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

ARTICLE 16

(PROTECTION OF PRIVACY)

The *Legislative History of the Convention on the Rights of the Child (1978-1989)* was prepared with the support of Rätts 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.16

ARTICLE 16

(PROTECTION OF PRIVACY)

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ARTICLE 16

(PROTECTION OF PRIVACY)

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. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

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 16 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 16 were first discussed at the Working Group in 1983 and a text was adopted in 1988. This article was referred to as article 7 quater throughout the first and second readings.

A. 1982: PROPOSAL SUBMITTED TO THE WORKING GROUP

1. United States of America

For the text of this proposal see paragraph 42 in section C below.

B. 1983: PROPOSAL SUBMITTED TO THE WORKING GROUP

1. United States of America

The following is taken from E/CN.4/1983/WG.1/WP.30.

6 quater (formerly 6 ter)

"The States Parties to the present Convention shall ensure that the child enjoys legal protection from arbitrary or unlawful interference by government authorities with his family or home."

C. 1983: DISCUSSION 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 42 to 44.

42. The representative of the United States reintroduced a proposal he made in 1982 according to which the draft convention should contain a provision ensuring the right of the child not to be subjected to arbitrary or unlawful interference by government authorities. The proposal, which was previously designated article 6 ter reads as follows (E/1982/12/Add.1, part C, para. 118).

"The States Parties to the present Convention shall ensure that the child and his parents are not subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence."

43. For some speakers, the inclusion of such provision was not necessary. In their opinion, the fulfilment of the child's basic needs was a more urgent matter.

44. No agreement was reached. The proposal was not, therefore, adopted.

D. 1985: PROPOSAL SUBMITTED TO THE WORKING GROUP

1. United States of America

The following text is taken from the 1985 report of the Working Group to the Commission on Human Rights, E/CN.4/1985/64, annex II, page 3.

Article 16 bis

The States Parties to the present Convention shall ensure that the child shall enjoy civil and political rights and freedoms in public life to the fullest extent commensurate with his age including in particular, freedom from arbitrary governmental interference with privacy, family, home or correspondence; the right to petition for redress of grievances; and, subject only to such reasonable restrictions provided by law as are necessary for respect of the rights and legally protected interests of others or for the protection of national security, public safety and order, or public health and morals, freedom of association and expression; and the right of peaceful assembly.

E. 1986: PROPOSAL SUBMITTED TO THE WORKING GROUP

1. United States of America

For the text of this proposal see paragraph 84 in section F below.

F. 1986: DISCUSSION AT THE WORKING GROUP

The following is taken from the 1986 report of the Working Group to the Commission on Human Rights, E/CN.4/1986/39, paragraphs 84 to 87.

84. The Working Group had before it the following revised proposal by the delegation of the United States for an article 18 quater:

"1. States Parties to the present Convention recognize the rights of the child to freedom of association with others, to peaceful assembly, and to be protected by law against arbitrary or unlawful interference with his privacy, family, home or correspondence.

2. States Parties shall respect and guarantee these rights, and shall not place any restrictions on their exercise, except as provided in paragraph 3 of this article. In no case shall a child be subjected to incarceration or other confinement for the legitimate exercise of these rights or other rights recognized in this Convention.

3. The exercise of the right to freedom of association and the right to peaceful assembly may be subject to those restrictions provided by law which are consistent with the international obligations of a State Party and which are necessary in a democratic society in the interests of national security, public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

4. Nothing in this article shall be interpreted as limiting or otherwise affecting the authority, rights or responsibilities of a parent or other legal guardian of the child."

85. While the delegations of Australia and Canada expressed their support for the inclusion of the United States proposal in the draft convention, the representative of the USSR stated that he was totally opposed to it and the representatives of Algeria, China, Iraq and Poland said that it would be difficult for them to accept the proposal.

86. The delegation of Bangladesh proposed two amendments to paragraph 1, namely, to delete the words "with others" and to replace the words "be protected" by the words "the protection".

87. The Working Group postponed consideration of this article until its next session.

G. 1987: PROPOSAL SUBMITTED TO THE WORKING GROUP

1. United States of America

For the text of this proposal see paragraph 111 in section H below.

H. 1987: DISCUSSION AT THE WORKING GROUP

The following is taken from the 1987 report of the Working Group to the Commission on Human Rights, E/CN.4/1987/25, paragraphs 111 to 118.

111. The Working Group had before it the following revised proposal, submitted by the delegation of the United States, of a text that had been put forward by the representative of the United States during the Working Group's 1986 session:

"1. States Parties to the present Convention recognize the rights of the child to freedom of expression, freedom of association and freedom of peaceful assembly.

2. States Parties recognize the right of the child not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

3. The exercise of the rights to freedom of expression, association and peaceful assembly shall be subject only to those restrictions which are provided by law and which are necessary in a democratic society in the interests of national security, public order ("ordre public"), the protection of public health and morals or the protection of the rights and freedoms of others.

4. In no case shall a child be subjected to incarceration or other confinement for the legitimate exercise of these rights or other rights recognized in this Convention.

5. This article shall not be interpreted as affecting the lawful rights and duties of parents or legal guardians, which should be exercised in a manner consistent with the evolving capacities of the child."

112. The representative of the United States said that the protection of children's civil and political rights was of fundamental importance to his country, particularly because the "child", as defined in the draft convention, included adolescents who had often acquired the skills needed to participate fully and effectively in society. He noted that the draft Convention already protected certain other fundamental rights, including the right to freedom of religion. He also explained that the rights in the draft article were universally accepted and were contained in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

113. The Chairman suggested that the proposal submitted by the representative of the United States could carry the number 7 ter, and this suggestion met with the agreement of the American delegation.

114. A lengthy discussion ensued dealing with the merits of such a proposal. During this general discussion, some delegations made observations concerning different aspects of the proposal. For example, the representative of the United Kingdom said, inter alia, that already existent international instruments dealt with certain parts of the proposal, and suggested that the language in which the draft article was worded called for some clarification. The delegation of Australia, although generally supporting the proposal, raised some questions remarking among other things that there appeared to be confusion about the freedoms of association and expression and that of privacy, as well as that the proposal made no provision whatsoever for the evolving sense of responsibility of children.

115. The delegation of Norway, in supporting the American proposal, shared the concern of the Australian delegation that there was a need for a general provision dealing with the evolving capacities of the child. The observer for Canada indicated her support for the proposal put forward by the United States

representative and her wish that the principle set out in paragraph 5 of draft article 7 ter be dealt with in a comprehensive manner in a general article. The representative of Argentina, although in general favourable to the draft article, voiced the same concerns as other delegations regarding its paragraph 5, and found that there was much to be clarified in the proposal being considered by the Working Group.

116. The representative of the USSR indicated that he was not in a position to support draft article 7 ter as it stood, and considered that the draft Convention should deal with new issues and not reproduce provisions already existing in international instruments. He raised the question as to why the proposal focused on certain civil and political rights and bypassed others, suggesting to break down the proposed article and proceed to separate the civil from the political rights in an approach that would not be selective, yet fully consistent with the provisions of the International Covenant on Civil and Political Rights.

117. The Chinese delegation was not in a position to accept the United States proposal. It was of the opinion that the freedoms of association, peaceful assembly and privacy could not be enjoyed by children in the same way as they are enjoyed by adults because the intellect of a child was not as developed as that of an adult, and therefore a child could only engage in activities commensurate with its intellect. The observer for Sweden indicated her support for the text tabled by the delegation of the United States, but called for a separate article on the evolving capacities of the child.

118. The Chairman voiced his hope that the representative of the United States would propose a revised text for article 7 ter and that in doing so would take into account the Working Group's observations. The delegation of the United States accepted the Chairman's suggestion to consider the comments made by other delegations and to resubmit article 7 ter for consideration by the Working Group at its 1988 session. It stated that in doing so, it was its understanding that the proposal would be considered early in the Working Group's deliberations.

I. 1988: PROPOSALS SUBMITTED TO THE WORKING GROUP

1. United States of America

For the text of this proposal see paragraph 35 in section J 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, page 11.

Every child has the right to respect for his or her privacy, family, home and correspondence.

J. 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 35 to 38 and 55 to 59.

Article 7a (Freedom of expression and information)

35. The Working Group had before it a proposal submitted by the United States of America on civil and political rights of the child (E/CN.4/1988/WG.1/WP.18) which read as follows:

(...)

"IV. NEW ARTICLE 7 QUATER (RIGHT TO PRIVACY)

The States Parties to the present Convention recognize the right of the child not to be subjected to arbitrary or unlawful interference with his or her right to privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation."

36. In introducing that proposal, the representative of the United States of America stated that children not only had the right to expect certain benefits from their Governments; they also had civil and political rights to protect them from abusive action of their Governments. These rights are largely the same as those enjoyed by adults, although it is generally recognized that children do not have the right to vote. While children might need direction and guidance from parents or legal guardians in the exercise of these rights, this does not affect the content of the rights themselves. The United States proposal was intended to complete the process already begun by the Working Group of incorporating provisions from the International Covenant on Civil and Political Rights into the draft convention. The proposal reflects the recognition contained in the International Covenant that the ability of all individuals to exercise civil and political rights is not absolute, but is subject to certain limited restrictions that may be imposed by States. The proposal was designed to incorporate into the draft convention the right to freedom of expression, the right to freedom of association and to peaceful assembly, and certain privacy rights as elaborated in the International Covenant. The representative of the United States reminded the Working Group that these rights protect children from action of the State, and would not affect the legitimate rights of parents or legal guardians to provide direction and guidance to children.

37. The idea of including civil and political rights in the draft convention to reinforce the protection of children was strongly supported by several participants. However, the legitimate rights of parents and tutors should be safeguarded, the balance between rights of children and rights of the family should be preserved and the wording of the article should be in line with the Covenants.

38. The view was expressed that, if parents should be protected from States, the child should be protected from parents. The following additional paragraph was thus proposed for insertion in article 7 quater:

"States Parties to the present Convention shall respect the right of the child to the protection of law against such interference or attacks."

(...)

Article 7 quater (Privacy, honour, reputation)*

55. The proposed article 7 quater (see paragraph 35 above) related to the right of the child to privacy, family, home or correspondence, and as orally revised by the representative of the United States of America would contain a second paragraph to read as follows:

"1. The States Parties to the present Convention recognize the right of the child not to be subjected to arbitrary or unlawful interference with his or her right to privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. States Parties recognize the child's right to protection of the law against such interference or attacks."

56. The view was expressed that article 17 of the International Covenant on Civil and Political Rights could not be applied to the draft convention. It was proposed to delete the word "arbitrary" which was vague and subjective; to replace "the right to privacy" by "the right to personal freedom"; and to delete the words "right to" before the word "privacy" since in article 17 of the International Covenant on Civil and Political Rights mention was made only of privacy but no right to privacy. The right to privacy might, to some extent, impair the relationship between the parents and the child.

57. Reference was made to the guidelines laid down in paragraph 4 of General Assembly resolution 41/120 entitled "Setting international standards in the field of human rights" and it was argued that the draft convention should be in conformity with the provisions of the Covenants.

58. The Working Group finally reached a consensus on the retention of the word "arbitrary" and the deletion of the words "right to" before "privacy" and adopted paragraph 2 as proposed by the United States of America. Article 7 quater as adopted read as follows:

"1. The States Parties to the present Convention recognize the right of the child not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks."

59. One representative expressed its concern at the piecemeal transfer of provisions from other legal instruments to the convention on the rights of the child as in the case of article 7 quater as adopted since, depending upon the way it was applied, it might have repercussions on the right of parents to guide and educate their children and, consequently, have repercussions on the family, the basis of society. She recalled that the law concerning minor children was nowadays an independent branch of the law and it should provide specific guidance to the Working Group.

K. TEXT AS ADOPTED AT THE FIRST READING

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

Article 7 quater

1. The States Parties to the present Convention recognize the right of the child not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

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. Additional comments and clarifications by the Secretariat

The following is taken from E/CN.4/1989/WG.1/CRP.1/Add.1, paragraph 19.

19. In order to ensure the conformity of this article with article 17 of the International Covenant on Civil and Political Rights, the Working Group may wish to modify paragraph 1 to read:

"The child shall not be subjected ..."

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 296 to 303.

296. The Working Group had before it article 7 quater as adopted at first reading (E/CN.4/1989/WG.1/WP.2):

"1. The States Parties to the present Convention recognize the right of the child not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks."

297. The Chairman stated that no major amendments were proposed except for the small change suggested by the Secretariat in E/CN.4/1989/WG.1/WP.2, and according to which the first paragraph would start as follows:

"1. The child shall not be subjected to arbitrary ... etc."

298. The observer for Australia agreed with the change.

299. The delegation of the Federal Republic of Germany suggested that "No child shall be ..." would be closer to the Covenant.

300. The Chairman agreed and article 7 quater was adopted by the Working Group to read as follows:

"1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks."

301. Following the adoption of article 7 quater, the delegate of Venezuela stated that articles 7, 7 bis, 7 ter, 7 quater needed a safeguard clause concerning the exercise of those rights as subject to national legislation, since this latter would best protect the interests of children.

302. The representatives of the United States of America, Sweden and Portugal expressed their opposition to such a clause.

303. The delegation of Morocco endorsed the Venezuelan position and reserved its right to discuss the issue under article 21.

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

The text of article 16 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 13 and 15. 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)
