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**Legislative History of the  
Convention on the Rights of the Child  
(1978 - 1989)**

**ARTICLE 7**

**(NAME AND NATIONALITY)**

The *Legislative History of the Convention on the Rights of the Child (1978-1989)* was prepared with the support of Rädde Barnen (Swedish Save the Children). It consists of a series of 45 booklets covering the drafting and adoption of each article of the Convention, as well as the preamble, based on United Nations records. This series will ultimately be collected and produced in a single set of volumes.

HR/1995/Ser.1/article.7

**ARTICLE 7**

**(NAME AND NATIONALITY)**

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## ARTICLE 7

### (NAME AND NATIONALITY)

#### I. FINAL TEXT ADOPTED BY THE GENERAL ASSEMBLY (1989)

*The following text is that approved by the General Assembly in its resolution 44/25 of 20 November 1989.*

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

#### II. FIRST POLISH DRAFT CONVENTION AND COMMENTS (1978)

*In a letter dated 17 January 1978 addressed to the Director of the Division of Human Rights (see E/CN.4/1284), the Permanent Representative of Poland to the United Nations Office at Geneva proposed that "The question of the Convention on the Rights of the Child" be included in the agenda of the thirty-fourth session of the Commission of Human Rights. At that session, the Polish delegation presented a draft resolution (E/CN.4/L.1366) which contained a draft convention based upon the provisions of the 1959 Declaration of the Rights of the Child. The resolution was subsequently revised (E/CN.4/L.1366/Rev.1) and two additional articles (XI and XII) were added to the draft convention annexed in the final version of the draft resolution (E/CN.4/L.1366/Rev.2) which was then adopted by the Commission on Human Rights (see E/CN.4/1292, pages 122 to 127) as resolution 20 (XXXIV) of 8 March 1978. In that resolution, the Secretary-General was requested to invite Member States, competent specialized agencies, regional, intergovernmental organizations and non-governmental organizations to communicate to him their views, observations and suggestions concerning the draft convention submitted by Poland.*

#### A. THE FIRST POLISH DRAFT

*The following text is taken from the 1978 report of the Commission on Human Rights, E/CN.4/1292, page 124.*

### Article III

The child shall be entitled from his birth to a name and a nationality.

#### **B. COMMENTS ON THE FIRST POLISH DRAFT**

*The Secretary-General was requested in Commission on Human Rights Resolution 20 (XXXIV) of 8 March 1978 to invite Member States, competent specialized agencies, regional, intergovernmental organizations and non-governmental organizations to communicate to him their views, observations and suggestions concerning the draft convention submitted by Poland. The views received are contained in documents E/CN.4/1324 and Corr.1 and Add.1-5. The comments concerning article III of the draft are the following.*

##### **1. Germany, Federal Republic of**

*The following is taken from E/CN.4/1324, page 30.*

1. See paragraph 3, Federal Republic of Germany, under General Comments.

(...) In the opinion of the Federal Government, article III of the draft gives rise to serious reservations. Although this provision provides that every child shall be entitled from his birth to a nationality, it does not indicate how this right is to be implemented. Unlike the texts of other provisions concerning nationality (article 15 of the Universal Declaration of Human Rights of 10 December 1948 and article 24, paragraph 3, of the International Covenant on Civil and Political Rights of 19 December 1966), article III of the draft implies that the Convention wishes to establish the child's nationality.

2. The same inference could also be drawn from article I of the draft Convention, according to which every child shall immediately be entitled to the rights provided for in the Convention. If draft article III was merely in the nature of a programme, this provision would be superfluous.

3. Immediate application of article III must not, moreover, cause us to forget that the absence of the other essential requirements for the acquisition of a nationality means that, in its present wording, this article is doomed to failure, because it cannot be supposed that the Convention wishes to compel every Contracting Party to introduce the principle of "jus soli".

4. Nowhere does the acquisition of nationality by birth depend solely on the natural fact of birth; quite the contrary, apart from birth, all nationality laws require additional elements which must be related to the birth and which are the really essential factors conferring nationality. These correlative factors sanctified

as principles by international law, which in general govern acquisition of a nationality through birth in the State granting it, are:

descent from parents having the nationality of the State in question;

birth in the territory of that State.

5. The reluctance of States Members of the United Nations to meet the minimal requirements imposed by the rules of the Convention on the Reduction of Statelessness of 30 August 1961 is shown by the small number of States that has accepted that instrument. In the circumstances, it would seem ill-advised to expect article III of the draft Convention to provide a solution to the fundamental problem, which in practice is still unresolved, of the acquisition of nationality by birth. The draft would in no way be impaired if this provision were omitted. In its place, it would be better to urge Members of the United Nations to accept the Convention of 30 August 1961 or to take account of that Convention's principles in their internal law.

*Paragraph 3 of the General Comments of the Federal Republic of Germany, which also is contained in E/CN.4/1324, is as follows.*

3. Without prejudice to a final assessment, we consider that articles I, III, IV (understood as the right of the child to have his needs provided for in the broadest sense), the first and second sentences of article VI, the first sentence of article VII, paragraph 1 (right to education), and the second part of article VII, paragraph 2 (primary right of parents) should be grouped together in a separate section as rights of the individual.

## 2. Malawi

*The following is taken from E/CN.4/1324/Add.4.*

We are concerned with the nationality requirement since nationality is a matter of Municipal Law. It is a fact that each State decides who are to be its nationals and who are not going to be its nationals. This serves, above all, to determine that the person upon whom nationality is conferred enjoys the rights and is bound by the obligations which the law of the State in question grants and imposes on its nationals.

Because of the foregoing, there are some people who are considered as stateless persons and others who are considered as persons with dual nationality.

We, therefore, feel that clarifications on the following points are also necessary:

- (1) the nationality that would be conferred upon children born from stateless persons or persons with dual nationality;

- (2) the question of whether or not nationality is going to be conferred purely on the basis of a child's birth place;
- (3) the question of whether or not the article is imposing on States Parties something which is supposed to be taken care of by Municipal Law; and
- (4) the guarantee that the State Party will have its nationality on the child; the child will honour the obligations that the State in question expects of the child, for example, like accepting to go to war when called upon to defend the State.

### **3. New Zealand**

*The following is taken from E/CN.4/1324/Add.5.*

Acceptable.

### **4. Sweden**

*The following is taken from E/CN.4/1324, page 31.*

The child's right to a nationality, which is dealt with in Principle 3 of the 1959 Declaration, is an important point which requires further examination. A child should not be stateless if at least one of its parents has a nationality. In cases where both parents are stateless, the child should be able to acquire the nationality of the State in which it was born or in which it resides.

## **III. FIRST READING (1979-1988)**

*In 1979, the Commission on Human Rights decided to establish an informal open-ended working group to meet for one week to consider the question of a draft convention on the rights of the child during the session of the Commission. The Working Group met again in 1980 and was authorized in 1981 and each year thereafter to meet prior to the Commission session. In 1988, the Working Group met for two weeks in order to complete the first reading. The text of article 7 was discussed and adopted by the Working Group during its 1980 and 1981 sessions. Additional comments were submitted to the Working Group in 1986 and 1987 but further consideration was deferred until the second reading. This article was referred to as article 2 throughout the first and second readings.*

### **A. 1979: REVISED POLISH DRAFT**

*A revised version of the draft convention was included in a note verbale dated 5 October 1979 addressed to the Division of Human Rights from the Permanent Representation of the*

*Polish People's Republic to the United Nations in Geneva. This draft formed the basis for discussion at the 1980 session of the Working Group. The following text is taken from Commission on Human Rights document E/CN.4/1349, which was reissued for technical reasons.*

## Article 2

1. The child shall have the right from his birth to a name and a nationality.
2. The States Parties to the present Convention undertake to introduce into their legislation the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, the application of the proper national law would not grant him any nationality whatever.

### **B. 1980: PROPOSALS SUBMITTED TO THE WORKING GROUP**

#### **1. Australia**

*For the text of this proposal, see paragraph 40 in section C below.*

#### **2. United States of America**

*For the text of this proposal, see paragraph 37 in section C below.*

### **C. 1980: DISCUSSION AND ADOPTION AT THE WORKING GROUP**

*The following is taken from paragraphs 37 to 43 of the 1980 report of the Working Group to the Commission on Human Rights, E/CN.4/L.1542, which is reproduced in paragraph 277 of the 1980 report of the Commission on Human Rights, E/CN.4/1408.*

37. At the fourth meeting, the Working Group considered article 2(1) of the draft Convention. The representative of the United States of America proposed that the wording of the article should be amended to read:

"1. In accordance with the laws or practices of each Contracting State, the child shall have the right from his birth to acquire a name and a nationality."

He pointed out that the proposed amendment would bring the draft Convention in line with article 24 of the International Covenant on Civil and Political Rights and

would help to prevent difficulties under the immigration and nationality laws of various States. In particular, he maintained that the amendment would avoid any implication that the draft Convention would automatically entitle stateless children entering the territory of a State Party to the nationality of that State.

38. Some delegations opposed the amendment on humanitarian grounds, in order to provide protection for stateless children. It was also argued that the wording of article 2(1) was of a general nature, while the second paragraph would include more specific provisions.

39. On the suggestion of the Chairman, the Working Group adopted the following compromise text:

"1. The child shall have the right from his birth to a name and to acquire a nationality."

40. At the fifth meeting, the delegation of Australia submitted the following amendment to article 2(2):

"2. The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws."

41. The representative of Australia explained that the first part of his amendment was meant to remove the implication in the original draft that the principle in question was not already contained in most national legislations; the second, and most important, part was aimed at bringing the draft Convention as close as possible to the general principles of the Convention on the Reduction of Statelessness of 1961.

42. Discussion on the proposed amendment began at the fifth meeting of the Working Group. Some delegations expressed their opposition on the grounds that the law of their countries did not provide for automatic granting of nationality to children of foreign parents born there.

43. The Working Group, however, was unable to continue consideration of article 2(2) because of lack of time.

#### **D. 1981: DISCUSSION AND ADOPTION AT THE WORKING GROUP**

*The following is taken from paragraphs 12 to 18 of the 1981 report of the Working Group to the Commission on Human Rights, E/CN.4/L.1575, which is reproduced in paragraph 289 of the 1981 report of the Commission on Human Rights, E/CN.4/1475.*

12. Paragraph 2 of article 2 of the revised Polish draft was as follows:

"The States Parties to the present Convention undertake to introduce into their legislation the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, the application of the proper national law would not grant him any nationality whatever."

13. At the Working Group's session of 1980, the representative of Australia submitted the following amendment to paragraph 2 of article 2:

"The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws."

This proposal was reintroduced at the 1981 session of the Group.

14. Some speakers felt that there were no substantial differences between the text of the revised Polish draft convention and the proposal submitted by Australia. They also felt that both the Australian and Polish delegations were inspired by humanitarian principles in proposing their formulations for the paragraph, recalling that this paragraph was aimed at providing every child with a nationality so as to prevent cases of statelessness among children.

15. The representative of Poland withdrew paragraph 2 of article 2 of the revised Polish draft in favour of the Australian amendment.

16. It had been noted by some speakers that the Australian proposal was largely aimed at bringing the draft convention as close as possible to the general principles of the Convention on the Reduction of Statelessness of 1961.

17. During the ensuing discussion, some speakers drew the attention of the Working Group to the problems that might arise from the fact that many Member States of the United Nations had based their legislation on nationality on principles other than those laid down in the Convention on the Reduction of Statelessness and the proposed paragraph 2. For, in the view of these speakers, there were countries where the jus sanguinis basis of nationality prevailed, as opposed to the jus soli approach in the Polish and Australian texts, and therefore the Working Group should consider the need for a compromise formula in order to prevent possible reservations by States to this provision of the convention on the rights of the child at the time of ratification.

18. The Working Group adopted by consensus paragraph 2 of article 2, as proposed by Australia, on the understanding that at a later stage, if necessary, the Working Group would resume the consideration of those problems pointed out by some members of the Group.

## **E 1984: PROPOSAL SUBMITTED TO THE WORKING GROUP**

### **1. International Federation of Women in Legal Careers and the International Abolitionist Federation**

*The following is taken from E/CN.4/1983/NGO/33, which appeared after the 1983 session of the Working Group.*

#### Article 2 (Nationality)

Noting that in some cases the minor children of political refugees who have given up their nationality have to wait for a fairly long time to acquire the nationality of the country in which they are living, although in principle it should be theirs by right, we would suggest that the words "without delay or prior conditions" be added after the words "the principle according to which a child shall acquire" and before the words "the nationality of the State...".

We would like to add the following paragraph 3:

"The acquisition of a name or nationality may not constitute grounds for discrimination against either of the parents or between children born in wedlock and children born out of wedlock."

## **F. 1984: STATEMENTS MADE AT THE WORKING GROUP**

*The following is taken from the 1984 report of the Working Group to the Commission on Human Rights, E/CN.4/1984/71, paragraphs 9 and 11.*

### **1. United Kingdom of Great Britain and Northern Ireland**

9. The representative of the United Kingdom stated that, even as a State participating in the work of the open-ended Working Group, his delegation continued to have difficulties with some of the articles already adopted (e.g. articles 2, paragraph 1 [new article 7(1)], 3, paragraph 1 [new article 3(1)], 4, paragraph 1 [new article 4(1)], 6 and 8 [new articles 9 and 18], paragraphs 1 and 2). Article 2, paragraphs 1 and 2, caused difficulties in relation to United Kingdom nationality law. Article 6, paragraph 1 [new article 9(1)], as currently drafted was not compatible with United Kingdom immigration legislation because the parents of a child who did not have rights of residence in the United Kingdom could not determine that he should live there unless he qualified for residence under United Kingdom immigration rules. In addition, draft articles 3, paragraph 1 [new article 3(1)], 4, paragraph 1 [new article 4(1)], 6, paragraphs 2 and 3 [new article 9(2)(3)], 6 bis, paragraphs 2 and 3 [new article 10(2)(3)], and 8, paragraphs 1 and 2 [new article 18(1)(2)], all posed problems in relation to United Kingdom immigration law. Certain of those draft provisions were difficult or even impossible to reconcile with his country's law and practice. Nevertheless, his delegation had joined the consensus at the Working Group in recognition of the

efforts made by other delegations to get an acceptable draft completed and available for comment by Member States with as little delay as possible. However, the United Kingdom thought it important that all States, including those which had not participated in the Working Group, should have an opportunity to consider and comment on those articles after the current drafting exercise was concluded. If, after the drafting was completed and notwithstanding that certain parts of the text remained substantially as they were now, the United Kingdom authorities were nevertheless to consider that they could proceed to signature and ratification, his delegation foresaw that there would be a need to enter reservations and declarations, in particular to deal with the aforementioned difficulties over immigration and nationality.

## **2. Germany, Federal Republic of**

11. The representative of the Federal Republic of Germany stated that his delegation shared the concerns of the United Kingdom delegation particularly with regard to article 2, paragraph 2 [new article 7(2)], and article 6, paragraphs 1 and 2 [new article 9(1)(2)]. Article 2, paragraph 2 [new article 7(2)], posed problems with regard to his country's nationality law. As in the case of the United Kingdom, the provisions of draft article 6, paragraphs 1 and 2 [new article 9(1)(2)], were not compatible with the Federal Republic's immigration legislation. Should article 2, paragraph 2, and article 6, paragraphs 1 and 2, be retained in their present form during the forthcoming deliberations in spite of the concerns of some delegations, and should the draft convention be opened for signature and ratification in that form, his Government might feel obliged to enter reservations to both articles. The representative of the Federal Republic of Germany also expressed his support for the United Kingdom proposal that all States be given an opportunity to comment on the Working Group's completed draft before its submission to the Commission on Human Rights.

## **G. 1986: COMMENT SUBMITTED TO THE WORKING GROUP**

### **1. Bangladesh**

*The following comment is contained in paper submitted by the Permanent Representative of Bangladesh to the United Nations Office at Geneva in connection with the draft Convention on the Rights of the Child with the request that the paper be annexed to the report of the Working Group. For the complete text, including general comments on the draft Convention, see E/CN.4/1986/39, annex IV.*

Paragraph 2 of article 2 as it stands will create serious and complex problems with regard to nationality and the status of children. If the article 2 (2) in its present form is adopted in the final text, it is the view of Bangladesh that this will lead to far-reaching legal reservations by a large number of States including Bangladesh.

## H. 1987: COMMENT SUBMITTED TO THE WORKING GROUP

### 1. Morocco

*On 30 January 1987, the Permanent Representative of Morocco submitted to the United Nations Office at Geneva a paper containing its comments on certain articles of the draft Convention and requested that those comments be brought to the attention of the Working Group. The following is taken from E/CN.4/1987/WG.1/WP.35.*

Morocco fully supports the resolutions of the General Assembly aiming to ensure the rapid adoption of the draft convention on the rights of the child, but it considers that the implementation of the Convention should not shake the foundations of the family or respect for its traditional rules.

The rights of the child are conceived in different ways throughout the world because of differences in legal systems, moral values, religious beliefs and family rules. Nevertheless, the family remains linked with the culture, the evolution and the beliefs of each society.

The Muslim societies, including Morocco, have not neglected the rights of the child. However, the Muslim conception has made the child an essential element within the family.

A reading of the draft convention on the rights of the child in its present form calls for comments on the following points:

- Nationality of the child born of stateless parents
- Situation of children born outside marriage
- Recognition of children
- Adoption
- Succession

#### ARTICLE 2 - Nationality

In accordance with the Moroccan code governing nationality, the acquisition of Moroccan nationality is subject to certain conditions. According to article 6 of this code, the nationality of the child follows that of his father (jus sanguinis). Similarly, the child is entitled to Moroccan nationality if born of a Moroccan mother and an unidentified father.

However, Moroccan nationality cannot be granted to a child born of stateless parents.

(...)

## I. TEXT AS ADOPTED AT THE FIRST READING

*The following is taken from E/CN.4/1988/WG.1/WP.1/Rev.1.*

## Article 2

1. The child shall have the right from his birth to a name and to acquire a nationality.
2. The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of a State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

### **IV. TECHNICAL REVIEW (1988)**

*By a letter addressed to the Secretary-General (see E/CN.4/1988/28, paragraph 248), the Working Group requested that a technical review of the draft convention be undertaken by the United Nations Secretariat in advance of the second reading. Among the aims of the technical review were to identify overlap and repetition between and within draft articles; to check for linguistic consistency and accuracy in the text; to compare the standards established with those in other widely accepted human rights instruments; and to make recommendations as to how any overlaps or inconsistencies might be corrected in the second reading.*

*The Secretary-General subsequently requested comments on matters within their respective mandates of a number of the specialized agencies and other United Nations bodies, as well as the International Committee of the Red Cross. Those comments were compiled in the Technical Review of the text of the draft Convention on the Rights of the Child (E/CN.4/1989/WG.1/CRP.1 and Add.1), which was taken into account by the Working Group during the second reading of the draft Convention.*

#### **A. Comment by UNESCO**

*The following is taken from E/CN.4/1989/WG.1/CRP.1, page 12.*

A new paragraph should be added between its present paragraphs 1 and 2, the present paragraph 2 becoming paragraph 3.

This new paragraph should read:

"2. The child shall have the right from birth to respect for his/her human, racial, national and cultural identity and dignity, as well as have the duty to respect the human, racial, national and cultural identity and dignity of others."

## **B. Comment by UNICEF**

*The following is taken from E/CN.4/1989/WG.1/CRP.1, page 13.*

### Gender neutrality

Paragraph 1. Omission of the pronoun "his" is proposed.

Paragraph 2. The latter part of the paragraph might be reformulated as follows:

"...a child shall acquire the nationality of the State in the territory of which he or she has been born if, at the time of birth, the child is not granted nationality by any other State in accordance with its laws".

## **C. Additional comments and clarifications by the Secretariat**

*The following is taken from E/CN.4/1989/WG.1/CRP.1/Add.1, paragraph 9.*

9. In line with article 24, paragraph 2, of the International Covenant on Civil and Political Rights, the words "and registration" may be added after the word "name" in paragraph 1.

## **V. SECOND READING (1988-1989)**

*By a letter addressed to the Secretary-General (see E/CN.4/1988/28, paragraph 248), the Working Group requested that the draft of the convention as adopted at the first reading be circulated to all Member States so that their comments could be taken into account during the second reading of the draft. The Working Group conducted the second reading from 28 November to 9 December 1988 and adopted its report from 21 to 23 February 1989.*

### **A. PROPOSALS SUBMITTED TO THE WORKING GROUP AT THE SECOND READING**

1. **Algeria, Egypt, Iraq, Jordan, Kuwait, Libyan Arab Jamahiriya, Morocco, Oman, Pakistan and Tunisia**

*For the text of this proposal, see paragraph 93 in section B below.*

2. **Germany, Federal Republic of**

*For the text of the two proposals submitted by the Federal Republic of Germany, see section B, paragraph 98, and section C, paragraph 695, below.*

### 3. Netherlands

*For the text of this proposal, see section paragraph 99 in section B below.*

### 4. Latin American Meeting

*By note verbal to the Centre for Human Rights, the Permanent Mission of Argentina requested that the report and recommendations of the Latin American meeting [of NGOs] in support of the United Nations draft Convention on the Rights of the Child be circulated as an official information document at the Working Group. The meeting took place in Buenos Aires from 29 September to 2 October 1988. The following is taken from E/CN.4/1989/WG.1/WP.1.*

In article 2: "... from his birth to assume an identity, a family, a name ...".

## B. DISCUSSION AND ADOPTION AT THE SECOND READING

*The following is taken from the report of the Working Group to the Commission on Human Rights, E/CN.4/1989/48, paragraphs 92 to 116.*

92. In connection with this article, the Working Group had before it the text of article 2 as adopted at first reading together with suggestions for revision, contained in E/CN.4/1989/WG.1/WP.2:

"1. The child shall have the right from his or her birth to a name and registration and to acquire a nationality.

2. The child shall have the right from birth to respect for his or her human, racial, national and cultural identity and dignity, as well as have the duty to respect the human, racial, national and cultural identity and dignity of others.

3. (The) States Parties (to the present Convention) shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of the State in the territory of which he or she has been born if, at the time of the child's birth, he or she is not granted nationality by any other State in accordance with its laws."

93. On behalf of Algeria, Egypt, Iraq, Jordan, Kuwait, Libyan Arab Jamahiriya, Morocco, Oman, Pakistan and Tunisia, the delegation of Egypt proposed the following amendments contained in E/CN.4/1989/WG.1/WP.4:

1. Paragraph 1 should be amended to read as follows:

"The child shall have the right from his birth to know and belong to his parents, as well as the right to a name and to acquire a nationality."

2. Paragraph 2 should be amended to read as follows:

"The States Parties to the present Convention shall diligently endeavour to grant their nationality, in accordance with their laws, to a child born in their territory if, at the time of the child's birth, he is not granted nationality by any other State."

94. According to the delegate of Egypt, the purpose of the first amendment was that of ensuring the psychological stability of the child, which was of equal importance to his physical and mental growth and helped to form his personality. In most cases the right to know his parents was quite essential to the child and equal to his right to a name or a nationality, which were only important for him at a certain age. The purpose of the second was to allow a country to apply freely either one of the two legal systems prevailing, that is, jus sanguinis or jus soli, regarding nationality.

95. Iraq urged the Working Group to consider this proposal contained in E/CN.4/1989/WG.1/WP.4 since the preference for jus soli was not in conformity with many legal systems.

96. With regard to paragraph 1 of the proposal, the German Democratic Republic, the Union of Soviet Socialist Republics and the United States of America referred to the exceptions in their legislation concerning the right of "secret adoption", that is, when the adopted child did not have the right to know his natural parents, and pointed out that "the right to know one's parents" could not be applied everywhere. They also drew the Working Group's attention on the use of the word "belonging" as an implication of the idea of property. They also underlined that the concepts of jus sanguinis and jus soli were of equal importance. The delegation of Portugal expressed the view that the idea of "belonging" is not applicable to children and that there were situations where the right to know one's parents could not be applied.

97. The delegate of Egypt reiterated the objective of the first amendment and stated he would seek new compromise language.

98. The representative of the Federal Republic of Germany submitted a proposal for amendment (E/CN.4/1989/WG.1/WP.7) which read as follows:

"Reformulate paragraph 2 of article 2 as follows (amendments underlined):

2. The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child upon application or without any further action shall acquire the nationality of the State in the territory of which he has been

born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws." "

99. The delegate of the Netherlands drew attention to the concept of permanent residency contained in his own proposal (E/CN.4/1989/WG.1/WP.23 (revised)) which read as follows:

"2. The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of the State in the territory of which he or she has been born and has habitually resided for such period as may be fixed by the States Parties, not exceeding five years immediately preceding the lodging of the application, nor ten years in all, if he or she would otherwise be stateless."

100. He then explained that the words "time of the child's birth" were to be deleted from the West German proposal in order to avoid statelessness and added that he judged unnecessary the use of the words "upon application" contained in that same proposal.

101. The representative of the Federal Republic of Germany explained that with the use of the words "upon application", the draft convention was being brought closer to the general principle of the Convention on the Reduction of Statelessness of 1961.

102. The delegate of the Union of Soviet Socialist Republics stated that the proposal of the Federal Republic of Germany referred to the above-mentioned Convention word for word, but that many countries that had not ratified this Convention would have problems in adopting this paragraph. He declared that the Dutch proposal in WP.23 overlapped with other views such as the one expressed by UNESCO and proposed the forming of a small drafting group and the use of more flexible wording as in E/CN.4/1989/WG.1/WP.25, which he proposed:

"To replace paragraph 2 of article 2 by the following text:

2. The States Parties shall ensure the realization of this right in accordance with their national legislation and their international legal obligations in this field."

103. The Chairman decided to establish a drafting group composed of Algeria, Australia, the Federal Republic of Germany, the German Democratic Republic, Kuwait, the Netherlands, and the Union of Soviet Socialist Republics, with the United States of America as its Co-ordinator.

104. The representative of the United States of America introduced the proposals submitted by the drafting group on article 2, composed of the United States of America, Algeria, Australia, the Federal Republic of Germany, the German Democratic Republic, Kuwait, the Netherlands and the Union of Soviet Socialist

Republics, (E/CN.4/1989/WG.1/WP.26). The proposed text for article 2 read as follows:

"1. The child shall have the right from birth to a name and registration and to acquire a nationality, and, as far as possible, to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

105. The representative of the Union of Soviet Socialist Republics stated that, since the proposal of his delegation relating to paragraph 2 of article 2 (E/CN.4/1989/WG.1/WP.25) was taken into account in the text submitted by the drafting group, he would not insist on consideration of his proposals by the working group.

106. The participants favoured in general the proposals submitted by the drafting group. The discussion focused mainly on the question of registration of the child. It was pointed out that the proposed text of article 2 differed substantially from the provision of article 24, paragraph 2, of the International Covenant on Civil and Political Rights which stated that "Every child shall be registered immediately after birth...".

107. Some doubts were also expressed with regard to the words "as far as possible" contained in paragraph 2 of article 2. This expression was viewed by some participants as giving rise to an arbitrary interpretation of this article of the Convention.

108. The observer for New Zealand proposed orally that the words "as far as possible" be replaced by "subject to the provisions of this Convention". Another alternative formulation was put forward by the representative of the United States of America who suggested the wording "in the best interests of the child". The observer for Sweden proposed to make a combination of two proposals reading "as far as possible and subject to the provisions of the Convention".

109. The observer for the Netherlands indicated that the right of the child to acquire a nationality is not directly linked to the fact of birth. He therefore suggested that certain modifications should be made in this connection in the text proposed by the drafting group.

110. The observer for Egypt orally proposed that the words "and/or" be added before the words "their obligations" in the second paragraph of article 2.

111. The representative of Italy proposed to introduce in the text of article 2 a phrase stating that "No child can be arbitrarily deprived of his or her family". Some other delegations pointed out that such provision had been already included

in the body of the draft convention and therefore there was no need to repeat it in article 2.

112. After some more discussion, the representative of the United States of America on behalf of the drafting group proposed a compromise text of the first paragraph of article 2 which read as follows:

"The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."

113. It was proposed that the second paragraph of article 2 should stay unchanged as submitted originally by the drafting group.

114. This proposal was accepted by the working group and it thus adopted article 2 which reads as follows:

"1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

115. The representative of Sweden stated that his delegation was able to join in the consensus on article 2 on the understanding that the provisions of this article should be interpreted in the best interests of the child.

116. The observer for Canada pointed out that certain provisions of article 2 as adopted had been already included in some of the other articles of the draft convention, in particular in article 6 [new article 9]. He urged the Working Group to avoid such duplication in future.

(...)

### **C. PROPOSALS DISCUSSED BUT NOT ADOPTED BY THE WORKING GROUP**

*The following is taken from the report of the Working Group to the Commission on Human Rights, E/CN.4/1989/48, paragraphs 695 to 703.*

#### Proposal relating to article 2

695. In connection with the discussion of article 2, the delegation of the Federal Republic of Germany submitted the following proposal (E/CN.4/1989/WG.1/WP.5):

"Article 2 (new)

Replace article 2 by the following:

"Article 2 (new)[\*]

(1) The States Parties shall ensure

(a) that all human rights recognized by them also apply to children,

(b) that general human rights as enshrined in the International Covenant on Civil and Political Rights even apply to children, if a State Party to the present Convention is not a Party to the Covenant.

(2) In order to take into account the evolving capacities of the child to take decisions under his own responsibility, provision may be made for the child to exercise some of his rights to be specified under the law of his State as if he had attained the age of majority; in this case, State Parties shall ensure that the legal effects of the decision taken by the child are recognized, except the child acted before having attained the minimum age prescribed under the law of his State."

[\* In the case of adoption of paragraph 1 of the proposed article 2 (new), numerous repetitious draft articles are to be deleted, especially article 1 bis [new article 6], (identical with parts of article 6(1) of the Covenant); article 2(1) [new article 7(1)] (nearly identical with article 24(2) and (3) of the Covenant; articles 7a [new article 13], 7 bis [new article 14], 7 ter [new article 15] and 7 quater [new article 16] (more or less identical with articles 19, 18, 21/22 and with article 17 of the Covenant); and article 19 [new article 37] of the draft Convention (a selective repetition of article 14 of the Covenant).]

696. The delegate of the Federal Republic of Germany pointed out that many rights which under the International Covenants already apply to children, were included again specifically for children in the draft convention, but on the other hand, not all the rights guaranteed by the Covenants appeared in the draft convention, for example, the right of self-determination, the equal rights of men and women, the ban on slavery, the right of a person arrested or detained to be brought promptly before a judge, even though they also should apply to children. The delegate said that this selective double-regulation of rights would create problems and even contradictions with the Covenants and that a general clause

ensuring the application of general human rights to children, should be substituted for the present article 2.

697. The observer for Australia stated that the proposal of the Federal Republic of Germany to replace article 2 was totally new, bringing into question the whole approach to the Convention to existing rights. It may well have been a better way to proceed had it been introduced eight years before, but that had not happened and now its acceptance would only serve to delay adoption of the Convention.

698. The delegate of India stated that the proposal of the Federal Republic of Germany to replace article 2 with a new article covered entirely new areas, and he expressed his opposition to consider such a proposal at this late stage.

699. The delegation of Portugal pointed out that the proposal of the Federal Republic of Germany referred solely to the Covenant on Civil and Political Rights, while other important conventions, including the Covenant on Economic, Social and Cultural Rights and the Geneva Conventions and Protocols, had been omitted. Moreover, the representative of Portugal pointed out that it seemed unlikely that a State which is not a party to the Covenant on Civil and Political Rights would be open to the idea of feeling bound by its provisions.

700. The delegate of Poland said that it was too late to adopt the proposal of the Federal Republic of Germany and pointed out the problem that would be posed by the countries which were not parties to the Covenant on Civil and Political Rights. He added that despite repetitions between the draft Convention and the Covenant, the former was an independent instrument and that work on this Convention should continue.

701. Noting the importance of the issue raised by the Federal Republic of Germany, the delegate of Ireland, reminded the Working Group that article 21 of the draft convention allowed the application of the highest human rights standards enshrined in other international instruments and suggested that article 21 might be moved forward to follow article 1 bis.

702. The observer for Finland drew the Working Group's attention to the issue raised under the present article 21 and stated that this had already been addressed by Finland and the ILO in E/CN.4/1989/WG.1/CRP.1, and proposed the inclusion of these two suggestions in article 21.

703. The representative of the Federal Republic of Germany withdrew his proposals relating to article 2 (E/CN.4/1989/WG.1/WP.5).

**VI. CONSIDERATION BY THE COMMISSION ON HUMAN RIGHTS, THE ECONOMIC AND SOCIAL COUNCIL AND THE GENERAL ASSEMBLY**

*The text of article 7 as adopted by the Working Group at the second reading was adopted along with the other articles of the Convention by the Commission on Human Rights by its resolution 1989/57 of 8 March 1989, by the Economic and Social Council by its resolution 1989/79 of 24 May 1989 and by the General Assembly by its resolution 44/25 of 20 November 1989.*

**VII. RELATED REFERENCES**

*See annex 1, "Related articles of the Convention".*

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## **RELATED ARTICLES OF THE CONVENTION**

The following grouping of related substantive articles is based on the guidelines adopted by the Committee on the Rights of the Child for the preparation of State party reports (CRC/C/5):

### ***GENERAL MEASURES OF IMPLEMENTATION***

- Implementation of rights (article 4)
- Promotion of rights and dissemination of information (article 42)
- Respect for higher standards (article 41)

### ***DEFINITION OF A CHILD***

- Definition of a child (article 1)

### ***GENERAL PRINCIPLES***

- Non-discrimination (article 2)
- Best interests of the child (article 3)
- Right to life, survival and development (article 6)
- Respect for the views of the child (article 12)

### ***CIVIL RIGHTS AND FREEDOMS***

- Name and nationality (article 7)
- Preservation of identity (article 8)
- Freedom of expression (article 13)
- Access to appropriate information (article 17)
- Freedom of thought, conscience and religion (article 14)
- Freedom of association and peaceful assembly (article 15)
- Protection of privacy (article 16)
- Prohibition of torture and the death penalty (article 37(a))

### ***FAMILY ENVIRONMENT AND ALTERNATIVE CARE***

- Parental guidance and the child's evolving capacities (article 5)
- Parental responsibilities (articles 18(1) and (2))
- Separation from parents (article 9)
- Family reunification (article 10)
- Recovery of maintenance for the child (article 27(4))
- Children deprived of a family environment (article 20)
- Adoption (article 21)

- Illicit transfer and non-return (article 11)
- Prevention of abuse and neglect (articles 19 and 39)
- Periodic review of placement (article 25)

### ***BASIC HEALTH AND WELFARE***

- Disabled children (article 23)
- Health and health services (article 24)
- Social security and child care services and facilities (articles 26 and 18(3))
- Standard of living (article 27)

### ***EDUCATION***

- Education, including vocational training and guidance (article 28)
- Aims of education (article 29)
- Leisure, recreation and cultural activities (article 31)

### ***SPECIAL PROTECTION MEASURES***

#### ***Children in situations of emergency***

- Refugee children (article 22)
- Children in armed conflicts (article 38)

#### ***Children in conflict with the law***

- Administration of juvenile justice (article 40)
- Children deprived of their liberty (article 37(b), (c) and (d))
- Sentencing of juveniles (article 37(a))
- Physical and psychological recovery and social reintegration (article 39)

#### ***Children in situations of exploitation, including physical and psychological recovery and social reintegration***

- Economic exploitation, including child labour (article 32)
- Drug abuse (article 33)
- Sexual exploitation and sexual abuse (article 34)
- Sale, trafficking and abduction (article 35)
- Other forms of exploitation (article 36)
- Children belonging to a minority or indigenous group (article 30)

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