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CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION, ADOPTED AND OPENED FOR SIGNATURE AT THE CONCLUSION OF THE SEVENTEENTH SESSION OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW ON MAY 29, 1993



JUNE 11, 1998.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 11, 1998.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, adopted and opened for signature at the conclusion of the Seventeenth Session of the Hague Conference on Private International Law on May 29, 1993. Thirty-two countries, including the United States, have signed the Convention, 17 countries have ratified it, and one country has acceded to it. The provisions of the Convention are fully explained in the report of the Department of State that accompanies this message.

The Convention sets out norms and procedures to safeguard children involved in intercountry adoptions and to protect the interests of their birth and adoptive parents. These safeguards are designed to discourage trafficking in children and to ensure that intercountry adoptions are made in the best interests of the children involved. Cooperation between Contracting States will be facilitated by the establishment in each Contracting State of a central authority with programmatic and case-specific functions. The Convention also provides for the recognition of adoptions that fall within its scope in all other Contracting States.

The Convention leaves the details of its implementation up to each Contracting State. Implementing legislation prepared by the Administration will soon be transmitted for introduction in the Senate and the House of Representatives. Once implementing legislation is enacted, some further time would be required to put the necessary regulations and institutional mechanisms in place. We would expect to deposit the U.S. instrument of ratification and bring the Convention into force for the United States as soon as we are able to carry out all of the obligations of the Convention.

It is estimated that U.S. citizens annually adopt as many children from abroad as all other countries combined (13,621 children in Fiscal Year 1997). The Convention is intended to ensure that intercountry adoptions take place in the best interests of the children and parents involved, and to establish a system of cooperation among Contracting States to prevent abduction of, and trafficking in children. We have worked closely with U.S. adoption interests and the legal community in negotiating the provisions of the Convention and in preparing the necessary implementing legislation.

I recommend that the Senate give its advice and consent to ratification of this Convention, subject to the declaration described in the accompanying report of the Department of State.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 29, 1998.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for its advice and consent to ratification, the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The Convention was adopted and opened for signature at the conclusion of the Seventeenth Session of the Hague Conference on Private International Law on May 29, 1993. It was signed by the United States at the Royal Netherlands Ministry of Foreign Affairs on March 31, 1994. As of February 1998 it had been signed by 31 other States and had been ratified by 17 of those States and acceded to by one other State. The Convention entered into force on May 1, 1995 after the deposit of the third instrument of ratification. U.S. citizens adopt over 13,000 children from abroad every year, representing about half of all children made available annually for intercountry adoption worldwide. The Department of State is hopeful that ratification of the Convention by the United States may encourage additional States to become parties to the Convention.

The Convention endorses the legal institution of intercountry adoption by recognizing in its preamble that children should grow up in a family environment, to ensure their full and harmonious development. After recalling that every State should take priority measures to enable children to remain in the care of their family of origin, the signatory States recognize that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in the child's State of origin. The preamble strongly suggests that if a child cannot remain in the care of its family of origin and cannot readily be provided with a permanent family in its country of origin, the provision of a permanent family through intercountry adoption can be more beneficial for the child than foster or institutional care in the child's country of origin.

Chapter I of the Convention contains Articles 1–3. Article 1 sets out the three general objectives of the Convention: (a) to establish safeguards to ensure that intercountry adoptions are in the best interests of the child and respectful of the child's fundamental rights recognized in international law; (b) to establish cooperation among Contracting States to ensure the safeguards are respected and thereby prevent abuses such as child abduction and the sale of, or

traffic in, children; and (c) to secure the recognition in Contracting States of adoptions made in compliance with the requirements of the Convention.

Article 2 sets out the scope of application of the Convention. It is to apply when a child habitually resident in a State of origin that is party to the Convention either has been, or is to be, moved to a receiving State that is party to the Convention after the child's adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purpose of such an adoption in the receiving State. Article 2 makes clear that the Convention covers only adoptions creating a permanent legal parent-child relationship.

Article 3 limits application of the Convention by providing that the Convention ceases to apply if the child turns 18 before the adoption has reached the point at which the Central Authorities of both the State of origin and the receiving State or those performing Central Authority functions have agreed that the adoption may proceed (Article 17c). Adoptions to which the Convention does not apply or no longer applies may proceed, but will not be subject to the Convention's requirements.

The provisions of Chapter II (Articles 4–5) set out the most fundamental determinations that must be made by the competent authorities of the State of origin of a child and the receiving State before an adoption covered by the Convention may take place.

Article 4 requires the determination by the competent authorities of the State of origin that (a) the child is legally adoptable; (b) an intercountry adoption is in the child' best interests once due consideration has been given to the possibility of placement of the child within the State of origin; (c) the persons and entities whose consent to adoption of the child is necessary have freely given their consent in the requisite written form in awareness of the consequences and without inducement by payment or compensation (and with consent of the mother, where required, only after birth of the child); and (d) depending on the age and maturity of the child, the child has been counseled about the effects of adoption and where required, the child's consent has been obtained in the appropriate manner. Requiring these determinations will protect children immigrating to the United States from other Contracting States and children emigrating from the United States who are being adopted by persons residing in other Contracting States.

Under Article 5, an adoption covered by the Convention may take place only if the competent authorities of the receiving State have determined that the prospective adoptive parents are legally eligible and suited by their circumstances to adopt a child from abroad and have been appropriately counseled. Those authorities must also have determined that the child is or will be authorized to enter and reside permanently in the receiving State.

Chapter III (Articles 6–13) deals with Central Authorities and accredited bodies. Article 6 provides that every Contracting State is to designate a Central Authority to discharge the duties imposed upon it by the Convention. Federal states and States with more than one system of law, or having autonomous territorial units, may appoint more than one Central Authority, but are to designate

a national Central Authority to which communications may be addressed for onward transmission.

Article 7 sets out the non-delegable functions of Central Authorities which they must perform to protect children and achieve other objects of the Convention. Central Authorities are to cooperate with each other and promote cooperation amongst the competent authorities in their States. They are to take directly all appropriate measures to provide (1) information on their adoption laws, and (2) general information such as statistics and standard forms. They are also to keep each other informed about operation of the Convention and, as far as possible, to eliminate any obstacles to its application.

Article 8 provides that Central Authorities are to take themselves, or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with intercountry adoptions and are to deter all practices contrary to the objects of the Convention.

Article 9 states that Central Authorities are to take themselves, or through public authorities or other bodies in their State, all appropriate measures, *inter alia,* to (a) assemble and exchange information about the situation of the child and the prospective adoptive parents in connection with a particular proposed adoption; (b) facilitate, monitor and expedite proceedings with a view to completing an adoption; (c) promote the development of adoption counseling and post-adoption services; (d) exchange general evaluation reports about experience with intercountry adoption; and (e) respond, as permitted by their domestic law, to justified information requests about particular adoption situations from other Central Authorities or public authorities.

Article 10 provides that Convention accreditation is to be granted to and maintained only by bodies (adoption agencies) that demonstrate their competence to provide adoption-related services. This Article leaves up to each Contracting State what authorities or entities are to provide accreditation.

Article 11 sets out specific requirements to be met by bodies (adoption agencies) if they are to qualify for accreditation under the Convention. These requirements must be read together with the Article 32 requirements and prohibitions that are applicable to all adoptions covered by the Convention. Accredited bodies (adoption agencies) may pursue only "non-profit objectives," the conditions and limits to be established by the competent authorities of the accrediting country. Accredited bodies (adoption agencies) are to be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of *intercountry* adoption. Finally, accredited bodies (adoption agencies) are to be subject to supervision by competent authorities of the country in which they operate as to their composition, operation, and financial situation.

Article 12 provides that a body (adoption agency) accredited in one Contracting State may act in another Contracting State only if it has been authorized to do so by the competent authorities of both States.

Article 13 states that each Contracting State is to notify the Permanent Bureau (secretariat) of the Hague Conference of the des-

ignation of Central Authorities, as well as the names and addresses of accredited bodies (adoption agencies).

Chapter IV (Articles 14–22) sets out the various procedural steps involved in individual intercountry adoptions covered by the Convention. Its use of the word "Central Authority" should also be viewed as encompassing in many countries public authorities and, in the United States, bodies (adoption agencies) accredited under Chapter III and meeting the requirements of Article 32, and bodies (adoption agencies) or persons approved as meeting the requirements of Articles 22(2) and 32.

While the Convention does not explicitly authorize prospective adoptive parents to undertake direct steps to adopt children from another Contracting State, it does not bar such activity. Article 29 sets certain requirements for contacts between prospective adoptive parents and the parents or caregivers of the child they seek to adopt—contacts that normally could only take place in the country of origin of the child that is the subject of the possible intercountry adoption. While the Convention thus permits direct efforts by prospective adoptive parents to adopt a child from another Contracting State, the Convention's substantive requirements and many of its procedures would apply to such an intercountry adoption. Countries of origin may, however, refuse to allow prospective adoptive parents to arrange intercountry adoptions directly on their own behalf and may require that they obtain the assistance of public authorities or Convention-accredited adoption agencies.

Article 14 provides that persons habitually resident in a Contracting State wishing to adopt a child habitually resident in another such State are to apply to the Central Authority (or a public authority) in the State of their habitual residence (the receiving State).

Article 15 sets the requirements for a report and its findings on the prospective adoptive parents. Under this provision, if the Central Authority (public authority, Convention-accredited agency, or agency or person approved under Convention Article 22(2)) is satisfied that the applicant prospective adoptive parents are eligible and suited to adopt, it shall prepare a report (home study) including specified background information on them, as well as on the characteristics of the children (e.g., special needs children) for whom they would be qualified to care for as adoptive parents. The Central Authority of the receiving State is to transmit the report to the Central Authority (or public authority, accredited agency, or approved agency or person) of the State of origin.

Article 16a sets out the information requirements for the report concerning the child and its background. The report is to be transmitted to the Central Authority (public authority, accredited adoption agency or approved agency or individual adoption service provider) in the receiving State with proof that the necessary consents have been obtained in accordance with Article 4 of the Convention, and the reasons for its determination on placement of the child, taking care not to reveal the identity of the birth parents of the child if, in the State of origin, these identities may not be disclosed. Under Article 16b the Central Authority of the State of origin is to give "due consideration" to the child's upbringing and the child's ethnic, religious and cultural background and is to determine

whether the envisaged placement is in the best interests of the child.

Under Article 17 any decision in the State of origin that a child should be entrusted to the prospective adoptive parents may only be made if (a) that State's Central Authority has ensured that the prospective adoptive parents agree; (b) the Central Authority (public authority, Convention-accredited adoption agency, Convention-approved adoption agency or individual provider of adoption services) in the receiving State has approved the decision when such approval is required by the law of that State or by the Central Authority of the State of origin; (c) the Central Authorities of both States have agreed that the adoption may proceed; and (d) it has been determined, in accordance with Article 5, that (i) the prospective parents are eligible and suited to adopt, and (ii) the child is or will be authorized to enter and permanently reside in the receiving State.

Article 18 provides that the Central Authorities of both the State of origin and the receiving State are to take all necessary steps to obtain permission for the child to leave the State of origin and enter and reside permanently in the receiving State.

According to Article 19 the movement of the child to the receiving State may take place only if the requirements of Article 17 have been met. The Central Authorities of both States are to ensure that the transfer takes place in secure and appropriate circumstances, and, if possible but not necessarily, in the company of the adoptive or prospective adoptive parents. If the child's transfer does not ultimately take place the reports referred to in Article 15 (on the prospective adoptive parent(s)) and Article 16 (on the child) are to be returned to the authorities who transmitted them.

Article 20 calls on the Central Authorities to keep each other informed about the adoption process in individual cases, as well as the progress of the placement if a probationary period is required before the final adoption.

Article 21 states that when the adoption is to take place after the transfer of the child to the receiving State and it appears that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, the receiving State Central Authority (or public authority, accredited adoption agency, or Convention-approved adoption agency or individual adoption service provider) shall take the measures necessary to protect the child, in particular (a) to remove the child from the prospective adoptive parents and arrange for the child's temporary care; and (b) in consultation with the Central Authority (or adoption service provider) of the State of origin, to arrange without delay a new placement of the child with a view to adoption, or, if this is not appropriate, to arrange alternative long-term care. An adoption is not to take place until the Central Authority (or adoption service provider) of the State of origin has been duly informed concerning the new prospective adoptive parents. Only as a last resort is the child to be returned to its State of origin if the child's interests so require. Article 21(2) provides for consultation with, and, where appropriate, consent of, the child, regarding the measures taken under this Article.

Use of the term "Central Authority" throughout Chapter IV (Articles 14–22) should be understood in light of actions taken by Contracting States pursuant to Article 22.

Article 22(1) states that the functions of a Central Authority under Chapter IV may be performed by public authorities or by bodies (agencies) accredited under Chapter III, to the extent permitted by the law of the State in question.

Under Article 22(2) any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under all Articles of Chapter IV except Article 14 and 22, may be performed in that State by bodies (adoption agencies) or persons (e.g., attorneys) who (a) meet the requirements of integrity, professional competence, experience and accountability of that State, and (b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption (the same requirement as imposed for accredited bodies under Article 11b). Under Article 22(3) a Contracting State making the declaration permitted under Article 22(2) is to keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these Convention-approved bodies and persons. Article 22(4) states that any Contracting State may declare that adoptions of its children pursuant to the Convention may only take place if Central Authority functions are performed in accordance with Article 22(1), i.e., by Central authorities, public authorities or Convention-accredited bodies (adoption agencies), i.e., not by bodies or persons found only to meet the requirements of Article 22(2).

Notwithstanding any declaration made under Article 22(2), the reports provided for in Articles 15 and 16 are, in every case, to be prepared under the responsibility of either the respective Central Authority or other public authority or Convention-accredited adoption agencies as provided for in Article 22(1).

I recommend that the United States ratification be subject to the following declaration:

> The United States declares, pursuant to Article 22(2), that in the United States the Central Authority functions under Articles 15–21 may also be performed by bodies or persons meeting the requirements of Articles 22a and b, and 32. In addition, such bodies or persons will be subject to federal law and regulations implementing the Convention as well as state licensing and other laws and regulations applicable to providers of adoptions services. The performance of Central Authority functions by such approved adoption service providers would be subject to the supervision of the competent federal and state authorities in the United States.

Chapter V (Articles 23–27) deals with the recognition and effects of Hague Convention adoptions.

Article 23 requires the recognition by operation of law in all Contracting States of adoptions certified as made in accordance with the Convention. The certificate is to specify when and by whom the agreements under Article 17c that the adoption could proceed were given. Each Contracting State is, at the time of its signature or ac-

tion resulting in its becoming a party to the Convention, required to notify the Convention depositary of the identity and functions of the authorities which are competent to make this certification in that State and any modifications of their designation.

Article 24 permits a Contracting State to refuse to recognize a Convention adoption only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child. As the authorities of both the country of origin and the receiving State have been involved in permitting the adoption to take place pursuant to the Convention, resort to the public policy exception to recognition by one of those States, or by a non-involved third Contracting State, would be very rare and invoked only in exceptional circumstances.

Article 39(2) permits any Contracting States to enter into agreements with one or more other such States with a view to improving the application of the Convention in their mutual relations. Such agreements may derogate only from certain provisions of Convention Chapter IV concerned with procedural requirements. This provision was included at the request of the Nordic States. Article 25 permits any Contracting State to declare to the Convention depositary that it will not be bound to recognize adoptions made in accordance with an agreement concluded pursuant to the authority given by Article 39(2).

Article 26(1) provides that recognition of an adoption includes recognition of the legal parent-child relationship between the child and the child's adoptive parents, parental responsibility of the adoptive parents for the child, and termination of the pre-existing legal relationship between the child and the child's mother and father—provided the adoption has this effect in the Contracting State where the adoption was made. When the adoption has the effect of terminating the pre-existing legal parent-child relationship, the child is to enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in the Contracting States concerned. However, the provisions of Article 26 are not to prejudice the application of any provision more favorable for the child that may be in force in the Contracting State recognizing the adoption.

Article 27 sets the requirements for the conversion of what may be a simple adoption in the country of origin into a full adoption in the receiving State. When an adoption granted in the State of origin does not have the effect of terminating the pre-existing legal parent-child relationship (simple adoption) it may be converted in the receiving State recognizing the adoption under the Convention into an adoption having such an effect (full adoption) if the law of the receiving State so permits and if the consents to the intercountry adoption referenced in Article 4c and d have been given. Article 27 also requires that Article 23, which mandates recognition of an adoption made in accordance with the Convention, shall apply to the decision converting the simple adoption to a full adoption.

Chapter VI (Article 28–42) contains what are referred to as general provisions.

Article 28 was stated to be important to some countries that considered it essential for the political acceptability of the Convention.

The Article states that the Convention does not affect any law of a State of origin that requires that adoption of a child habitually resident within that State to take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to the child's adoption.

Article 29 prohibits contacts between the prospective adoptive parents on the one hand, and the parents of the child or any other person who has care of the child on the other hand, until the requirements of Article 4a-c, and Article 5a have been met—unless the adoption takes place "within a family", or unless the contact is in compliance with the conditions established by the competent authority of the State of origin. Such contacts are regulated to minimize the possibility of inducements for consent by payment or compensation that are prohibited by Article 4c(3) of the Convention. As the contacts in question are possible only within the State of origin, and primarily when the prospective adoptive parents are seeking to act directly on their own behalf and without the assistance of Convention-accredited agencies or Convention-approved agencies or persons, this Article implicitly confirms that, so far as the Convention is concerned, prospective adoptive parents may seek to act directly on their own behalf but subject to the applicable requirements of the Convention and the consent of the States concerned.

Article 30 requires competent authorities of every Contracting State to ensure that information held by them concerning the child's origin, and in particular information concerning the identity of the child's parents, as well as the child's medical history, will be preserved. Subparagraph 2 requires those competent authorities to ensure that the child or the child's representative have access to such information, with appropriate guidance, insofar as is permitted by the law of the State where the information is preserved.

Article 31 makes clear that personal data gathered or transmitted pursuant to the Convention, especially data referred to in Articles 15 (home study on the prospective adoptive parents) and 16 (the report with background on the child) are to be used only for the purposes for which the data were gathered or transmitted.

Article 32 sets certain requirements that are to be generally applicable to all adoptions covered by the Convention, including the operation of Convention-accredited bodies, Convention-approved bodies and persons referred to in Article 22. No one is to derive improper financial or other gain from an activity related to an intercountry adoption. Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

Article 33 provides that a competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected is immediately to inform the Central Authority of its State. That Central Authority is responsible for ensuring that appropriate measures are taken.

Article 34 states that if the competent authority of the State of destination of a document so requests, a certified translation must be furnished. Unless otherwise arranged, the costs of translation are to be borne by the prospective adoptive parents.

Article 35 provides that the competent authorities of Contracting States are to act expeditiously in processing adoptions covered by the Convention.

For States having two or more systems of law with regard to adoption applicable in different territorial units, Article 36 states that (a) any reference to habitual residence in that State is to be construed as referring to habitual residence in a territorial unit of that State; (b) any reference to the law of that State is to be construed as referring to the law in force in the relevant territorial unit of that State; (c) any reference to the competent or public authorities of that State is to be construed as referring to those authorities authorized to act in the relevant territorial unit; and (d) any reference to accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

For a State that, with regard to adoption, has two or more systems of law applicable to different categories of persons, Article 37 provides that any reference to the law of that State is to be construed as referring to the legal system specified by the law of that State.

Article 38 provides that a Contracting State within which different territorial units have their own laws with regard to adoption shall not be bound to apply the Convention where a state with a uniform system of law would not be bound to do so. In other words, the Convention would not govern adoptions within the United States when the child moves from one U.S. jurisdiction to another.

Article 39 states that the Convention does not affect any international agreement or other instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention unless a contrary declaration has been made by the Contracting States to such agreement or other instrument. Article 39(2) was already mentioned in connection with Article 25.

Article 40 prohibits countries becoming parties to the Convention from making any reservations.

Article 41 provides that the Convention shall apply in every case where an application by persons habitually resident in a Contracting State who wish to adopt a child habitual resident in another such State has been received by the Central Authority in the State of their habitual residence after the Convention has entered into force in that State and the State of origin of the child they wish to adopt.

Article 42 provides that the Secretary General of the Hague Conference on Private International Law is to convene at regular intervals a special commission to review the practical operation of the Convention.

Chapter VII (Articles 43–48), with its final clauses, sets out the usual types of provisions concerning signature and ratification of the Convention, accession to the Convention, when the Convention shall enter into force, how the Convention may be denounced and when the denunciation will be effective, and the notification requirements to be met by the depositary—the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

According to Article 43, the Convention is open for signature and ratification, acceptance or approval by States which were Member

States of the Hague Conference on Private International Law at the time of its Seventeenth (1993) Session and by the other States which participated in that Session.[1]

Article 44 provides that other States may accede to the Convention after it has entered into force (which occurred on May 1, 1995), such accessions to have effect only as regards the relations between the acceding State and those Contracting States which have not objected to that State's accession in the six months after receipt of the notification of accession. Such an objection is also possible for States ratifying, accepting or approving the Convention after an accession.

Article 45 establishes that if a State has two or more territorial units in which different systems of law are applicable concerning Convention adoptions, it may declare that the Convention will extend to all of its territorial units, or only to one or more of those units. Such a declaration may be modified at any time. Article 45(3) further directs that if a State makes no declaration under this provision, the Convention shall presumptively extend to all territorial units of that State.

Purusant to Article 46, the Convention entered into force on May 1, 1995, following its ratification by three States. For every State subsequently ratifying the Convention or acceding to it, the Convention enters into force, in accordance with Article 46(2), on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession.

Article 47 provides that a Contracting State to the Convention may denounce the Convention in writing, such denunciation taking effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary, unless the denunciation specifies a longer period of time.

Provided that the Senate gives advice and consent to U.S. ratification, the U.S. instrument of ratification would not be deposited until congressional enactment of necessary implementing legislation and until appropriate steps have been taken pursuant to that legislation to enable the United States fully to implement the Convention.

I believe that the United States, as the world's major receiving country of children made available by other States for intercountry adoption, should embrace the internationally agreed norms and procedures that it helped develop for the protection of children involved in intercountry adoptions and for the protection of the interests of their birth and adoptive parents.

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[1] Member States as of the seventeenth Session of the Hague Conference on Private International Law:

Argentina, Australia, Austria, Belgium, Canada, China, Denmark, Egypt, Finland, France, Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Latvia, Luxembourg, Mexico, Netherlands, Norway, Poland, Portugal, Slovak Republic, Spain, Suriname, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Yugoslavia.

Non-member States that participated in the eighteenth session:

Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Ethiopia, Honduras, India, Indonesia, Madagascar, Mauritius, Peru, Philippines, Romania, Senegal, Sri Lanka, Thailand and Viet Nam.

I therefore recommend that this Convention be transmitted to the Senate at an early date for its advice and consent to ratification, subject to the declaration previously described.

Respectfully submitted,

STROBE TALBOT.

Convention on Protection of Children and Co-operation in respect of Intercountry Adoption

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions —

CHAPTER I — SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are —

a to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;

b to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

c to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

1 The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

2 The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph *c* have not been given before the child attains the age of eighteen years.

CHAPTER II - REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin —

a have established that the child is adoptable;

b have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;

c have ensured that

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

(4) the consent of the mother, where required, has been given only after the birth of the child; and

d have ensured, having regard to the age and degree of maturity of the child, that

(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,

(2) consideration has been given to the child's wishes and opinions,

(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and

(4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State -

a have determined that the prospective adoptive parents are eligible and suited to adopt;

b have ensured that the prospective adoptive parents have been counselled as may be necessary; and

c have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III - CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

2 They shall take directly all appropriate measures to –

a provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;

b keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to —

a collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

b facilitate, follow and expedite proceedings with a view to obtaining the adoption;

c promote the development of adoption counselling and post-adoption services in their States;

d provide each other with general evaluation reports about experience with intercountry adoption;

e reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall —

a pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

b be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

c be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV - PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

1 If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

2 It shall transmit the report to the Central Authority of the State of origin.

Article 16

1 If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall —

a prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

b give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

c ensure that consents have been obtained in accordance with Article 4; and

d determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

2 It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if -

a the Central Authority of that State has ensured that the prospective adoptive parents agree;

b the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

c the Central Authorities of both States have agreed that the adoption may proceed; and

d it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

1 The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

2 The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

3 If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

1 Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular -

a to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

b in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

c as a last resort, to arrange the return of the child, if his or her interests so require.

2 Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

1 The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

2 Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who -

a meet the requirements of integrity, professional competence, experience and accountability of that State; and

b are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

3 A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

4 Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

5 Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V - RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

1 An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.

2 Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

1 The recognition of an adoption includes recognition of —

a the legal parent-child relationship between the child and his or her adoptive parents;

b parental responsibility of the adoptive parents for the child;

c the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

2 In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

3 The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27

1 Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect -

a if the law of the receiving State so permits; and

b if the consents referred to in Article 4, sub-paragraphs *c* and *d*, have been or are given for the purpose of such an adoption.

2 Article 23 applies to the decision converting the adoption.

CHAPTER VI - GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *a* to *c*, and Article 5, sub-paragraph *a*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

1 The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

2 They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

1 No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

2 Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

3 The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units -

a any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;

c any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;

d any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

1 The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

2 Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII - FINAL CLAUSES

Article 43

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

1 Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

2 Thereafter the Convention shall enter into force -

a for each State ratifying, accepting or approving it subsequently, or acceding to it on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following -

a the signatures, ratifications, acceptances and approvals referred to in Article 43;

b the accessions and objections raised to accessions referred to in Article 44;

c the date on which the Convention enters into force in accordance with Article 46;

d the declarations and designations referred to in Articles 22, 23, 25 and 45;

e the agreements referred to in Article 39;

f the denunciations referred to in Article 47.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

Copie certifiée conforme à l'original

Le Directeur des Traités
du Ministère des Affaires Etrangères
du Royaume des Pays-Bas

Certified true copy of the original

The Director of Treaties
of the Ministry of Foreign Affairs
of the Kingdom of the Netherlands

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