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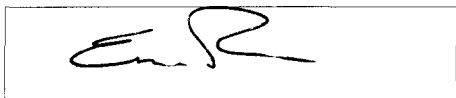
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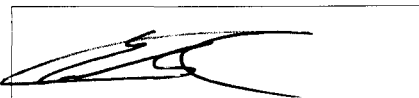
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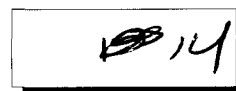
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Legislative History of the Convention on the Rights of the Child (1978 - 1989)

ARTICLE 39

(PHYSICAL AND PSYCHOLOGICAL RECOVERY AND SOCIAL REINTEGRATION)

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 39

**(PHYSICAL AND PSYCHOLOGICAL RECOVERY
AND SOCIAL REINTEGRATION)**

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ARTICLE 39

(PHYSICAL AND PSYCHOLOGICAL RECOVERY AND SOCIAL REINTEGRATION)

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.

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

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 39 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 text of article 39 was discussed and adopted by the Working Group in 1988. This article was referred to as article 18 sixto throughout the first and second readings.

A. 1987: PROPOSAL SUBMITTED TO THE WORKING GROUP

1. Norway

For the text of this proposal see paragraph 157 in section B below.

B. 1987: DISCUSSION AT THE WORKING GROUP

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights, E/CN.4/1987/25, paragraphs 157-158. The proposal referred to in paragraph 158 had been made in informal consultations rather than in a formal submission.

New unnumbered article, rehabilitation of exploited children

157. The delegation of Norway submitted the following draft article concerning the rehabilitation of children victims of exploitation, to follow the articles on exploitation already adopted by the Working Group:

"The States Parties to the present Convention shall take all appropriate measures to facilitate the physical, psychological and social rehabilitation of children who have been victims of exploitation or abuse of any kind."

158. This draft article, which originated in a proposal by the Informal NGO Ad Hoc Group on the Drafting of the Convention, was supported by the representative of Venezuela who expressed the hope that it would be considered by the Group.

C. 1988: PROPOSALS SUBMITTED TO THE WORKING GROUP

1. Norway

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

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

The following is taken from E/CN.4/1988/WG.1/WP.2.

New unnumbered article (Rehabilitation of exploited children)

The States Parties to the present Convention shall take all appropriate legal, administrative and other measures to ensure the physical, psychological and social rehabilitation of any child victim of: exploitation and abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; armed conflicts, international disturbances and natural disasters. Such rehabilitation shall take place in an environment which fosters the self-respect and dignity of the child.

D. 1988: DISCUSSION AND ADOPTION AT THE WORKING GROUP

The following is taken from the 1988 report of the Working Group to the Commission on Human Rights, E/CN.4/1988/28, paragraphs 66-70.

66. A proposal submitted by Norway (E/CN.4/1988/WG.1/WP.29) was introduced by the representative of that country, who explained that the proposal was based on the text of one submitted to the working group at its previous session by the NGO Ad Hoc Group (E/CN.4/1988/WG.1/WP.2, chap. IV). That proposal had been elaborated upon in consultation with other delegations and the NGO Ad Hoc Group, and read as follows:

"The States Parties to the present Convention shall take all appropriate legal, administrative and other measures to ensure the physical, psychological and social rehabilitation of any child victim of: all forms of exploitation and abuse, or any other form of cruel or inhuman treatment. Such rehabilitation shall take place in an environment which fosters the self-respect and dignity of the child."

67. The members of the working group expressed their support for the proposal and the discussion focused on how to reflect the idea more precisely and how to cover all the concerns involved in the proposal. Some speakers stated that the words "any form" should replace "all forms" and that the word "neglect" should be inserted before the word "exploitation". The terms "legal, administrative and other" seemed to be superfluous, since "all measures" sufficed to cover any of the measures that could be taken. It was also necessary to insert the word "health" before "self-respect", and the word "torture" before "or any other form of cruel, inhuman or degrading treatment".

68. The use of the expression "rehabilitation" was discussed at length. Some speakers stated that the word, in their respective languages, was linked to a very precise and restrictive idea and that it would not be understood if it were to be

applied to the concepts involved in the proposal. Others were in favour of using that word, because it had been used in international meetings in relation to problems affecting disadvantaged children or adults, as well as in international instruments, such as the Convention against Torture (article 14). One member proposed using the word "réadaptation" in French, and another suggested the word "readaptación" in Spanish. It was suggested that the Spanish words "recuperación e reintegración" would be more appropriate. An English-speaking member found that those words were also appropriate in English and suggested "physical and psychological recovery and social reintegration". Some speakers insisted that the word "rehabilitation" was the most appropriate one, but they withdrew their proposal in order to join the consensus on "recovery and reintegration". The observer for Canada requested that his position in favour of the word "rehabilitation" should be reflected in the final report. The representative of France requested that the words should be translated into French as "réadaptation physique et psychologique et réinsertion sociale".

69. One speaker wondered whether the second sentence was in fact needed, but the author of the proposal stressed that, if the second sentence were eliminated, it could be understood that any kind of medical treatment or mechanisms for social adjustment would be acceptable in the context of the convention, which was not the idea of the members of the group.

70. The group finally reached a consensus and adopted the following text:

"The States Parties to the present Convention shall take all appropriate measures to ensure the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

E. TEXT AS ADOPTED AT THE FIRST READING

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

Article 18 sexto

The States Parties to the present Convention shall take all appropriate measures to ensure the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

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 World Health Organization (WHO)

The following is taken from E/CN.4/1989/WG.1/CRP.1, page 38.

This article deals with the physical and psychological recovery and integration of a child victim of, *inter alia*, neglect, torture or abuse, and requires recovery and integration to take place in an environment which fosters the health, self-respect and dignity of the child. Fostering the health of the child, under such circumstances, could be of concern to the World Health Organization.

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. PROPOSAL SUBMITTED TO THE WORKING GROUP AT THE SECOND READING

1. Norway

The following is taken from E/CN.4/1989/WG.1/WP.48.

"The States Parties to the present Convention shall take all appropriate measures to ensure the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; [armed conflicts]. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

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 526 to 532.

526. The Working Group had before it a text of the article as adopted during the first reading incorporating some suggested linguistic revisions (E/CN.4/1989/WG.1/WP.2). The text read as follows:

"(The) States Parties (to the present Convention) shall take all [appropriate] measures to ensure the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman, or degrading treatment or punishment. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

527. The Working Group also had before it a proposal (E/CN.4/1989/WG.1/WP.57) submitted by a drafting group consisting of Argentina, Finland, Norway, Senegal and the United Kingdom of Great Britain and Northern Ireland. The text read as follows:

"States Parties shall take all measures to enable physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment; punishment or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

528. In introducing the proposal the representative of Norway indicated that the two differences between the proposal contained in document E/CN.4/1989/WG.1/WP.57 and the article as adopted during first reading were that the proposal envisaged covering an aspect of armed conflicts which the Convention would otherwise have left uncovered and that the word "enable" had replaced the word "ensure" because the group felt that States could not be made to guarantee the recovery and reintegration of children.

529. The representative of Argentina suggested that the words "or imprisonment" be inserted after the word "punishment" in the proposal contained in E/CN.4/1989/WG.1/WP.[57]. The representatives of Canada and Venezuela

were willing to support the proposal on the basis that the reference to imprisonment referred only to improper detention rather than imprisonment pursuant to the due process of law. However, the representatives of Norway and the Inter-American Organization took the view that the words "any other form of cruel, inhuman or degrading treatment or punishment" should meet the concerns raised by the representative of Argentina. Pursuant to the foregoing debate the representative of Argentina indicated that he would not insist on the adoption of his proposal.

530. The representatives for Australia, Norway and Sweden agreed with the reference to the proposal contained in E/CN.4/1989/WG.1/WP.57 that the word "or" should replace the semi-colon between the words "treatment" and "punishment". They suggested that the semi-colon should be placed between "punishment" and "or armed conflicts".

531. The representative of the United States of America proposed with reference to the proposal contained in E/CN.4/1989/WG.1/WP.57 to replace the word "enable" with "promote" because the latter implied more of an ongoing obligation. He also suggested that the word "appropriate" be inserted in between "all" and "measures" because, without the qualifying word, the obligation placed on States would be unduly strong. The representative of the Federal Republic of Germany supported both of these amendments to the proposal (E/CN.4/1989/WG.1/WP.[57]). The representative of Norway supported the inclusion of the word "appropriate" and the representative of the United Kingdom of Great Britain and Northern Ireland supported the insertion of the word "promote". Although the observer for Sweden voiced concern regarding the substitution of the word "enable" by the word "promote" and indicated that he would have preferred the use of the word "rehabilitation" instead of "recovery", in the interests of arriving at a consensus he did not insist on his reservations.

532. In the light of the foregoing debate, the text of article 18 sixto as adopted during the second reading reads as follows:

"States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

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

The text of article 39 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 article 37. See also annex 2, "Related articles of the Convention".

* * * * *

ORGANIZATIONS PARTICIPATING IN THE NGO AD HOC GROUP

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

Participating organizations

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

RELATED ARTICLES OF THE CONVENTION

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

GENERAL MEASURES OF IMPLEMENTATION

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

DEFINITION OF A CHILD

- Definition of a child (article 1)

GENERAL PRINCIPLES

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

CIVIL RIGHTS AND FREEDOMS

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

FAMILY ENVIRONMENT AND ALTERNATIVE CARE

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

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

BASIC HEALTH AND WELFARE

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

EDUCATION

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

SPECIAL PROTECTION MEASURES

Children in situations of emergency

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

Children in conflict with the law

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

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

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