC (Article 24(1)). It is not necessary to reaffirm that States Parties shall ensure that no person with a disability is deprived of that right – we have not done that with regard to other rights elsewhere in the text. As regards the issue of “free” or “affordable” health services, I note that General Comment 14 on ICESCR Article 12 refers to “affordability” of health services, and suggest we use that word. In some individual cases, of course, for health services to be affordable they will actually

need to be free. I note that the issue of affordability and cost also arises in some other Articles (see, for example, Article 28(2)(a)).

In paragraph (c), it should not be necessary to use “endeavour to”, as this obligation is already qualified by the phrase “as close as possible.”

Health and life insurance has been moved from Article 28 into paragraph (e), and I have attempted a formula that I hope will bridge the difference of views over this.

Article 26 – Habilitation and Rehabilitation

As we have no working group text for an Article specifically on habilitation and rehabilitation I have drawn on the facilitator’s text, relevant elements from the working group text on health, and also the EU proposal which received support, so as to ensure that no key elements are lost. Although this text is new, I hope that it will not need extensive discussion, as the key elements are included.

Article 27 – Work and Employment

Although the Committee considered that paragraph (g) could either be merged with paragraph (c) or deleted and covered under Article 21 bis (now 26) (AHC6, Annex II, para. 106), it does not seem to fit very well in either Article. Accordingly I have left it in this Article (now paragraph (h)). The first part of paragraph (j) of the working group text has been moved to Article 8, as paragraph 2(a)(iii) (see AHC6, Annex II, paragraph 109).

Article 28 – Adequate Standard of Living and Social Protection

I suggest that we use the term “social protection”, which is very broad, as defined in the Report of the Commission for Social Development, 39th Session, 13-23 February 2001, doc. E/CN.5/2001/2. “Social protection” is also the term used in Articles 23(3) and 25(2) of the Universal Declaration of Human rights. Delegations appeared to be supporting the broadest term in this respect (AHC6, Annex II, para. 112). I hope we can resolve the issue relating to access to clean water in the manner proposed in the text, as this has become a distraction from other issues (I would draw colleagues’ attention to CEDAW Article 14(2)(h) and CRC Article 24(2)(c)).

As noted above, I have included a provision on health and life insurance in Article 25 (see AHC6, Annex II, para. 128), but have rephrased it so that it rules out discrimination in the provision of health and life insurance, but would not rule out actuarial considerations relating to particular disabilities which was a concern of some delegations (see comment under Article 25).

Article 29 – Participation in Political and Public Life

In paragraph (a)(ii), I have deleted the reference to “in accordance with law”, since this is superfluous.

The chapeau to (b) has been redrafted (and, I hope, clarified). I would note that equality between men and women has now been included as a general principle in Article 3.

Paragraph (c) of the working group text has been consolidated along with other similar provisions into Article 4(3).

Article 30 – Participation in Cultural Life, Recreation and Sport

In paragraph 2 I suggest we retain the reference to “intellectual property rights” which is broader – the qualifications later in the provision (“do not constitute an unreasonable or discriminatory barrier”) circumscribe its application, as does making it subject to international law.

In paragraph 5(c) and (d) there was duplication in respect of sporting activities, and I have removed them from the former.

Article 31 – Statistics and Data Collection

I have included the streamlined text from AHC4, Annex IV, para. 18, together with some language taking up the concept of compliance with ethical principles of statistics.

Drawing on discussion in the facilitator’s group, I have also added a new paragraph 2 dealing with the usage of this information.

This draft Article should be rapidly concluded.

Article 32 – International Cooperation

There is a large group of countries in favour of a separate Article on international cooperation. A particular concern of those countries with reservations about a separate Article is that international cooperation (or the lack thereof) might be used as an excuse by states for not implementing the Convention. We could overcome this by including language along the lines of “The provisions relating to international cooperation do not in any way derogate from the obligations of States to fulfill their obligations under this Convention.”

You will recall that at the end of our August meeting, Mexico reported back on some very useful discussions it had held, including “Principles and Elements for a provision on International cooperation”. This seemed to be well received, and I do hope that it will provide a basis for rapid progress on this Article.

Articles 33 and 34 – National Implementation and Monitoring and International Monitoring

There was general agreement that we should include national monitoring and international monitoring in the text, and this will need to be discussed further at our meeting in January. I would ask colleagues to come to the January meeting with flexible instructions, as we will need to discuss specific text. As you know, a number of proposals have been made, some of them quite comprehensive.

I look forward to meeting with colleagues, and making considerable progress, at our next meeting in January. I expect the dates and duration of that meeting to be decided shortly by the Third Committee.

Yours sincerely

Don MacKay
Chairman, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities

OLD STRUCTURE

1	Purpose	(same)
2	General principles	(now 3)
3	Definitions	(now 2)
4	General obligations	(same)
5	Promotion of positive attitudes	(now 8)
6	Statistics and data collection	(now 31)
7	Equality and non-discrimination	(now 5)
8	Right to life	(now 10)
8bis	Situations of risk	(now 11)
9	Equal recognition as a person before the law	(now 12)
9bis	Access to justice	(now 13)
10	Liberty and security of the person	(now 14)
11	Freedom from torture etc	(now 15)
12	Freedom from exploitation, violence and abuse	(now 16)
12bis	Protecting the integrity of the person	(now 17)
13	Freedom of expression	(now 21)
14	Respect for privacy	(now 22)
14bis	Respect for home and family	(now 23)
15	Living independently	(now 19)
15bis	Women with disabilities	(now 6)
16	Children with disabilities	(now 7)
17	Education	(now 24)
18	Participation in political and public life	(now 29)
19	Accessibility	(now 9)
20	Personal mobility	(now 20)
20bis	Liberty of movement	(now 18)
21	Health	(now 25)
21bis	Habilitation and rehabilitation	(now 26)
22	Work and employment	(now 27)
23	Adequate standard of living and social protection	(now 28)
24	Participation in cultural life	(now 30)
24bis	International cooperation	(now 32)
25	National implementation and monitoring	(now 33)
25bis	International monitoring	(now 34)

NEW STRUCTURE

Preamble

PART I

1	Purpose	(old 1)
2	Definitions	(old 3)
3	General principles	(old 2)
4	General obligations	(same)
5	Equality and non-discrimination	(old 7)
6	[Women with disabilities]	(old 15 bis)
7	[Children with disabilities]	(old 16)
8	Raising awareness regarding disability	(old 5)
9	Accessibility	(old 19)

PART II

10	Right to life	(old 8)
11	[Situations of risk]	(old 8 bis)
12	Equal recognition as a person before the law	(old 9)
13	Access to justice	(old 9 bis)
14	Liberty and security of the person	(old 10)
15	Freedom from torture etc	(old 11)
16	Freedom from exploitation, violence and abuse	(old 12)
17	Protecting the integrity of the person	(old 12 bis)
18	Liberty of movement	(old 20 bis)
19	Living independently etc	(old 15)
20	Personal mobility	(old 20)
21	Freedom of expression and opinion, etc	(old 13)
22	Respect for privacy	(old 14)
23	Respect for home and the family	(old 14 bis)
24	Education	(old 17)
25	Health	(old 21)
26	Habilitation and rehabilitation	(old 21 bis)
27	Work and employment	(old 22)
28	Adequate standard of living etc	(old 23)
29	Participation in political and public life	(old 18)
30	Participation in cultural life	(old 24)

PART III

31	Statistics and data collection	(old 6)
[32	International cooperation]	(old 24 bis)
33	National implementation and monitoring	(old 25)
34	International Monitoring	(old 26)

PART IV		(new)
XX	Signature	(new)
XX	Ratification	(new)
XX	Accession	(new)
XX	Entry into force	(new)
XX	Amendment	(new)
XX	Reservations	(new)
XX	Dispute settlement	(new)
XX	Depositary	(new)
XX	Authentic texts	(new)