

CHAPTER THREE

THE SCOPE OF CRC ARTICLE 15

1. *Drafting CRC Article 15: Retaining ICCPR Standards?*

1.1. *CRC Article 15 in the Original CRC Provision on Civil and Political Rights*

The CRC drafting process provides crucial insight into the background to, and nature of, CRC Article 15. In particular, the process demonstrates the efforts of drafters to retain the standards of the ICCPR for children's association and assembly rights. This consolidates the points made above concerning the importance of interpreting CRC Article 15 in the context of the principle of non-discrimination (CRC Article 2), whereby children should be seen as having the same freedom rights as adults unless there are good reasons why they should not. The drafting history indicates that such an interpretation is intended.

During the drafting process, association and assembly were first discussed at the 1986 Working Group, in the context of the broader matter of civil and political rights for children.¹⁸⁶ The US delegation had originally proposed that the CRC should emphasize that children “*have civil and political rights as adults do*” (emphasis added),¹⁸⁷ later calling attention to the importance of such rights in the US where, it was stated, it is often considered that adolescents have the capacity to engage “fully and effectively” in society.¹⁸⁸ These statements imply that, from the very start of the drafting process, CRC civil and political rights were intended to be equivalent to those in the ICCPR. In terms of which substantive civil and political rights would be outlined in the CRC, it was initially proposed by the US delegation that explicit reference would be made to the right of children to privacy and the right to “petition for redress of grievances” although, it was added, the age of the

¹⁸⁶ The 1986 discussion was on the basis of a proposal submitted by the US to the Working Group in 1985 for an article on civil and political rights. See 1985 Report of the Working Group to the Commission on Human Rights (E/CN.4/1985/64), annex II, at 3, in Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child* (United Nations, 2007) <http://www.ohchr.org> accessed 10 Apr. 2015.

¹⁸⁷ Taken from the 1985 Report of the Working Group to the Commission on Human Rights (m186). See Office of the United Nations High Commissioner for Human Rights (m186), at 445.

¹⁸⁸ Taken from the 1987 Report of the Working Group to the Commission on Human Rights (E/CN.4/1987/25), para. 112. See Office of the United Nations High Commissioner for Human Rights (m186).

child would dictate to some extent how he or she exercises it.¹⁸⁹ This provision was then to make reference to “freedom of association and expression; and the right of peaceful assembly,”¹⁹⁰ with a limitation clause mirroring that of ICCPR ‘freedom’ articles. However there were many more formulations of this provision to come.

Two further drafts presented different combinations of ‘freedom’ rights and other civil rights.¹⁹¹ The second draft (draft article 7 ter), considered at the 1987 Working Group, separated out: 1. freedom of expression, association, and assembly; 2. the right to privacy; 3. a limitation clause mirroring that of ICCPR rights; 4. freedom from illegitimate incarceration; and 5. a proviso that parents’ authority would not be affected by this article.¹⁹² Concerns were raised by some delegations that the

¹⁸⁹ Taken from the 1985 Report of the Working Group to the Commission on Human Rights (m86). See Office of the United Nations High Commissioner for Human Rights (m86), at 445.

¹⁹⁰ Article 16 bis read:

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.

Taken from the 1985 Report of the Working Group to the Commission on Human Rights (m86). See Office of the United Nations High Commissioner for Human Rights (m86).

¹⁹¹ A 1986 draft separated out: 1. Freedom of association, of assembly and the right to privacy; 2. Freedom from illegitimate incarceration; 3. a limitation clause mirroring that of ICCPR rights; and 4. a proviso that parents’ authority would not be affected by this article. Article 18 quater read:

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.

Taken from the 1986 Report of the Working Group to the Commission on Human Rights (E/CN.4/1986/39), paras. 84–87. See Office of the United Nations High Commissioner for Human Rights (m86). This draft article met with mixed responses from delegations, although reasons for the support or lack thereof are not provided in the *travaux*.

¹⁹² The draft article (7 ter) read:

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.