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

ARTICLE 9

(SEPARATION FROM PARENTS)

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.9

ARTICLE 9

(SEPARATION FROM PARENTS)

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ARTICLE 9

(SEPARATION FROM PARENTS)

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 shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.**
- 2. In any proceedings pursuant to paragraph 1, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.**
- 3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.**
- 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.**

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.

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 VI

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

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 VI of the draft convention are the following.

1. Barbados

The following is taken from document E/CN.4/1324.

The payment of State and other assistance towards the maintenance of children of large families is desirable but it is suggested that a family should be encouraged to limit its size especially where it becomes difficult to provide adequately for these children.

2. Bulgaria

The following is taken from document E/CN.4/1324.

Add the words: "and children from incomplete families (children of unmarried mothers, widows, divorced parents) or children who have been abandoned by their parents" to the penultimate sentence of article VI.

3. Finland

The following is taken from document E/CN.4/1324.

"Where necessary, governments should, by economic or other arrangements, ensure the possibilities for parents to take care of their children" (to be inserted after the first sentence);

The wording "be separated from his mother", at the end of the second sentence to be replaced by the wording "be separated from his parents";

The last sentence to be replaced by the following sentence: "Governments shall ensure the livelihood of families with children and provide the necessary family counselling and domestic services".

4. France

The following is taken from document E/CN.4/1324/Add.1.

1. In the light of the comments made in paragraph 4(a) above under "General Comments", the first sentence of this article should be included in a preliminary declaration or a recommendation.

2. Article VI could be improved in two other respects. While a young child should not be separated from his mother, it is equally important that his ties to his father should not be jeopardized. The article might also be completed by a special reference to the situation of children belonging to an international family that has split up. These two points might be worded as follows:

(a) Add at the end of the second sentence, after the words "A child of tender years shall not, save in exceptional circumstances, be separated from his mother", the words "but neither shall his ties with his father be jeopardized or severed".

(b) Add at the end of the third sentence the following words: "Children who belong to an international family that has split up shall, so far as possible, preserve their ties with both parents even if they are of different social origin, nationality or religion."

5. Germany, Federal Republic of

The following is taken from document E/CN.4/1324.

See paragraphs 3, 6 and 7, Federal Republic of Germany, under General Comments.

Paragraphs 3, 6 and 7 cited, which appear elsewhere in document E/CN.4/1324, are the following.

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.

6. Unlike the series of measures on the rights of the individual, article II, article IV (first and second sentences), article V, article VI (fourth sentence), article VII, paragraph 1 (second sentence), article VII, paragraph 3, article IX and article X (first sentence) can be considered only as undertakings on the part of States.

7. Conversely, the provisions of the draft relating to objectives, content and methods of education cannot be considered as either rights of the individual or undertakings on the part of States. The provisions in question are contained in the first sentence of article VI, the first part of article VII, paragraph 2, [article VIII] and the second sentence of article X of the draft. It is the responsibility and duty of the parents whose rights are also recognized in the draft to take binding decisions in this regard. The provisions referred to can more appropriately be made the subject of a recommendation to be incorporated in the preamble to the Convention.

6. Greece

The following is taken from document E/CN.4/1324.

1. The Greek Government considers that the role of the father for the normal development of children has been so far underestimated and should be stressed in the future. It suggests the following alteration starting as from the middle of the paragraph.

"... a child of tender years shall not, save in exceptional circumstances, be separated from his parents."

2. Because of the growing problem of child abuse (non-accidental injury) by one or both of his parents or his caretakers, the Greek Government feels that special mention should be made of the problems of these children. It suggests the following rewording:

"... society and the public authorities shall have the duty to extend particular care to children not only without a family, but also those whose families are evaluated as unable to care for the child in the present and future, regardless of support from public authorities. The child in that case deserves to grow up in an environment which can guarantee his optimal development. Payment of State and other assistance ..."

7. New Zealand

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

Sentences 1 and 2 are generally acceptable. However, the phrase "separated from his mother" requires qualification. It appears to preclude the choice available to many parents at present to place "the child of tender years" in the day care or child care situation where the quality of care is judged to be equivalent to or even better than that provided by the family and the mother. There is now a considerable body of evidence which indicates that such practices are not detrimental to the best interests of the child and may in fact be positively in the child's best interests. Moreover there is no principle in New Zealand law whereby a child of "tender years" shall not, save in exceptional circumstances, be separated from his mother. Both parents are entitled to custody of their child and in the event of a dispute over custody, the court is bound to treat the welfare of the child as the first and paramount consideration (Guardianship Act 1968, S. 23). Thus it would be possible for a small child to be separated from his mother if the court thought this was in the best interests of the child. In addition the Family Proceedings Bill would give equal rights to parents in custody disputes, where the paramount consideration is still the welfare of the child. To that extent our law accords with the principle of article II, rather than article VI.

The last sentence of the article as stated is highly debatable. We would prefer that all children, without discrimination according to size of family, were given the same financial benefits by the State. The equalization of family circumstances would be carried out through the taxation structures of the country. We would therefore suggest an alternative wording along the lines of: "Payment of State and other assistance towards the maintenance of all children should be of such a nature that no child is placed at a disadvantage because of the size of the family".

8. Norway

The following is taken from document E/CN.4/1324.

1. Delete the following phrase:

"a child of tender years shall not, save in exceptional circumstances, be separated from his mother."

2. Amend the last sentence to read as follows:

"Economic support for families with children, through appropriate mechanisms, is desirable."

9. Spain

The following is taken from document E/CN.4/1324.

1. After the words "children without a family" insert the words "arranging for them to be placed, wherever possible, in the most appropriate family environment and, with respect to those without means of support, supplying them with the necessary assistance and preventing them from being uprooted from the family environment". The words "and to those without adequate means of support" would accordingly be deleted.

2. The purpose of this is to avoid the effects of being placed in institutions and, so far as possible, to encourage acceptance in families and adoption.

10. Suriname

The following is taken from document E/CN.4/1324.

See paragraph 2, Suriname, under General Comments.

Paragraph 2 cited, which appears elsewhere in document E/CN.4/1324, is the following.

2. In this connection the Government of the Republic of Suriname wishes to state that it attaches particular importance to the articles VI, VII sub[paragraph] 3 and IX sub[paragraphs] 1 and 2 of the above mentioned draft convention.

11. Sweden

The following is taken from document E/CN.4/1324.

The child's need of close contacts with both parents - and not only with the mother - is a fact which ought to be adequately reflected in the Convention. Generally, the equality of children with respect to education, social and health care is a fundamental element.

12. World Health Organization (WHO)

The following is taken from document E/CN.4/1324.

Article VI, fourth line:

We have some difficulties with the reference to "moral security" and would prefer the deletion of "moral". The provision would thus read: "... in an atmosphere of affection and security; ..."

13. International Council of Women

The following is taken from document E/CN.4/1324.

Article VI seems to us to be ambiguously formulated. It is obviously aimed at providing the child with optimum conditions for the harmonious development of his personality but the juxtaposition, in one and the same article of the Convention, of love and family allowances is not felicitous. There seems to be a problem of drafting, if not of substance.

14. Society for Comparative Legislation

The following is taken from document E/CN.4/1324.

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother, although his ties with his father shall not thereby be weakened or broken, and a child belonging to a divided international family shall, so far as possible, maintain his ties with both his parents. Society and the public authorities shall have the duty to extend particular care to children without a family, to those belonging to a divided international family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

15. International Humanist and Ethical Union

The following is taken from document E/CN.4/1324.

In the light of other world problems, especially the population problem, we doubt whether it is desirable to include in article VI the sentence "payment of State and other assistance towards the maintenance of children of large families is desirable". This, in effect, nullifies efforts to decrease population in the world. We agree that States should be encouraged to achieve an adequate standard of living for their citizens and feel that it might be better to replace the above-mentioned sentence by a sentence to that effect.

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 9, which was based on article 6 of the revised Polish draft, was discussed in 1981, 1982 and 1983. Paragraphs 1 and 2 were adopted in 1982 and paragraphs 3 and 4 were adopted at the 1983 session. Additional proposals were submitted to the Working Group but further consideration was deferred until the second reading. This article was referred to as article 6 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. For the text of the revised article 6, which was taken from Commission on Human Rights document E/CN.4/1349, see paragraph 62 of section C below. Related article 10 of the revised draft, also taken from E/CN.4/1349, is as follows:

A child of pre-school age shall not be separated from his parents, with the exception for cases when such separation is necessary for the child's benefit.

B. 1981: PROPOSALS SUBMITTED TO THE WORKING GROUP

1. Australia

For the text of this proposal, see paragraph 69 in section C below.

2. Denmark

For the text of this proposal, see paragraph 70 in section C below.

3. Norway

For the text of this proposal, see paragraph 66 in section C below.

4. Poland

For the text of these proposals, see paragraphs 63 and 71 in section C below.

5. United States of America

The following text is taken from HR/(XXXVII)/WG.1/WP.12.

Replace existing text of article 6 (...) with the following:

"Except as otherwise provided in the present Convention, the child shall have the right to reside with his parents or legal guardians, including when necessary the right to be reunited with them if they lawfully reside in another State party. If only one parent or legal guardian of a child resides on another State party, such child's preferred place of residence shall be a primary consideration in the deliberations of any judicial or administrative proceeding held to determine such child's place of residence. Each State party shall process applications for family reunification in a positive, humane, and expeditious manner. Until family reunification in a particular case is accomplished, all States parties involved shall permit frequent and regular family contacts."

The foregoing proposal was later extensively modified. For the text of the revised proposal, see paragraph 65 in section C below.

C. 1981: DISCUSSION AT THE WORKING GROUP

The following is taken from paragraphs 62 to 72 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.

62. Article 6 of the revised Polish draft read as follows:

"The parents shall have the right to specify the place of the child's residence unless, guided by his best interests, a competent State organ is authorized, in accordance with national law, to decide in this matter."

63. The Polish delegation submitted the following revised text to replace the original wording of article 6 of the revised draft Convention:

"The parents have the right to determine the place of the child's residence. If the place of residence determined by parents endangers the child's well-being and in case of disagreement between the parents as well as if the child does not remain under the care of parents, his residence will be decided by a competent State organ, guided by the child's well-being."

64. The delegation of Australia suggested that article 6 be deleted because a provision concerning the rights accruing to the parents had no place in such a convention.

65. The representative of the United States proposed that the original wording of articles 6 and 10 of the revised draft convention, be replaced by a revised text which read as follows:

"1. States Parties shall ensure that a child shall not be involuntarily separated from his parents, except when competent authorities determine, in accordance with procedures and criteria specified by domestic law, that such separation is necessary for the welfare of the child in a particular case, such as one involving maltreatment or abuse of the child by the parents or one where the parents are living separately and a decision must be made as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.

2. In cases where both parents lawfully reside in one State Party and their child lawfully resides in another State Party, the States Parties concerned shall deal with applications for family reunification in a positive, humane and expeditious manner. States Parties shall charge only moderate fees in connection with such applications and shall not modify in any way the rights and obligations of the applicant(s) or of other members of the family concerned. States Parties shall ensure that applications for the purpose of family reunification of parents with their children which are not granted for any reason may be renewed at the appropriate level and will be considered at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned, and, in such cases, fees will be charged only when applications are granted. Until family reunification in a particular case is accomplished, all State Parties involved shall permit frequent and regular family contacts.

3. The provisions of paragraph 2 shall also apply in cases where a child's only surviving parent lawfully resides in one State Party and the child lawfully resides in another State Party.

4. If the parents of a child lawfully reside in different States Parties, States Parties shall ensure that the child's preference as to which parent he wishes to reside with shall be an important consideration in any determination made by competent authorities concerning the child's place of residence."

66. Although the representative of Norway submitted a text to replace article 6 only, he shared the view of the United States delegation that there was a strong relationship between article 6 and 10 of the revised Polish draft convention. The text put forward by Norway read as follows:

"A child shall not, against the will of the parents be separated from them, unless a competent public organ is authorized, in accordance with national law, to make such a decision in order to protect the child."

67. The representative of Australia maintained his suggestion that article 6 be deleted and requested the sponsors of the amendments and of the original version to delete the article. The representative of the United States agreed with the representative of Australia that the article as drafted should be deleted, but insisted that the Convention should contain a provision on family reunification and that article 6 was the logical place for this provision because it dealt with the child's place of residence.

68. The representative of the Union of Soviet Socialist Republics supported the wording of article 6 of the revised draft Convention, stressing the importance of retaining this provision guaranteeing the child's interest with regard to his place of residence. In addition, he pointed out that the proposal made by the delegation of the United States (see paragraph 64) was aimed at substituting the provision concerning the child's place of residence for a provision on the reunification of families.

69. One speaker pointed out that it was not the rights of the parents that were emphasized, but the best interests of the child. In that connection, the representative of Australia proposed the following amendment to article 10:

"A child of pre-school age shall not be separated from his parents unless extraordinary circumstances determine that such a separation is necessary for the child's welfare."

70. The representative of Denmark proposed a new text, stating her preference that it should not be incorporated in article 6 but should stand as a separate article. It read as follows:

"Parents or other guardians have the main responsibility for the child. Every State Party has, however, the responsibility to satisfy the needs of the child and ensure the child the rights set forth in this Convention."

71. The representative of Poland, taking account of the views expressed by other delegations, submitted a new revised text of article 6 which read:

"The States Parties shall recognize the right of the child to have his residence to be determined by his parents. If the place of residence specified by the parents is likely to be detrimental to the child's well-being or in the case of disagreement between the parents, a competent public organ, guided by the child's well-being, shall determine his place of residence."

72. The Working Group was unable to continue consideration of article 6 for lack of time.

D. 1982: MODIFIED PROPOSAL PRESENTED BY POLAND

At its 1982 session, the Working Group had before it an elaboration of the draft convention which had been made available to the General Assembly in 1981 (see A/C.3/36/6) by the Polish delegation with a view to facilitate the drafting process. That document contained the text of the articles which had already been adopted as well as a number of modified proposals which had been made at the Working Group. The following text is taken from A/C.3/36/6, part II.

The States Parties to the present Convention shall recognize the right of the child to have his residence to be determined by his parents. If the place of residence specified by the parents is likely to be detrimental to the child's well-being, or in the case of disagreement between the parents, a competent public organ, guided by the child's well-being, shall determine his place of residence.

E. 1982: PROPOSALS SUBMITTED TO THE WORKING GROUP

1. France

For the text of this proposal, see paragraph 15 in section F below.

2. United States of America

For the text of this proposal, see paragraph 25 in section F below.

3. Joint NGO Proposal (Co-sponsors: International Council of Women, Friends World Committee for Consultation, International Association of Penal Law, International Catholic Child Bureau, International Catholic Union of the Press, International Commission of Jurists, International Council of Jewish Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers and the World Jewish Congress)

For the text of this proposal, see paragraph 13 in section F below.

4. Minority Rights Group

For the text of this proposal, see paragraph 14 in section F below.

F. 1982: DISCUSSION AND ADOPTION AT THE WORKING GROUP

The following is taken from the 1982 report of the Working Group to the Commission on Human Rights, E/CN.4/1982/30/Add.1, paragraphs 9 to 33.

9. Article 6 of the revised Polish draft read as follows:

"The parents shall have the right to specify the place of the child's residence unless, guided by his best interests, a competent State organ is authorized, in accordance with national law, to decide in this matter."

10. Article 10 of the revised Polish draft read as follows:

"A child of pre-school age shall not be separated from his parents, with the exception for cases when such separation is necessary for the child's benefit."

11. At the Working Group's session of 1981, the delegation of the United States proposed that the original wording of articles 6 and 10 of the revised draft Convention, be replaced by an amended text which read as follows:

"1. States Parties shall ensure that a child shall not be involuntarily separated from his parents, except when competent authorities determine, in accordance with procedures and criteria specified by domestic law, that such separation is necessary for the welfare of the child in a particular case, such as one involving maltreatment or abuse of the child by the parents or one where the parents are living separately and a decision must be made as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.

2. In cases where both parents lawfully reside in one State Party and their child lawfully resides in another State Party, the States Parties concerned shall deal with applications for family reunification in a positive, humane and expeditious manner. States Parties shall charge only moderate fees in connection with such applications and shall not modify in any way the rights and obligations of the applicant(s) or of other members of the family concerned. States Parties shall ensure that applications for the purpose of family reunification of parents with their children which are not granted for any reason may be renewed at the appropriate level and will be considered at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned, and, in such cases, fees will be charged only when applications are granted. Until family reunification in a particular case is accomplished, all States Parties involved shall permit frequent and regular family contacts.

3. The provisions of paragraph 2 shall also apply in cases where a child's only surviving parent lawfully resides in one State Party and the child lawfully resides in another State Party.

4. If the parents of a child lawfully reside in different States Parties, States Parties shall ensure that the child's preference as to which parent he wishes to

reside with shall be an important consideration in any determination made by competent authorities concerning the child's place of residence."

This proposal, which was reintroduced at the 1982 session of the Group, was the subject of some further amendments by its sponsor.

12. At the Working Group's session of 1981, the representative of Australia proposed to replace the aforementioned text of article 10 by the following:

"A child of pre-school age shall not be separated from his parents unless extraordinary circumstances determine that such separation is necessary for the child's welfare."

This proposal was reintroduced at the 1982 session of the Group by several non-governmental organizations as contained in document E/CN.4/1982/WG.1/WP.1.

13. Several non-governmental organizations suggested the following paragraph, as contained in document E/CN.4/1982/WG.1/WP.1, to replace paragraph 3 of the amendment to articles 6 and 10 originally submitted by the representative of the United States at the Working Group's session in 1981:

"Where a child is placed in the custody of one parent because of a marital dispute between the parents residing in different countries, resulting in divorce, separation or other interlocutory proceedings, and due to conflicting private international law considerations there has been no final determination of the issue of the child's custody or the child is unlawfully held by one parent because of the non-execution of an order of the court of competent jurisdiction, the States Parties shall endeavour to resolve the issue by bilateral agreements or multilateral arrangements reached where appropriate under the auspices of a regional intergovernmental body, the best interest of the child being the guiding principle."

14. The Minority Rights Group, a non-governmental organization proposed the following text in substitution for the proposed new paragraph 3 mentioned above:

"The States Parties shall endeavour, by new or updated bilateral agreements or multilateral arrangements, reached where appropriate under the auspices of a regional intergovernmental body, the best interest of the child concerned being the guiding principle, to resolve the issues arising:

- (i) When a child has been placed in the custody of one parent or in joint custody because of a marital dispute between the parents residing in different countries, resulting in divorce, separation or other interlocutory proceedings, and due to conflicting private international law considerations there has been no final determination of the issue of the child's custody;

- (ii) When a child is unlawfully held and hidden by one parent because of the non-execution or later breach of an order of the court of competent jurisdiction; or
- (iii) When, there being no order of a court of competent jurisdiction as to custody, one parent assumes control over the child contrary to the wish of the parent normally exercising it; and exercises that control in a country other than that in which the latter parent resides."

The main intention of this proposal was to extend the endeavours which States would undertake to make to children who are in effect kidnapped across international frontiers by a parent, particularly those kidnapped in circumstances where no court order on custody exists; these cases are numerous and may in fact be more numerous than those to which an order of custody applies.

15. Some speakers drew attention to the situation of children of parents separated by divorce or for other reasons who are not of the same nationality or who may reside in countries other than the country of residence of the child, and to the need of a child in such a situation to retain his links with both his parents. Accordingly, the representative of France made the following proposal: "The child of a separated international family shall, as far as possible, retain his links with both his parents." The French proposal was supported by several delegations, but it was thought that it dealt more properly with paragraph 2 of the article under discussion and it would be very appropriate if it were the first sentence of paragraph 2. At a later stage in the proceedings, the representative of France submitted a new draft to replace his earlier proposal as mentioned above. The text read as follows:

"The child of parents with different nationalities, who are separated, shall, save in exceptional circumstances, be entitled to maintain personal relations with both parents."

The French representative indicated that:

- (a) the Convention on the rights of the child would in the future serve as a bench-mark for co-operation agreements between States. In view of its importance, the French representative believed that the Convention would benefit if it were completed by including a clause concerning a matter which had not so far been dealt with, namely the situation of children of separated parents of different nationalities;
- (b) experience had shown that private family disputes which gave rise to the abduction of children across frontiers occurred more and more frequently and that no country could consider itself exempt. In France, for example, the Ministry of Justice had estimated that there were 1,000 cases of abduction per year involving no fewer than 41 States. It was a situation which gravely affected society;

(c) the Convention, which constituted a basic text at the international level, must by its very nature be universal. Preventive measures should be taken to impede that its provisions be interpreted from a nationalistic point of view. It was absolutely necessary that the child's interests should be evaluated on the basis of all the elements of his family background, whether such elements were national or international. Experience had shown that the nationalistic approach to the child's interests had in most cases resulted in making a legal orphan of a child with a foreign father or mother;

(d) the Convention should not take second place to the existing conventions which have confirmed at the multilateral level the principle of the maintenance of relations between the child and both his parents of different nationalities. The conventions, which had already been ratified by many countries, were the European Convention of Luxembourg of 20 May 1980 on the recognition and enforcement of decisions relating to children's custody and the restoration of custody rights, and The Hague Convention of 25 October 1980 on the civil aspects of international child abduction.

16. In connection with a child's place of residence, it was said that the Convention also should address itself to certain subjects, namely, the right of the child to liberty of movement and freedom of residence within any State Party together with the right to leave any State - including his own - and to enter his own State, the right of the child to seek asylum from persecution without fear of retaliation, and the right of the child and his parents to be free from arbitrary or unlawful interference with their privacy, family, home or correspondence.

17. Some delegations strongly opposed any distinction whatsoever of children by age, stating that the essential point was that separation of a child from his parents should not occur under any circumstances, while other delegations continued to find some value in distinguishing the position regarding pre-school children, and considered that the same kind of protection cannot be awarded to very young and much older children.

18. In keeping with the view expressed by his delegation at the Group's 1981 session that the idea contained in article 10 was reflected in paragraph 1 of the United States text for article 6 (set forth in paragraph 11 above) the representative of the United States proposed the merger of these two texts. This suggestion was favourably received by some delegations.

19. In addition, it was repeatedly emphasized by some delegations that the separation of a child from his parents should preferably be of a temporary or provisional nature, that the separation period should be made as short as possible under national legislation, and that a child should be returned to his parents as soon as circumstances changed favourably making the separation no longer necessary.

20. The representative of the United States proposed that after the words "competent authorities" in the first sentence of paragraph 1 of the United States text for article 6, the words "subject to judicial review" should be inserted. He also

suggested that the Group should consider using, throughout the Convention, the term "best interests of the child" rather than the term "welfare of the child". Also, he proposed that the concept of "neglect" of the child should be introduced into the Convention and hence suggested the incorporation of the words "or neglect" after the word "abuse" in the first sentence of paragraph 1 of article 6, and the deletion of the word "maltreatment". Further, he proposed the introduction, at the end of the first sentence of the same paragraph, of a new example concerning the child's place of residence to read "or one where there is a disagreement between parent(s) and child as to the child's place of residence". The use of the term "parent(s)" resulted from a suggestion by the representative of Norway that cases of single parents must be covered.

21. The representative of Norway suggested the deletion of the word "involuntarily" from the first sentence of paragraph 1 of article 6 and the insertion of the words "against their will" after the word "parents" in the same sentence. Further, she proposed that any reference to the age of children should be removed completely from the texts under discussion. This proposal was supported by several delegations.

22. The delegation of France suggested that the words "in accordance with applicable law and procedures" should replace the words "in accordance with procedures and criteria specified by domestic law" in the first sentence of paragraph 1 of article 6. This proposal was supported by various delegations.

23. Some speakers questioned the appropriateness of having the letter "s" in the word "parents" between brackets, as in the proposal of the delegation of the United States in paragraph 20, noting that the Convention was intended, as far as possible, to cover regular situations where a child has both his parents.

24. Delegations having found the first lines of paragraph 1 of article 6 up to the words "welfare of the child", as amended, acceptable, the Working Group adopted them by consensus. They read:

"States Parties shall ensure that a child shall not be separated from his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."

25. The representative of the United States submitted the following revised text to replace the original wording of the amendment to articles 6 and 10 presented by his delegation at the Working Group's session of 1981 and reintroduced by him at the beginning of the Group's 1982 session.

"1. States Parties shall ensure that a child shall not be separated from his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child in a particular case, such as one involving abuse or neglect of the child by the parents, one where

the parents are living separately and a decision must be made as to the child's place of residence, or one where there is a disagreement between parent(s) and child as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.

2. In cases where both parents lawfully reside in one State Party and their child lawfully resides in another State Party or where the parents of a child lawfully reside in different States Parties, the States Parties concerned shall deal with applications for family reunification or contacts on the basis of family ties in a positive, humane and expeditious manner. States Parties shall make no distinction as to country of origin or destination in dealing with such applications, shall charge only moderate fees in connection with such applications and shall not modify in any way the rights and obligations of the applicant(s) or of other members of the family concerned. States Parties shall ensure that applications for the purpose of family reunification of parents with their children which are not granted for any reason may be renewed at the appropriate level and will be considered at reasonably short intervals by the authorities of the country of residence or destination, whichever is concerned, and, in such cases, fees will be charged only when applications are granted. Until family reunification in a particular case is accomplished, all States Parties involved shall permit frequent and regular family contacts.

3. The provisions of paragraph 2 shall also apply in cases where a child's only surviving parent lawfully resides in one State Party and the child lawfully resides in another State Party, as well as in cases where parents who are nationals of different States Parties apply to transfer the permanent residence of their children and themselves to a Member State in which either one is normally a resident.

4. If the parents of a child lawfully reside in different States Parties, States Parties shall ensure that the child's preference as to which parent he wishes to reside with shall be an important consideration in any determination made by competent authorities concerning the child's place of residence."

26. A discussion ensued as to whether the examples listed in the second half of the first sentence of the above-mentioned proposal were called for. One delegation expressed its preference for not having any listing of examples whatsoever while another, in supporting this viewpoint, stated that it was impossible to present an exhaustive list of examples and objected in particular to the addition of any example to those already existing in the text submitted by the representative of the United States at the Group's session of 1981.

27. The representative of the United States agreed to delete the third example contained in the first sentence of its proposal which read "or one where there is a disagreement between parent(s) and child as to the child's place of residence".

Further, he suggested that the sentence containing the examples in his proposal should start with the phrase "Such a determination may be necessary".

28. The Working Group then adopted by consensus the following text:

"Such a determination may be necessary in a particular case, such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence."

29. The representative of Poland proposed that the opening sentence of article 6 contained in document A/C.3/36/6 of 7 October 1981 which read as follows: "The States Parties to the present Convention shall recognize the right of the child to have his residence to be determined by his parents", should also be the opening sentence of the paragraph under consideration by the Group. In this connection, the delegation of the United States suggested that the sentence be amended to read: "The States Parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parent(s) except as provided herein".

30. The text originally proposed by the representative of Poland, as amended by the representative of the United States, was supported by the Working Group and was adopted by consensus. The Chairman decided that that text should become paragraph 1 of article 6.

31. The Working Group then adopted the last two sentences of paragraph 1 in the United States text for article 6, and placed them at the end of paragraph 2 of article 6. These sentences read as follows:

"Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination."

32. The delegation of France requested that at the end of the French version of paragraph 2 the following clause be added: "sous réserve de cas prévu par le paragraphe 3".

33. Paragraphs 1 and 2 of article 6, as adopted by the Working Group, read as follows:

"1. The States Parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parent(s), except as provided herein.

2. States Parties shall ensure that a child shall not be separated from his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such

separation is necessary for the best interests of the child. Such a determination may be necessary in a particular case, such as one involving abuse or neglect of the child by the parents or one where the parents are living separately and a decision must be made as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination."

G. 1983: PROPOSALS SUBMITTED TO THE WORKING GROUP

1. Australia

The following is taken from E/CN.4/1983/WG.1/WP.12.

New article 6 ter

1. A child who is separated from one or both parents has the right to maintain personal relations and direct contacts with both parents on a regular basis, save in exceptional circumstances and regardless of whether the parents and the child live in different States.
2. Where such separation results from judicial or administrative action by a State party, such as detention, imprisonment, exile or deportation of one or both parents or of the child, the State party shall provide the parents and the child with precise information as to the whereabouts of the absent member(s) of the family.

For a revision of paragraph 2 of this proposal, see paragraph 23 in section H below.

H. 1983: DISCUSSION AND ADOPTION AT THE WORKING GROUP

The following is taken from the 1983 report of the Working Group to the Commission on Human Rights, E/CN.4/1983/62, paragraphs 8-10 and 20-28.

8. It will be recalled that paragraphs 1 and 2 of article 6 relating to the question of the determination of the place of residence of the child were adopted by the Working Group last year. At the present session, the discussions which led to the adoption of paragraphs 3 and 4 of article 6, part of article 6 bis and article 6 ter, focused on the proposals and amendments thereto relating to various problems which arise from family separation, such as the right of the child to maintain relations with his parents, the question of family reunification and the illegal abduction of children by one parent. It was also stressed that the national and international aspects of the question should be dealt with separately. All the proposals relating to these problems were considered simultaneously.

9. The right of the child, who is separated from one or both parents, to maintain relations with both parents, was generally recognized, but in view of some speakers, reference should be made to exceptional circumstances. The exchange of views on that question led to the adoption of paragraph 3 of article 6.

10. It was suggested that the draft convention should also contain provisions dealing with cases where family separations result from actions initiated by States. It was further stressed, in this connection, that there was a need to ensure that adequate information be provided to the family concerning the whereabouts of the absent parent or child. Various opinions were voiced as regards the type of State action which could lead to family separations. The question was also raised as to whether it was necessary to draw up a list of those actions. The discussions on these points led to the adoption of paragraph 4 of article 6.

(...)

20. During the discussions, it was suggested that the text of the first paragraph of the proposal by the representative of Australia relating to the right of the child who is separated from one or both parents to maintain relations with both, could be adopted by the Group as paragraph 3 of article 6, with the deletion of the words "and regardless of whether the parents and the child reside in different States." It was said in this connection that the international aspects of the question should be dealt with in a separate article. The Group agreed to the adoption of the paragraph on this basis.

21. Discussion on the proposals relating to action taken by States which result in family separations, led to the adoption of paragraph 4 of article 6.

22. During the discussions it was suggested to add to the list of actions by States which could result in family separations the case of "death in custody". With regard to the obligation of the States to provide information, several representatives stressed that such information should be provided only if: (a) a formal request is made and (b) if the information would not be detrimental to the interest of the child.

23. The representative of Australia revised paragraph 2 of his proposal (E/CN.4/1983/WG.1/WP.20) as follows:

"Where such separation results from judicial, administrative or any other action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death in custody) of one or both parents or of the child, that State Party shall provide the parents, the child or, if appropriate another member of the family upon request with essential information concerning the whereabouts of the absent member(s) of the family, unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned."

24. During the discussions, it was observed that specific references to judicial or administrative action should be deleted as this text refers to any action taken by States.

25. Several representatives objected to the reference to cases where family separation results from "death in custody", as formulated. In their view, the formulation used seemed to imply the responsibility of the States concerned.

26. Some representatives continued to maintain that a listing of actions initiated by States were unnecessary.

27. Paragraph 2 of the Australian proposal was orally revised by the representative of Australia to delete specific references to judicial and administrative action and to replace the words "death in custody" by the words "including death arising from any cause while the person is in the custody of the State".

28. The paragraph as orally revised was adopted as paragraph 4 of article 6.

I. 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 6 (residence of the child)

Article 6 relates to the determination of the place of residence of children whose parents are separated and states at the end of paragraph 2: "Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known". We would like to add: "It shall be understood that the children will have an opportunity to express their preference".

J. 1987: COMMENT SUBMITTED TO THE WORKING GROUP

1. Morocco

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights, E/CN.4/1987/25, paragraph 2.

2. (...). By a note verbale of 30 January 1987, the Permanent Representative of Morocco asked that their observations on the draft convention be brought to the

attention of the Working Group; those observations were contained in E/CN.4/1987/WG.1/WP.35.

The following is taken from E/CN.4/1987/WG.1/WP.35.

Article 6 - Paragraph 2 - Care of children

Moroccan legislation stipulates that the parents shall have the care of the children during the marriage, but that if the parents are living separately the mother shall have priority in caring for the child.

K. TEXT AS ADOPTED AT THE FIRST READING

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

1. The States Parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parents(s), except as provided herein.
2. States Parties shall ensure that a child shall not be separated from his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such a determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.
3. A child who is separated from one or both parents has the right to maintain personal relations and direct contacts with both parents on a regular basis, save in exceptional circumstances.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

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 UNICEF

The following is taken from E/CN.4/1989/WG.1/CRP.1, page 20.

Gender neutrality

Paragraph 1. A possible reformulation of the paragraph is:

"The States Parties to the present Convention recognize that the child should enjoy parental care and should have his or her place of residence determined by his or her parent(s), except as provided herein."

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

"States Parties shall ensure that a child shall not be separated from his or her parents against their will..."

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. Canada

For the text of this proposal, see paragraph 192 in section B below.

2. German Democratic Republic

For the text of this proposal, see paragraph 190 in section B below.

3. Germany, Federal Republic of, and Japan

For the text of this proposal, see paragraph 190 in section B below.

4. Venezuela

For the text of these proposals, see paragraphs 188 and 189 in section B below.

5. 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 6: Include a new paragraph 2: "In case of expectant minors, the States parties shall implement compatible policies for the protection of maternity and for attaining integral assistance, keeping the mother-child bond intact, avoiding trafficking and fraudulent adoptions."

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 186 to 207.

186. The Working Group had before it the following text of article 6 as adopted at first reading:

"1. The States Parties to the present Convention recognize that the child should enjoy parental care and should have his place of residence determined by his parent(s), except as provided herein.

2. States Parties shall ensure that a child shall not be separated from his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such a determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. Such determinations shall not be made until all interested parties have been given an opportunity to participate in the proceedings and to make their views known. Such views shall be taken into account by the competent authorities in making their determination.

3. A child who is separated from one or both parents has the right to maintain personal relations and direct contacts with both parents on a regular basis, save in exceptional circumstances.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in custody of the State) of one or both parents or for the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned."

187. Three revisions relating to gender neutrality were suggested in the course of the technical review by UNESCO with regard to paragraphs 1 and 2 of the article (E/CN.4/1989/WG.1/CRP.1, p. 20). It was also proposed to consider changing the beginning of paragraph 1 to read: "States Parties recognize that...".

188. The representative from Venezuela introduced a proposal (E/CN.4/1989/WG.1/WP.36) which sought to replace paragraph 1 of article 6 by the following text:

"1. The States Parties to the present Convention recognize that the child has a right to enjoy parental care and protection, and should have his place of residence chosen by either of his parents, except as provided herein."

189. The representative of Venezuela then orally proposed some more amendments relating to paragraphs 2 and 4 of article 6 which were subsequently issued as document E/CN.4/1989/WG.1/WP.43. The amendments read as follows:

"Paragraph 2

States Parties shall ensure that a child shall not be separated from his parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child, as in the case of articles [10, 18 et seq. and 19] or where the parents are living separately and have to make a decision as to the child's place of residence.

Paragraph 4

In the Spanish version, replace the words 'cuando se le pida' with 'cuando asé sea solicitado'. " [does not affect the other language versions.]

190. The representative of the German Democratic Republic introduced a proposal (E/CN.4/1989/WG.1/WP.13) to reformulate paragraph 3 of article 6 to read as follows:

"The States Parties to the present Convention shall respect and promote the right of the child who is separated from one or both parents on a regular basis, save in exceptional circumstances."

191. The representative of the Federal Republic of Germany introduced a proposal (E/CN.4/1989/WG.1/WP.20) sponsored also by Japan by which a new paragraph 5 was to be added to article 6 reading as follows:

"5. Nothing in this Convention shall affect in any way the legal provisions of States Parties concerning the immigration and the residence of foreign nationals."

192. The observer for Canada introduced a proposal (E/CN.4/1989/WG.1/WP.37) to revise article 6 to read as follows:

"1. States Parties shall ensure that the separation of a child from his or her parents, or other persons who have undertaken responsibility for the child's care, against their wishes shall be authorized only where the competent authorities determine, in accordance with applicable law and procedure that such persons have failed to fulfil their responsibilities in circumstances which indicate that the child's welfare is harmed or threatened. Any care provided for a child who is separated from his or her parents by public authorities shall be in accordance with the best interests of the child.

2. States Parties recognize that when the parents of a child are living separate and apart from each other and an application is made to the competent authorities for a determination as to which of them shall have custody of the child, the interests of the child shall be the paramount consideration of such authorities in determining who shall be awarded the custody.

3. In any proceedings pursuant to paragraphs 2 and 3, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

4. A child who is separated from one or both parents has the right to maintain personal relations and direct contacts with both parents on a regular basis, except if it is contrary to the child's best interests.

5. Where such a separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned."

193. The representative of Iraq orally proposed to delete the word "regular" from paragraph 3 of article 6.

194. The representative of Portugal stated that she could not support the proposal introduced by the Federal Republic of Germany in E/CN.4/1989/WG.1/WP.20, since it was not consistent with article 12 of the Covenant on Civil and Political Rights, concerning the liberty of movement, several recommendations of the Council of Europe, to which Portugal is a member, and the Draft Convention on Migrant Workers. She also pointed out that the proposal could be interpreted as a general reservation, not applying only to this article.

195. After some discussion, the Working Group decided upon the suggestion of the Chairman, to establish a small drafting group composed of Canada, the Federal Republic of Germany, the German Democratic Republic, Japan, the Netherlands, the Philippines, the United Kingdom of Great Britain and Northern Ireland and Venezuela to elaborate a unified text of article 6.

196. On behalf of the drafting group, the representative of the Federal Republic of Germany introduced the proposals made by the drafting group (E/CN.4/1989/WG.1/WP.55). In doing so, he stated that the group proposed the deletion of paragraph 1 as adopted during the first reading because its contents were covered elsewhere in the Convention. He also indicated that old paragraph 2 was to be split up with the bulk of it forming a new paragraph 1 and for the last two sentences of the old paragraph to be more elegantly restyled into a new paragraph 2. He stated that the new paragraph 3 was more consistent with the tone of article 6 in that it imposed State obligations rather than directly creating rights for individuals. He further stated that paragraph 4 remained unchanged from the first reading and that in agreeing to the text in E/CN.4/1989/WG.1/WP.55 the drafting group urged

the Chairman to make a statement for the report as to the meaning and intention of the whole article.

197. The representative of the United States of America suggested that the proposed text for article 6 contained in E/CN.4/1989/WG.1/WP.55 be adopted without any modifications.

198. The delegations of Finland, Brazil, India and Venezuela expressed their preference for the text of article 6 as adopted during the first reading. In particular, the observer for Finland did so because he took the view that the proposed text in E/CN.4/1989/WG.1/WP.55 added nothing substantial to the old text. However, all four representatives indicated that they would not insist on the adoption of the old text.

199. The representative of Venezuela proposed with reference to E/CN.4/1989/WG.1/WP.55 that the words "such as the cases in articles 10, 18 and following and 19 or" be inserted after the word "child" in line 5 of paragraph 1 with the deletion of the second sentence of that paragraph from the words "such determination" until "or one", on line 7, inclusive. However, in view of the lack of support for this proposal, the representative of Venezuela withdrew her proposal.

200. With reference to paragraph 2 of article 6 as contained in E/CN.4/1989/WG.1/WP.55, the representative of India questioned why, since it embodied the latter part of old paragraph 2, the last sentence of old paragraph 2 had been omitted. He strongly urged its inclusion in the text contained in E/CN.4/1989/WG.1/WP.55, because he felt that, in being more forceful, it strengthened the obligation on States Parties. The representatives of the Federal Republic of Germany and Canada indicated that that sentence was not necessary as its meaning was clearly implied by the paragraph as restyled in E/CN.4/1989/WG.1/WP.55. The observer for Finland indicated that it was unnecessary to include that sentence because the idea contained therein was covered in article 7. The representative of India agreed to join the consensus to leave the sentence out on the understanding that its intent would be covered by article 7.

201. In the foregoing debate, general agreement was expressed as to the desirability of a statement by the Chairman for the report, as contained in E/CN.4/1989/WG.1/WP.55, regarding articles 6 and 6 bis.

202. The Working Group then proceeded to adopt article 6 as contained in E/CN.4/1989/WG.1/WP.55 which reads as follows:

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned."

203. After the adoption of the article, the Chairman made a statement for the report. The declaration reads as follows:

"It is the understanding of the Working Group that article 6 of this Convention is intended to apply to separations that arise in domestic situations, whereas article 6 bis is intended to apply to separations involving different countries and relating to cases of family reunification. Article 6 bis is not intended to affect the general right of States to establish and regulate their respective immigration laws in accordance with their international obligations."

204. The representative of Portugal then made a statement for the report. It reads as follows:

"In this connection, the delegation of Portugal would like to emphasize that the term 'international obligations' means not only the treaties concluded or ratified by a State but also the principles recognized by the international community, particularly United Nations legal instruments for the promotion and protection of human rights."

205. The observer for Sweden stated that his delegation fully agreed with the interpretation of the Chairman's declaration made by the representative of Portugal. He further stated that the notion "international obligations" in the Chairman's declaration should include the provisions of this Convention and especially article 6 bis.

206. The representative of Italy indicated her support for, and wished to join in, the expression of the sentiments contained in the statements made by the representative of Portugal.

207. The representative of the Federal Republic of Germany reserved the right to declare that silence in the face of the Chairman's declaration did not mean agreement with it.

C. STATEMENT MADE AFTER THE ADOPTION OF THE CONVENTION

1. Japan

The following is taken from the report of the Working Group to the Commission on Human Rights, E/CN.4/1989/48, paragraph 22.

22. The representative of Japan expressed the reservation of his Government with regard to the legal nature of the declaration that the Chairman of the Working Group should make on article 6 bis to the effect that this article was not intended to affect the immigration laws of States Parties. Doubts were also expressed as to the consequences for the national immigration laws of some other provisions of the convention, namely of article 6, paragraphs 2 and 4, and of article 11 bis. The representative of Japan further stated that a number of other newly adopted proposals and articles of the draft convention would be ad referendum to his Government which will express its formal view on them at an appropriate opportunity.

D. STATEMENTS MADE DURING THE ADOPTION OF THE REPORT

1. Germany, Federal Republic of

The following is taken from the report of the Working Group to the Commission on Human Rights, E/CN.4/1989/48, paragraph 721.

721. (...) The representative of the Federal Republic of Germany further asked that the following declarations be entered in the report:

(a) Nothing in the Convention on the Rights of the Child shall be interpreted as legitimizing the illegal entry and presence on the territory of the Federal Republic of Germany of any alien, nor shall any provision be interpreted as restricting the right of the Federal Republic of Germany to promulgate laws and regulations concerning the entry of aliens and the conditions of their stay or to establish differences between nationals and aliens.

(...)

2. Japan

The following is taken from the report of the Working Group to the Commission on Human Rights, E/CN.4/1989/48, paragraph 722.

722. The representative of Japan drew the attention of the Working Group to the Chairman's declaration contained in paragraph 203 of the report stating that article 6 of the Convention (present article 9) was intended to apply to separations that arise in domestic situations and also that article 6 bis (present article 10) was not intended to affect the general right of States to establish and regulate their respective immigration laws in accordance with their international obligations. (...)

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

The text of article 9 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

For further research, see the legislative history of articles 10 and 11 below. See also 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)
