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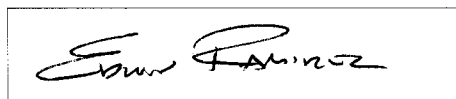
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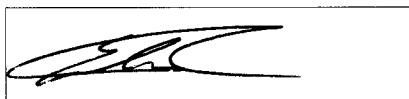
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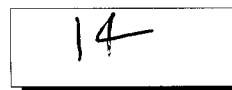
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**Legislative History of the
Convention on the Rights of the Child
(1978 - 1989)**

ARTICLE 8

(PRESERVATION OF IDENTITY)

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.8

ARTICLE 8

(PRESERVATION OF IDENTITY)

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ARTICLE 8

(PRESERVATION OF IDENTITY)

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. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

I. 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. Neither that draft nor the views received on it (see E/CN.4/1324 and Corr.1 and Add.1-5) addressed the issues raised in article 8 of the Convention.

II. 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 for one week 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 8 was proposed at the Working Group in 1985 and discussed and adopted in 1986. This article was referred to as article 9 bis throughout the first and second readings.

A. 1985: PROPOSAL SUBMITTED TO THE WORKING GROUP

1. Argentina

The following is taken from paragraphs 28-36 of the 1985 report of the Working Group to the Commission on Human Rights, E/CN.4/1985/64, paragraph 9 and annex II.

9. The representative of Argentina introduced a new article for consideration by the Working Group at its next session to be held in 1986. He stated that such an article constituted a safeguard to preserve personal, legal and family identity of children throughout the world.

New article (Argentina)

The child has the inalienable right to retain his true and genuine personal, legal and family identity.

In the event that a child has been fraudulently deprived of some or all of the elements of his identity, the State must give him special protection and assistance with a view to re-establishing his true and genuine identity as soon as possible. In particular, this obligation of the State includes restoring the child to his blood relations to be brought up.

B. 1986: MODIFIED PROPOSAL PRESENTED BY POLAND

At its 1986 session, the Working Group had before it an elaboration of the draft convention which had been made available to the General Assembly in 1985 (see A/C.3/40/3) by the Polish delegation with a view to expediting the drafting process. That document contained the text of the articles which had already been adopted as well as modifications of a number of proposals which had been made at the Working Group. For the text of the Polish proposal, see section D, paragraph 33, below.

C. 1986: PROPOSAL SUBMITTED TO THE WORKING GROUP

1. NGO Ad Hoc Group (see annex 1 for participating organizations)

The following is taken from E/CN.4/1986/WG.1/WP.1, page 26.

The States Parties to the present Convention shall take all appropriate measures to enable the child to exercise his/her inalienable right to know and to retain his/her true and genuine personal, legal and family identity.

D. 1986: DISCUSSION AND ADOPTION AT THE WORKING GROUP

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights, E/CN.4/1986/39, paragraphs 33 to 49.

33. In 1985, the delegation of Argentina submitted a proposed new article to be incorporated in the draft convention as article 9 bis to read as follows:

"The child has the inalienable right to retain his true and genuine personal, legal and family identity.

In the event that a child has been fraudulently deprived of some or all of the elements of his identity, the State must give him special protection and assistance with a view to re-establishing his true and genuine identity as soon as possible. In particular, this obligation of the State includes restoring the child to his blood relations to be brought up."

The proposal was reintroduced at the current session as originally presented. There was also a proposal from the delegation of Poland, contained in document A/C.3/40/3, that read:

"1. The States Parties undertake to guarantee to the child the right to preserve his true and genuine personal, legal and family identity.

2. If a child has been fraudulently deprived of some or all of the elements of his identity, the States Parties shall provide the child with necessary assistance and protection, with a view to speedily re-establishing his true and genuine identity."

In addition, a proposal was submitted by the Informal NGO Ad Hoc Group on the Drafting of the Convention, contained in document E/CN.4/1986/WG.1/WP.1.

34. The representative of Norway asked the delegation of Argentina whether it was necessary to have such an article in the convention, pointing out that the true and genuine personal identity of the child was embodied in articles 2, 6 and 8 which had already been adopted by the Working Group.

35. The representative of Argentina said that, while articles 2, 6 and 8 of the convention referred to the question, they did so in general terms, and that the importance of the article submitted by his delegation stemmed both from the special protection that was to be given by the State to the child as soon as possible, when the right of the child to preserve his or her true identity had been violated, and from the distinction made between the child's true and genuine identity and his or her legal one.

36. The observer for the Netherlands said he shared the opinion put forward by the Norwegian delegation, reminding the Working Group that it had previously adopted article 11 on adoption procedure. In view of the existence in the convention of articles 2, 6, 8 and 11, he wondered whether there was any need for the article under discussion, especially in view of the many family law problems concealed therein.

37. The representative of Austria expressed his agreement with the views of the delegations of Norway and the Netherlands. The representative of the United States also shared the concerns of those delegations, while the observer for Canada held the same opinions as previous speakers indicating at the same time that identity per se, so broadly stated, had no place whatsoever in Canadian legislation.

38. The representative of Argentina insisted on the need for a specific article relating to that question in order to cover the legal void which otherwise would exist in the convention on the rights of the child. The representative of Brazil, while supporting the Argentine proposal, thought that articles 2, 6, 8 and 11 of the draft convention already dealt with some of the aspects covered by the Argentine proposal and requested the formation of a working party to redraft the article submitted by the Argentine delegation. The representative of Bangladesh supported the idea of forming a working party and considered - echoing an earlier observation by the representative of the United Kingdom - that the word "inalienable" qualifying the term "right" in the first sentence of the Argentine proposal did not have to be retained and furthermore that the word "fraudulently" at the beginning of the second paragraph could be avoided.

39. The Argentine delegation, replying to the observations made by the delegation of Bangladesh, said that the word "inalienable" was not a major concern but that the word "fraudulently" certainly was. Consequently, before joining the proposed working party, it wished to place on record its desire to retain the word "fraudulently" in the text to be produced by the aforementioned working party.

40. Further to the Chairman's suggestion that the working party should include the delegations of Argentina, the Netherlands, Norway and Poland with the assistance of the International Commission of Jurists, and that it should take into account the views exchanged during the discussion of the Argentine proposal, the representative of Argentina submitted a text that read as follows:

"1. The States Parties undertake to respect the right of the child to preserve his or her family identity without unlawful interference.

2. Where a child is illegally separated or removed from his or her lawful custodians or otherwise fraudulently or illegally deprived of some or all of the elements of this identity, the States Parties shall provide special assistance and protection, with a view to speedily re-establishing his or her rightful family identity."

41. The delegation of the Netherlands observed that the concept of family identity as such was not known in every State and, for that reason, he wished to introduce in the first paragraph after the words "family identity" the phrase "as recognized by law". The delegations of Australia and Finland expressed similar views and their desire that the representative of Argentina should clarify the meaning of the expression "family identity".

42. The representative of Argentina replied that paragraph 2 of the redrafted proposal supplied a context for the concept of "family identity", and added that he would have no objection to incorporating the proposal of the delegation of the Netherlands in paragraph 1 of the text.

43. The delegation of Norway suggested that the words "family relations" should replace "family identity", and the observer for Finland indicated that he was able to accept that proposal.

44. The representative of Austria said that he shared the doubts of previous speakers concerning the article under discussion, because the concept of "family identity" was unknown in Austrian law, and the reply by the representative of Argentina had not removed those doubts. He asked the representative of Argentina to provide the Working Group with a clear definition of the concept of "family identity".

45. The delegations of France and the United Kingdom shared the concerns voiced by other delegations. The representative of Argentina then stated that for the interpretation of "family identity" reference must be made, within the national context, to the national legislation and, within the international context, to the Protocols additional to the Geneva Conventions of 1949.

46. The representative of Australia, indicating that the concept of "family identity" was unknown in Australian law, requested that the representative of Argentina provide the Working Group with definitions in national legislations of the term "family identity" for he still did not understand its meaning. The Chairman then suggested that, in the first paragraph, the word "family" be deleted and that between the words "identity" and "without unlawful interference" the words "nationality, name, family relations" should be inserted, the amendment being placed in brackets. The representative of Bulgaria proposed that, after the wording suggested by the Chairman, the following phrase be added: "in accordance with their legal system and judicial practice".

47. The observer for the Netherlands reiterated his previous proposal to introduce the phrase "as recognized by law" in paragraph 1 and suggested its addition after the words "family relations". He also objected to the utilization in paragraph 2 of the two words "fraudulently" and "illegally", indicating his preference for the word "fraudulently", in addition, he proposed that, in the same paragraph, the word "special" should be replaced by "appropriate". The latter proposal was supported by the delegation of the United States.

48. The delegation of Australia proposed the deletion of the word "family" before the word "identity" at the end of paragraph 2. The representative of Austria associated himself with the remarks made by the observer for the Netherlands regarding the deletion of the word "fraudulently" and the replacement of the word "special" by the word "appropriate".

49. After a further exchange of views, the Working Group approved the following text:

1. The States Parties to the present Convention undertake to respect the right of the child to preserve his or her identity (nationality, name, family relations, as recognized by law) without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, the States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity."

E. TEXT AS ADOPTED AT THE FIRST READING

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

Article 9 bis

1. The States Parties to the present Convention undertake to respect the right of the child to preserve his or her identity (nationality, name, family relations as recognized by law) without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, the States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

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. The 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. Additional comments and clarifications by the Secretariat

The following is taken from E/CN.4/1989/WG.1/CRP.1/Add.1, paragraphs 22 and 23.

22. In paragraph 1, for linguistic reasons, it may be suggested that the brackets be removed and the word "including" be added so that other elements of identity will not be excluded. The relevant part of the paragraph would then read:

"... to preserve his or her identity, including nationality, name and family relations as recognized by law, without ...".

23. Keeping in mind the provision of article 2 which does not allow for exceptions, as is the case with article 24, paragraphs 2 and 3, of the International Covenant on Civil and Political Rights, the reference in paragraph 2 of article 9 bis to "illegally" raises the question when or whether a child can be legally deprived of some and especially all of the elements of his or her identity. The question of compatibility with article 10, paragraph 2, is also raised by the use of this term. For this reason, the Working Group may wish to consider deleting the word "illegally" in order to avoid implying that a child can be legally deprived of, for example, his or her cultural background.

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. 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 333 to 338.

333. The Working Group had before it article 9 bis as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

"1. The States Parties to the present Convention undertake to respect the right of the child to preserve his or her identity (nationality, name, family relations) as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, the States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity."

334. The Chairman declared that no major amendment was proposed except for the small changes suggested by the Secretariat in E/CN.4/1989/WG.2/CRP.1/Add.1, namely the suppression of brackets and addition of the word "including" before "nationality" under paragraph 1 and the deletion of the word "illegally" under paragraph 2.

335. The representatives of Argentina, Norway and the Netherlands accepted the suppression of brackets under paragraph 1 but insisted upon keeping the word "illegally" under paragraph 2. The observer for Australia agreed in view of the situation in some countries but pointed out that the word "illegally" would be meaningless in the Australian context since there it was simply not possible "legally" to deprive someone of their identity.

336. The representative of Mexico stated that the wording should be more explicit as to the commitments made by the States under paragraph 1 and that the biological elements of the identity should also be included.

337. The Working Group adopted article 9 bis keeping the changes under paragraph 1 and leaving paragraph 2 unchanged.

338. The final version of article 9 bis reads as follows:

"1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity."

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

The text of article 8 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 2, "Related articles of the Convention".

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ORGANIZATIONS PARTICIPATING IN THE NGO AD HOC GROUP

The organizations listed below participated consistently in the NGO Ad Hoc Group on the drafting of the Convention on the Rights of the Child, which was active in the drafting process from 1983 to 1989. The individual participating organizations did not necessarily subscribe to every provision contained in the various proposals submitted by the NGO Ad Hoc Group.

Participating organizations

Amnesty International
Anti-Slavery Society for the Protection of Human Rights (Anti-Slavery International)
Associated Country Women of the World
Baha'i International Community
Defence for Children International (Secretariat for the NGO Ad Hoc Group)
Friends World Committee for Consultation
Human Rights Internet
International Abolitionist Federation
International Association of Democratic Lawyers
International Association of Juvenile and Family Court Magistrates
International Association of Penal Law
International Catholic Child Bureau
International Commission of Jurists
International Council of Jewish Women
International Council on Social Welfare
International Federation of Business and Professional Women
International Federation of Social Workers
International Federation of Women Lawyers
International Federation of Women in Legal Careers
International Movement of ATD Fourth World
International Social Service
Rädda Barnen International
Rädda Barnen Sweden
Save the Children Alliance
World Association for the School as an Instrument of Peace
World Association of Girl Guides and Girl Scouts
World Organization for Early Childhood Education
Zonta International.

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)
