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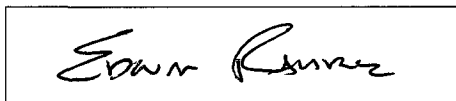
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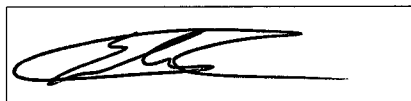
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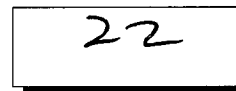
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**Legislative History of the
Convention on the Rights of the Child
(1978 - 1989)**

ARTICLE 11

(ILLICIT TRANSFER AND NON-RETURN)

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.

ARTICLE 11

(ILLICIT TRANSFER AND NON-RETURN)

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ARTICLE 11

(ILLICIT TRANSFER AND NON-RETURN)

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 take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

II. FIRST POLISH DRAFT CONVENTION AND COMMENTS (1978)

In a letter dated 17 January 1978 addressed to the Director of the Division of Human Rights (see E/CN.4/1284), the Permanent Representative of Poland to the United Nations Office at Geneva proposed that "The question of the Convention on the Rights of the Child" be included in the agenda of the thirty-fourth session of the Commission of Human Rights. At that session, the Polish delegation presented a draft resolution (E/CN.4/L.1366) which contained a draft convention based upon the provisions of the 1959 Declaration of the Rights of the Child. The resolution was subsequently revised (E/CN.4/L.1366/Rev.1) and two additional articles (XI and XII) were added to the draft convention annexed in the final version of the draft resolution (E/CN.4/L.1366/Rev.2) which was then adopted by the Commission on Human Rights (see E/CN.4/1292, pages 122 to 127) as resolution 20 (XXXIV) of 8 March 1978. In that resolution, the Secretary-General was requested to invite Member States, competent specialized agencies, regional, intergovernmental organizations and non-governmental organizations to communicate to him their views, observations and suggestions concerning the draft convention submitted by Poland. 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 11 of the Convention.

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 issues raised under article 11 were first discussed by the Working Group at its 1982 session and the text was adopted in 1983. This article was referred to as article 6 ter throughout the first and second readings.

A. 1982: PROPOSALS SUBMITTED TO THE WORKING GROUP

1. France

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

2. 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 B below.

3. Minority Rights Group

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

B. 1982: DISCUSSION 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 13 to 15.

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.

C. 1983: VIEWS OF GOVERNMENTS ON CHILD REMOVAL OR RETENTION

In its resolution 1982/39, the Economic and Social Council inter alia called the attention of States to the proliferation of cases of removal and retention of children and invited them to co-operate actively with a view to preventing the occurrence of such cases and to solving them speedily, out of concern for the interest of the child. In this connection, it

invited the Commission on Human Rights, when drafting the convention on the rights of the child, to take into consideration the protection of the rights of the child in cases of unauthorized international removal. It further requested the Secretary-General to consult with Governments on this problem and to report to the Commission on Human Rights at its thirty-ninth (1983) session.

In accordance with that resolution, note verbales relating to this question were sent to all Member States of the United Nations. The following summaries of the replies received were compiled in documents E/CN.4/1983/32 and Add.1-5, which, with the exception of E/CN.4/1983/Add.5 (containing the replies of Barbados and Sudan), were before the Working Group at its 1983 session.

1. Austria

The following is taken from E/CN.4/1983/32.

The Government refers to the Hague Convention on Civil Aspects of International Child Abduction of 25 October 1980 and makes observations on a number of points including, in particular, the enforcement of decisions concerning custody of children, measures guaranteeing the expeditious return of children in cases of removal, grounds for refusing the return of a child, and the question of the costs incurred through recourse to the assistance of a lawyer.

2. Barbados

The following is taken from E/CN.4/1983/32/Add.5.

The Government of Barbados states that the retention of children, removal or abduction of children by a parent in defiance of a custody order is becoming an increasing problem in Barbados.

This issue has been discussed at several Commonwealth Law Ministers Meetings since 1977 and an attempt is being made by members of the Commonwealth to draft a convention along similar lines as the Hague Convention.

The broad aim of this convention would be to recognize and enforce custody orders made within Commonwealth countries and to ensure that an application to vary or modify a custody order would only be done in the child's country of residence. There is, however, general consensus that in order to alleviate this problem, there must be (a) an intergovernmental agreement and (b) subsequent legislative changes.

The Government has already implemented some initial legislative changes. In the Family Law Bill of 1981, foreign custody orders can be registered and are recognized. A limit is placed on the right of the court in Barbados to exercise jurisdiction on the matter unless (a) each person having rights in the original order

consents to the proceedings or (b) the welfare of the child will be adversely affected by non-action. There is also provision for the transmission of Barbadian custody orders to overseas countries.

The inclusion of the rights of the child in cases of unauthorized removal in the draft convention on the rights of the child would ensure that countries become more aware of the size and scope of the problem and safeguard the right of a child to a stable and secure environment.

3. Colombia

The following is taken from E/CN.4/1983/32/Add.2.

The Government of Colombia reports that chapter 8 of Administrative Decision No. 0773 of 1981 refers expressly to permits to leave Colombia and prescribes the requirements concerning minors.

1. When both parents agree to the minor's departure:

In this case, a statement of intent that has been signed by both parents and authenticated shall be submitted in writing to the Ministry of External Relations so that a passport may be issued to the minor or minors concerned.

2. When the domicile of one of the parents or legal representatives is unknown, the Minors' Counsel shall, in administrative proceedings, allow or refuse to allow the minor or minors concerned to leave Colombia, as appropriate.

All these decisions must be complied with by the immigration authorities.

In addition to such cases, somewhat irregular de facto situations occur when one of the parents manages, by resorting to bribes, forging signatures or travelling by land to the borders with Ecuador, Brazil, Venezuela, Panama, etc., unlawfully to obtain a visa for other countries from the competent officials.

In view of the foregoing, we consider it advisable, important and urgent that international agreements should be concluded on such matters and that the Commission on Human Right should draft agreements on the rights of children which take account of the protection of their rights in cases of unauthorized and unlawful international travel.

It is extremely important that such agreements should deal not only with the protection of minors, but also provide for machinery to pave the way for, facilitate and make possible the repatriation of a minor or minors unlawfully removed from Colombia.

4. Cyprus

The following is taken from E/CN.4/1983/32.

The Government states that it supports Economic and Social Council resolution 1982/39 and that it is also considering the ratification of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, of 20 May 1980

5. Denmark

The following is taken from E/CN.4/1983/32.

The Government states that it is considering whether to accede to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, drafted within the framework of the Council of Europe, or to the Hague Convention on Civil Aspects of International Child Abduction of 25 October 1980.

6. Ethiopia

The following is taken from E/CN.4/1983/32.

The Government expresses its full support for Economic and Social Council resolution 1982/39 and declares that States should organize some form of co-operation for preventing the occurrence of cases such as those referred to in the resolution. The Government further notes that it is in favour of the elaboration of an international convention on the question.

7. Germany, Federal Republic of

The following is taken from E/CN.4/1983/32.

The Government states that it welcomes Economic and Social Council resolution 1982/39. It further states that it is willing to co-operate with other States on the basis of the Hague Convention on Civil Aspects of International Child Abduction of 25 October 1980, and that it therefore intends to ratify the Hague Convention.

8. Greece

The following is taken from E/CN.4/1983/32.

The Government states that it attaches great importance to the inclusion, in drafting the convention on the rights of the child, of sufficient and effective safeguards for the prevention of unauthorized removals from State to State.

The efforts being made to construct a complete and up-to-date system for the protection of the child against unauthorized removal across frontiers, may find inspiration in the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, of 20 May 1980, which Greece has already signed and intends to ratify shortly.

9. Kuwait

The following is taken from E/CN.4/1983/32/Add.1.

The Government states that its legislation fully safeguards the right of the child to live undisturbed under the protection of the person legally responsible for his welfare, irrespective of whether that person is the child's guardian, trustee or any other individual in whose custody the child had been placed. According to articles 178 to 184 of the Penal Code, it is absolutely forbidden to remove a child under 21 years of age from his environment or from the place in which he normally lives is such removal would entail the severance of the child's links with his family, who are responsible for his welfare.

The State of Kuwait intends to co-operate with other State Members of the United Nations with a view to the adoption of measures and rules to prevent the removal or retention of children.

The following additional text is taken from E/CN.4/1983/32/Add.4.

The Government states that Kuwaiti legislation contains numerous provisions under the Personal Status Act to protect the child's individuality, development and maintenance. Chapter II of the Constitution stipulates that the family is the foundation of society and is based on religion, morality and patriotism. The law shall safeguard the family and strengthen its bonds, thereby ensuring the protection of mothers and children.

Article 10 of the Constitution stipulates that: "The State shall provide for the welfare of the younger generation, protect it from exploitation, and preserve it from moral, physical and spiritual neglect."

In the event of a conflict between spouses, the customary practice followed by the courts in the State of Kuwait is to grant child custody to the mother, since she is regarded as the person most likely to show concern for the welfare of the child during the early stages of his life. The child remains in the custody of his mother, or whoever replaces her, until he comes of age as prescribed in the Islamic Shari'a.

The nationality Act No. 15 of 1959 ensures extensive protection for mothers and children.

10. Netherlands

The following is taken from E/CN.4/1983/32.

The Government notes that it intends to ratify the two recently concluded international instruments which deal with the problem of preventing the occurrence of cases of removal of children, namely: the Hague Convention on Civil Aspects of International Child Abduction, and the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children. Interested States should organize co-operation in this field by acceding to one or both Conventions. Furthermore, if the Commission on Human Rights intends to include in the draft convention on the rights of the child provisions concerning the removal of children, it should pay due attention to existing instruments in order to ensure the effective prevention of unauthorized removal of children.

11. Norway

The following is taken from E/CN.4/1983/32.

It is the Government's view that the question of the unauthorized removal of children should be taken into consideration when drafting a convention on the rights of the child. At the same time, the need for co-ordination with the work already done by other international organizations should also be taken into account. The Government is, in principle, in favour of adhering to one or both conventions on the subject, namely, the Hague Convention on Civil Aspects of International Child Abduction and the convention elaborated by the Council of Europe.

12. Pakistan

The following is taken from E/CN.4/1983/32.

The Government states that it does not permit the removal or retention of children from their parents' family by other persons. The family courts decide on custody in cases arising out of divorce. The Government supports the proposal that all countries should co-operate closely through accession to the Hague Convention on Civil Aspects of International Child Abduction of 25 October 1980, which is open to all States.

13. Qatar

The following is taken from E/CN.4/1983/32.

The Government states that it endorses Economic and Social Council resolution 1982/39. Islamic law recognizes the need to protect children. The Government proposes that one of the aspects of the question which should be considered is the importance of ensuring adequate services for the fundamental needs of children suffering from the problem of removal.

14. Singapore

The following is taken from E/CN.4/1983/32.

The Government states that there are adequate laws in Singapore to cover the protection of the rights of children and young persons, namely, the Laws of Children and Young Persons Act, the Women's Charter and the Penal Code. In addition to these laws, the Ministry of Social Affairs of Singapore contains two divisions - the Counselling and Advice Division and the Protection and Welfare of Children and Young Persons Division - which deal with all problems connected with children and young persons. Any parent who is aggrieved by the unauthorized removal of a child by one spouse can have recourse to the Courts, provided he or she is a Singapore citizen or has resided in Singapore continuously for a period of not less than six months. There is provision for an expedited order where the Court is satisfied that there is an imminent danger of the child being taken out of the country. The Court is also empowered to order a child to be kept at a place of safety to await a decision. The Penal Code also has a provision which safeguards a child against kidnapping from lawful guardianship.

15. Spain

The following is taken from E/CN.4/1983/32/Add.1.

The Government states that it shares the concern underlying the text of Economic and Social Council resolution 1982/39 in view of the increasing number of cases of Spanish nationals becoming involved in situations of this type, usually as a result of marriages with aliens. Noting that it had played an active part in the preparation of the Hague Convention on Civil Aspects of International Child Abduction to which it intends to accede, the Government adds that it would be very opportune if, at its thirty-ninth session, the Commission on Human Rights completes its work on the elaboration of that convention on the rights of the child with a view to achieving the speedy solution of the cases referred to in the Council's resolution 1982/39.

16. Sudan

The following is taken from E/CN.4/1983/32/Add.5.

The Government states that it fully supports Economic and Social Council resolution 1982/39. Although cases of retention and international removal of children rarely occur because of the existence of strong social and family ties, Sudan welcomes international co-operation and the exchange of experience in the field of the rights of the child.

The Constitution and other legislative acts clearly indicate the importance of moral, spiritual, mental, physical and social values for the development of the child.

17. Switzerland

The following is taken from E/CN.4/1983/32.

The Government states that it has taken the necessary steps for the ratification, in the near future, of the Hague Convention on Civil Aspects of International Child Abduction of 25 October 1980, as well as of the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, of 20 May 1980. The Swiss Government also proposes to begin negotiations with certain States not intending to become parties to either of the above-mentioned conventions, with a view to examining the possibility of concluding bilateral agreements with those States for mutual aid in the event of international child abduction by a parent or close relative.

Within the framework of the draft convention on the rights of the child, Switzerland supports the proposal to grant to a child having parents of different nationalities who are separated the right to maintain personal relations with both parents.

18. Thailand

The following is taken from E/CN.4/1983/32.

The Government states that the protection of children and of youth is the responsibility of various governmental organizations. The services provided to disadvantaged children include family assistance, protection measures, adoption arrangements and the promotion of voluntary child welfare institutions.

The following additional text is taken from E/CN.4/1983/32/Add.3.

The Government state that cases of unauthorized removal and retention of children in Thailand are not only the result of conflicts arising between couples of different nationalities, but also of an increasing demand for children for adoption abroad.

It is the Government's view that national legislative measures are not sufficient to control infringements of the rights and benefits of such children. It therefore suggests that the Commission on Human Rights should take up this problem when drafting the convention on the rights of the child. At the same time, the public should be made aware that a child given for adoption should be provided with the facilities to develop in conditions of freedom and dignity.

19. Yugoslavia

The following is taken from E/CN.4/1983/32/Add.2.

According to Yugoslav law, parents shall exercise the parental right together and by mutual consent, and in case of disagreement the guardianship authority shall decide. If parents are separated, the parental right shall be exercised by the parent with whom the child lives; in the case of parental disagreement, a decision shall be reached by the guardianship authority or, in specified cases, by the court. Furthermore, if, in case of the separation of parents, dissolution or annulment of their marriage, the child has been entrusted by a court decision or by the decision of any other competent authority to the care and upbringing of one of the parents, that parent shall exercise the parental right.

In exceptional cases, Yugoslav laws provide that a child may be removed from a parent by a decision of the guardianship authority, if the child's proper upbringing is seriously threatened. The act of removal of the child in such cases does not imply that any other rights and duties of parents have ceased. Anyone who removes or retains a child not entrusted to him/her would be subject to civil and criminal liability. The penal laws of the Republics and autonomous provinces provide for a specific type of offence (removal of a minor) for which, in cases of unauthorized removal of a minor by a natural parent, adoptive parent, guardian or any other person, the offender may be punished with imprisonment.

D. 1983: PROPOSALS SUBMITTED TO THE WORKING GROUP

1. France

For the text of these proposals, see paragraphs 19 and 47 in section E below.

2. Minority Rights Group

For the text of this proposal, see paragraph 50 in section E below.

E. 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, 13, 19 and 45 to 51.

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.

(...)

13. The illegal abduction of children was considered by many speakers as a very important question. It was observed that when parents of different nationalities are separated and reside in different States, such situations often give rise to the abduction of children across frontiers. The need for effective remedy was stressed. In the view of some speakers, however, what constituted "illegal abduction by one parent" could not be easily defined, as international private law varied from country to country. Nevertheless, in order to find solutions to this problem, most speakers agreed on the need for the conclusion of bilateral agreements or appropriate additions to existing multilateral agreements. The discussion on this question led to the adoption of article 6 ter.

(...)

19. (...)

(c) The representative of France reintroduced a proposal he submitted last year. As revised, the proposal (E/CN.4/1983/WG.1/WP.6) deals with two questions: (i) the question of personal relations of the child with his parents when the parents are of different nationalities and are separated, and (ii) the question of illegal removal of the child by one parent. It reads as follows:

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

2. The States Parties to the present Convention shall take the necessary measures to prevent the unlawful removal abroad and non-return of children.

The removal and non-return of a child shall be considered unlawful:

(a) When it occurs in violation of custody rights awarded to a person or an institution by the laws of the State in which the child had his usual place of residence immediately prior to his removal or non-return;

(b) When such rights were actually exercised at the time of the removal, or would have been so exercised if such events had not taken place. The measures taken by States may be the conclusion of international agreements or accession to existing agreements."

(...)

45. Discussions on the question of unlawful removal of children across frontiers led to the adoption of article 6 ter. The representative of France referred to paragraph 2 of his earlier proposal (see paragraph 19 above) and said that it could constitute a new article 6 ter, with the provisions of article 6 bis, paragraph 2 in relation with the provisions of article 3, paragraph 1.

46. During the discussion on the proposal doubts were expressed concerning the two criteria proposed for considering the removal of children unlawfully. Such criteria, it was stated, varied according to different legal systems. Speakers also emphasized the need for more international co-operation, through bilateral or multilateral agreements and consultations between national authorities as regards the measures to be taken by States against abduction of children.

47. In the light of the discussions the representative of France revised paragraph 2 of his proposal (E/CN.4/1983/WG.1/WP.17) as follows:

"1. The States Parties to the present Convention shall take appropriate measures to combat the unlawful abduction of children abroad and their non-return.

2. To that end, States shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements, and the institution of periodic consultations between the national authorities concerned."

Adoption of paragraphs 1 and 2 of article 6 ter

48. Paragraph 1 of the revised proposal submitted by France was adopted by the Group as paragraph 1 of article 6 ter.

49. With the insertion of the word "Parties" after the word "States" in the first line of paragraph 2 of the revised proposal, that paragraph was provisionally adopted by the Group as paragraph 2 of article 6 ter.

50. The Minority Rights Group, a non-governmental organization, introduced a proposal under which a third paragraph would be added to article 6 ter (E/CN.4/1983/WG.1/WP.18). The text of the proposal reads as follows:

"Children cannot be divorced from their parents. Any arbitrary removal must be seen as contrary to the interest of the child, in accordance with the principles of human rights.

This Convention must comprise a measure expressing condemnation of such acts and the States Parties' duty to dissuade their perpetration.

The act of abduction shall not be treated differently for reasons of parents' nationality, sex, race or religion, or the status of the parents' separation proceedings."

51. The Chairman noted that that proposal did not command unanimous support. The Group concerned should review its proposal in the light of delegates' remarks.

F. TEXT AS ADOPTED AT THE FIRST READING

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

Article 6 ter

1. The States Parties to the present Convention shall take appropriate measures to combat the illicit transfer and non-return of children abroad.
2. To this end, the States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements, as well as the introduction of periodic consultations between the competent national authorities.

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. There were no comments which specifically referred to the text of article 6 ter.

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 224 to 233.

224. The Working Group had before it article 6 ter as adopted at first reading:

"1. The States Parties to the present Convention shall take appropriate measures to combat the illicit transfer and non-return of children abroad.

2. To this end, the States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements, as well as the introduction of periodic consultations between the competent national authorities."

225. The observer for Finland suggested the deletion of the end of paragraph 2: "... the introduction of periodic consultations between the competent national authorities", since those mechanisms were already provided by international conventions and that here it appeared superfluous, given that within this Convention, there would be a committee supervising the matter. The delegate then appealed to the French delegation, which had sponsored this clause to reconsider it.

226. The delegation of the Netherlands joined Finland in this suggestion and also proposed the deletion of the word "appropriate" under paragraph 1.

227. The representative of France agreed to the deletion as suggested by Finland.

228. The representative of Mexico while expressing his regrets over the deletion, declared he had neither objections nor amendments to suggest. The delegate asked, however, for more specific measures against the sale of children and said that the measures proposed in article 6 ter were too general.

229. The observer for Canada stated that article 18 already dealt with the sale of children so there was no necessity to broaden article 6 ter further, and that he had no objection to the deletion of the end of paragraph 2 as proposed by Finland. Finally, he said that paragraph 1 of the original text had been proposed in French, using language from the French version of the Hague Convention on International

Child Abduction and therefore the English translation of the original paragraph 1 should also use the language from the English version of the Hague Convention. Accordingly, the phrase "illicit transfer and non-return" should be changed to "wrongful removal and retention".

230. The observer for Finland pointed out that in the Hague Convention the French text used the expression "d placement illicite" whereas the corresponding expression in the English text was "wrongful removal" and that the 1980 European Convention used the expressions "sans droit" and "illicite" in the French text and the word "improper" in the English text. He suggested that it might be better to avoid the use of "wrongful" in the English text since that word had a specific meaning within the Hague Convention, slightly different from "improper" in the European Convention, and proposed, in order to cover all those nuances and possibilities that the word "illicit" be kept in the English text.

231. The delegation of Italy proposed the use of "abduction" instead of "illicit transfer and non-return".

232. As far as article 18 quater was concerned, the representative of the Federal Republic of Germany suggested the deletion of article 6 ter in order to keep only article 18 quater whereas Senegal proposed the addition of article 18 quater under article 6 ter as the third paragraph.

233. After a short discussion, the Working Group adopted article 6 ter which reads as follows:

"1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements."

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

The text of article 11 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 9 and 10 above. 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)

