

MEMORANDUM

TO: Hillary Rodham Clinton
FROM: Nicole Rabner
RE: Hague Convention on Intercountry Adoption
DATE: September 13, 1996

After speaking with Connie Fails about her concern with the Hague Convention on Intercountry Adoption, I contacted the State Department to find out about our strategy and timeline for the treaty. I have followed up with Connie to let her know where things stand. General background on the treaty and on U.S. position follows; a State Department briefing paper and the Convention text are attached.

General Background

The Convention, formally known as the Hague Convention on the Protection of Children and Co-Operation in Respect of Inter-country Adoption, was negotiated at the Hague Conference on Private International Law, May 10-29, 1993 and was adopted by unanimous vote on May 29, 1993. The Hague Conference has over forty member states, including all European Community and most European Free Trade Countries, several Eastern European Countries, Middle Eastern Countries, Australia, China, Japan and several countries in the Western Hemisphere; the United States has been a member since 1964.

The purpose of the Convention is to institute a formal intergovernmental process of intercountry adoption, create a Central Authority for international adoption in every party country and establish a set of core norms and procedures that will be uniform for every party country and every adoption involving two party countries.

To date, twenty-six countries have signed the Convention, a symbolic act without legal effect, but signally an intention to seek ratification a pledge not to act in opposition to the Convention. Eleven countries have ratified. The Convention entered into force on May 1, 1995, meaning that on that date at least three countries had completed ratification.

United States Involvement

The United States was actively involved in the development of the Convention, and sent strong and broad-based delegation to the Hague Conference (of which Connie was a part). The United States signed the Convention on March 31, 1994, and has since been working toward ratification, both with the relevant government bodies and with the larger adoption community.

The three relevant government agencies -- the State Department, HHS and INS -- have formed an informal working group

to devise an implementation strategy. One of the key issues still under debate is which government entity will assume the role of "Central Authority" for international adoptions, required by the Convention. With resource and paperwork implications, it is unclear which agency will take on this role. HHS has signalled its unwillingness, and the adoption community has made clear its opposition to the INS, so while it seems likely that the State Department will assume this role, there has been no clear decision.

Consultation with the U.S. adoption community has taken place throughout the project. A 50-person Study Group on Intercountry Adoption was formed, comprised of representatives from adoption agencies, private adoption interests like the Joint Commission on International Childrens Services and the National Council on Adoption, the American Bar Association and the American Academy of Adoption Attorneys, law professors expert in family and comparative law, the American Public Welfare Association, the Child Welfare League of America, as well as officials from the Consular Affairs Bureau in the Department of State, the Departments of Justice, Defense, HHS, and INS. Three public meetings have taken place, as well as much informal consultation. The State Department intends further consultation as draft implementation legislation is developed in the coming months. As soon as this piece of legislation is before Congress (transmitted by the President), the adoption community will have further opportunities to be heard through public hearings. The State Department hopes its work in partnership with the community will engender support for the legislation.

The State Department contends that the timing of the transmission of the Convention to the Senate and of introduction of the legislation in both houses of Congress will largely depend on the support that the Convention and implementing legislation receive from the U.S. adoption community. In addition to concerns about which agency will become the "Central Authority" for international adoption, the adoption community has raised concerns about added layers of bureaucracy and paperwork, the required accreditation process for adoption agencies, and state flexibility.

The State Department hopes to address these concerns and complete its draft implementing legislation early this coming spring, at which point it will be sent by the State Department to the President for his review and transmittal to the Congress.

Attachments

State Department briefing paper on the Convention

List of countries that have signed or ratified the Convention

Convention text

1993 Hague Convention on Intercountry Adoption

Briefing Paper (Revised)

Status: April 1996

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Summary

The final text of the 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, a multilateral treaty, prepared by the international organization known as the Hague Conference on Private International Law, was adopted on May 29, 1993 at the conclusion of the organization's 17th session (inter-governmental diplomatic conference). The Convention is to cover all adoptions between countries that become parties to it, whether those adoptions are adoptive-parent-initiated or are arranged by Convention-accredited adoption agencies or by Convention-approved private/independent providers of adoption-related services. The Convention sets certain internationally agreed minimum norms and procedures that are to be complied with to protect the children involved as well as the interests of their birth parents and their adoptive parents. Additional requirements or prohibitions may be maintained or newly imposed by countries party to the Convention.

As there were about 9700 adoptions of children from abroad to the United States in the year ending on September 30, 1995 (out of a world total of 15-20,000), as well as perhaps two hundred adoptions of children from the United States by persons resident abroad, the United States has a considerable stake in the future of the Convention.

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The Hague Conference and Its Project

The Hague Conference on Private International Law has existed since 1893 and has operated in its current form since 1951. The United States, with Congressional authorization, has been a member State since 1964. We have become a party to four much-used conventions produced by the organization, dealing with the service of process abroad, the taking of evidence abroad, the simplified certification of documents intended for use abroad, and the return of children wrongfully removed or retained abroad (usually in custody-related disputes). The Hague Conference has over 40 Member States, including all EC and most European Free Trade Area countries, several eastern European countries, Israel, Egypt, Australia, China, Japan, and several countries in the Western Hemisphere including Argentina, Canada, Chile, Mexico and Venezuela.

The organization's deliberations are legal-technical, professional, non-politicized and non-confrontational. Its Permanent Bureau (secretariat) consists of four lawyers and a supporting staff of about 6 persons.

In order to ensure that the work on the intercountry adoption Convention would be relevant and potentially broadly acceptable, the participating Member States working on this Convention were joined in that work by about 30 non-Member States, primarily from Latin America and southeast Asia but also from Eastern Europe and Africa. These non-Member States represented the major countries that make children available for adoption abroad. Eighteen international organizations, several particularly focussed on child welfare and protection, including adoption, also participated.

After the decision of Hague Conference Member States in 1988 to entrust the preparation of a convention on this topic to the organization, the Permanent Bureau in 1990 issued an in-depth 100-page study of the legal institution of intercountry adoption examining its history and forms in various legal and social systems, relevant national laws, and problems and issues that might be dealt with in a convention. With the steadily increasing participation of Member and other States, the Conference convened three two-week sessions of a preparatory commission that identified issues to be addressed and prepared initial language to deal with them and, ultimately, the preliminary draft convention. The United States and other countries submitted written comments on the draft convention that were compiled by the Permanent Bureau and distributed to all participating countries in order to facilitate the final negotiations in May 1993.

The preliminary draft convention formed the basic working document at the session of the Hague Conference itself on May 10-29, 1993. By a unanimous vote of the 55 countries present at the time, the Session adopted the final Convention text, which

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was opened on May 29 for signature and ratification by States. Four States -- Brazil, Costa Rica, Mexico and Romania -- signed the Convention on May 29, thereby signalling their early intent to proceed with efforts to obtain the necessary domestic authority to ratify the Convention.

By the end of May 1994, 15 countries, including the United States, had signed the Convention -- more than had signed any convention previously produced by the Hague Conference during the first year after the adoption of a convention's final text. By February 1996 twenty-four countries had signed. With ratification of the Convention by the requisite three countries to bring it into force -- Mexico, Romania and Sri Lanka -- the Convention entered into force among these three countries as of May 1, 1995. Six further countries have ratified as of February 1996.

U.S. Role at the Hague Conference: Consultation with U.S. Private Sector

The United States was an active and important participant in these negotiations. The U.S. delegation to preparatory meetings included a family and comparative law professor and representatives of Adoptive Families of America, Inc., the American Academy of Adoption Attorneys, the National Council For Adoption, and the Department of State. The delegation to the Hague Conference's 17th session was headed by Peter H. Pfund, Assistant Legal Adviser for Private International Law (L/PIL), and James L. Ward, Acting Assistant Secretary for Consular Affairs (CA), both Department of State, and included, in addition to the representatives mentioned above, two adoptive mothers appointed by the White House, a representative of the American Public Welfare Association, the nominee of the President of the American Bar Association, and a representative of the U.S. Immigration and Naturalization Service.

The U.S. delegation sought to ensure throughout the preparation of the Convention that in addition to setting meaningful norms and procedures, the Convention would remain sufficiently flexible and capable of support by the various elements of the U.S. adoption community to permit the United States to become a party. Many of the participating countries, where, unlike the United States, adoption services are provided only or primarily by public authorities, perceived private adoptions to be more prone to abuses, such as those that occurred in Romania a few years ago, than adoptions for which public authorities or licensed agencies provide adoption services. However, the Convention as adopted clearly permits and regulates private adoptions.

Throughout the project, L/PIL in the State Department's Office of the Legal Adviser, which has responsibility for action on the Convention, has sought and received guidance from the private sector through a 50-person Study Group on Inter-country

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Adoption and other adoption interests attending Study Group meetings. The Study Group is composed of representatives of adoption agencies, private adoption interests like the Joint Commission on International Childrens Services (JCICS) and the National Council For Adoption, the American Bar Association and the American Academy of Adoption Attorneys, law professors expert in family and comparative law, the American Public Welfare Association, the Child Welfare League of America, as well as officials from the Consular Affairs Bureau in the Department of State, the Departments of Justice, Defense and Health and Human Services, and the U.S. Immigration and Naturalization Service. It met for three all-day meetings between 1990 and 1993, all open to the public, announced in advance in the Federal Register, and attended by over 70 persons from all over the United States. The most recent meeting, in October 1993, attended by over 160 persons, discussed the Convention as adopted and, in a general way, the issues that would be involved in its implementation in the United States.

Major Advantages Offered by the Convention

The Convention as adopted will eventually affect future intercountry adoptions to and from the United States, whether the United States becomes a party to it or not. It may cause numerous countries, and especially sending States, to review and possibly change their domestic laws and procedures governing adoptions to foreign countries, thereby also affecting countries like the United States which receive children in adoption from those countries.

The advantages offered by the Convention include the following:

-- It constitutes a first formal intergovernmental stamp of approval for the process of intercountry adoption when the process conforms to minimum norms set by the Convention. This differs from the perception some have of the effect of language in the earlier U.N. Convention on the Rights of the Child, to which about 170 countries are parties and which the United States has recently signed. That Convention appears to treat intercountry adoption as a last resort for children if they cannot be placed for adoption or in foster homes in their country of origin or if they cannot otherwise be appropriately cared for (institutionalized) in that country. The U.N. Convention might thus be invoked in support of the belief in some countries, also hitherto held by a number of international organizations, that intercountry adoption is a process by which industrialized countries exploit a national resource of poorer developing countries, a view that has played to the self-esteem problems that authorities in some countries experience because they are currently not able to provide for appropriate care for some of the children resident in those countries. Moreover, the U.N. Convention has been

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interpreted by some as totally forbidding private intercountry adoptions. The Preamble of the 1993 Convention starts by recognizing that the child, for the full and harmonious development of its personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. After recalling that every State should take appropriate measures to enable the child to remain in the care of its family of origin, the third provision of the Preamble recognizes "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." The Preamble thereby suggests that intercountry adoption, providing the child a permanent family, should be placed ahead of foster or institutional care in the child's country of origin -- a very welcome and important endorsement of intercountry adoptions if they meet the internationally agreed minimum requirements set out in the Hague Convention.

-- By providing for national Central Authorities to be established in every party country, the Convention ensures that there is a single authoritative source of information about the laws and procedures for intercountry adoptions in every such country, and a single point of contact in every country for the authorities of other party countries to look to for reliable information and responsibility for what occurs or should (and should not) occur in that country.

-- The Convention establishes a minimum set of core norms and procedures that will be uniform for every party country and every adoption involving two party countries. However, every party country is able to maintain or to add further conditions and restrictions at any time beyond those set by the Convention.

-- The Convention establishes reasonable certainty that adoptions decreed pursuant to the Convention will be recognized and given effect in all other party countries.

-- It may make politically possible the establishment of a new category of children admissible to the United States for permanent residence, separate from the "eligible orphans" requirement that children must currently meet under the U.S. Immigration and Nationality Act (INA). This would facilitate the adoption of children from other party countries by prospective adoptive parents resident in the United States.

-- Implementation of the Convention may make possible greater automaticity for the acquisition by adopted children of American citizenship.

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The U.S. Political Process Before U.S. Ratification of the Convention

The text of the Convention as adopted at the end of May 1993 has been mailed by L/PIL to the 5-600 persons and organizations on its mailing list and it has been published in the July 1993 issue of International Legal Materials and in the Spring 1994 issue of Family Law Quarterly. On the basis of the general endorsement of the Convention by the American Bar Association, the Joint Council on International Childrens Services (JCICS), the North American Council on Adoptable Children, the National Council For Adoption, and others who have been associated with us on this project, the United States signed the Convention on March 31, 1994 -- a symbolic act without legal effect but signalling an intention to seek authority eventually to ratify the Convention and a commitment not to act contrary to the objects, and purpose of the Convention in the interim.

The Convention with an article-by-article legal analysis of its provisions will eventually be submitted by the Secretary of State to the President for transmission to the Senate for advice and consent to U.S. ratification. In the Senate the Convention would be referred to the Senate Foreign Relations Committee for a hearing and recommendations to the full Senate.

Approximately at the same time that the Convention is transmitted to the Senate, an Administration bill with proposed federal implementing legislation, prepared by interested federal agencies in consultation with the private sector via the Department's Study Group on Intercountry Adoption, would be introduced in the House and Senate.

Only after the Senate has given its advice and consent to U.S. ratification, and the Congress has enacted appropriate federal legislation that the President has signed, will final preparations be possible within the federal government, the States of the United States and the adoption community with regard to the accreditation of agencies and the authorization of other providers of adoption services and to deal with many other aspects of implementation so that the United States would be able to ratify the Convention and bring it into force for the United States a few months later. Such advance preparations before U.S. ratification would need to have been made to ensure that intercountry adoptions covered by the Convention initiated as of the day on which the Convention would enter into force for the United States could comply with the Convention's requirements.

Summary of the Convention's Provisions

The Convention is to apply to all adoptions between countries becoming parties to it (Art. 2) that create a permanent parent-child relationship, but would cease to apply if a child becomes 18 before certain Convention-steps have occurred (Art. 3). If those steps have occurred, the Convention, in particular

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its provisions on recognition, continue to apply regardless of the age of the adoptee. However, the child would remain capable of adoption after the Convention ceases to apply -- just not under the Convention and any amendments made by federal implementing legislation for the Convention to the Immigration and Nationality Act with regard to children whose adoption is covered by the Convention.

An adoption under the Convention may take place only if:

-- the competent authorities of the State (country) of origin have established that the child is adoptable, that an intercountry adoption is in the child's best interests, and have ensured that the necessary consents to the adoption have been given freely and without inducement, expressed or evidenced in writing after appropriate counselling about the effect of consent and whether it will result in termination of the parent-child relationship, and, on the part of the mother, after the birth of the child (Art. 4); and

-- the competent authorities of the receiving State (country) have determined that the prospective adoptive parents are eligible and suited to adopt, that they have been counseled as necessary, and that the child they wish to adopt will be authorized to enter and reside permanently in that State (Art. 5).

Every party country is to establish a Central Authority (Art. 6) with the non-delegable functions to cooperate with the Central Authorities of other party countries to protect children and achieve the other objects of the Convention, and to provide information on the laws of their country on adoption and general information (including statistics and standard forms) (Art. 7).

The functions for Central Authorities set out in Article 9 may be performed through public authorities or Convention-accredited bodies (agencies). The functions of Central Authorities in Chapter IV on Procedural Requirements (Articles 14 to 21) may, according to Article 22(1), be performed by public authorities or "bodies accredited under Chapter III". This means that such "bodies" (agencies) must meet the requirements of Articles 10 and 11 (demonstrate competence to carry out properly the administrative and social tasks with which they may be entrusted; pursue only non-profit objectives; be directed and staffed by persons specially qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; be subject to supervision by competent authorities as to their composition, operation and financial situation) and Article 32 (not derive improper or other financial gain; may charge or pay only costs and expenses, including reasonable professional fees; staff involved in an adoption shall not receive unreasonably high remuneration in relation to services rendered).

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Independent or private adoptions are addressed in the second and fourth paragraphs of Article 22. The second paragraph permits any party country to declare that Central Authority functions set out in Articles 15 to 21 may be performed in that country "also by persons or bodies who meet the requirements of integrity, professional competence, experience and accountability of that State" and "are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption", e.g., lawyers and social workers. However, Article 22(4) explicitly permits any State to declare that adoptions of its children may only take place if the functions of Central Authorities are performed in accordance with Article 22(1), i.e., by public authorities or accredited bodies (agencies). Thus, private adoptions are permitted if both the State of origin and the receiving State permit them, and subject to essentially the same fundamental provisions, procedures and requirements of the Convention as agency adoptions.

The Convention's procedural chapter provides in Article 14 that persons wishing to adopt a child resident in another party State are to apply to the Central Authority of their own State which, under Article 22(1), could be an accredited agency there but not an approved provider of adoption services covered by the Article 22(2).

The Convention contains no prohibition against parent-initiated adoptions but also contains no explicit authorization. However, the bar in Article 29 to contacts between the prospective adoptive parents and the child's parents or any other person who has care of the child (until certain requirements have been met) makes sense only if there may be activities (aimed at an intercountry adoption) by prospective adoptive parents in the State of origin of a child they may wish to adopt.

Many functions of Central Authorities under Chapter IV, with the exception of immigration matters, may be carried out by accredited agencies or private adoption intermediaries in the United States meeting the Convention requirements. However, only the U.S. Central Authority may perform the non-delegable functions set out in Article 7. The U.S. Central Authority will be generally responsible for monitoring U.S. implementation of the Convention and other party countries will look to that Authority to ensure that U.S. obligations under the Convention are complied with.

It seems likely that if U.S. states wish adoption agencies and other adoption service providers from each of their territories to be able to qualify under the Convention (Article 22(1) and (2)), they will need to arrange, on the basis of standards and criteria set by federal regulation, to screen applicant agencies for compliance with those standards and criteria. The adoption community is preparing accreditation standards and criteria that it expects soon to propose to the Department of State.

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Article 17 sets out the requirements that must be met before a child can be "entrusted" to (in essence: "matched with and placed in the care of") the prospective adoptive parents. Article 17(b) deals with approval of the matching decision by the Central Authority of the receiving State -- an approval delegable to the accredited agency involved, or to a private adoption intermediary when such an intermediary is acceptable to both the State of origin and the receiving State, thereby leaving the U.S. Central Authority without the need itself to approve the matching if such approval should be required by the Central Authority of the State of origin.

Adoptions certified as made in accordance with the Convention shall be recognized by operation of law in other party States (Article 23), subject to the restricted ("manifestly contrary to") public policy exception in Article 24. The United States delegation sought unsuccessfully further to limit the scope of this exception, which is rarely invoked in practice.

Article 26 details what recognition includes, and touches indirectly on the more limited nature of "simple" adoptions in some countries of origin (that do not terminate the pre-existing legal parent-child relationship). Article 27 sets out requirements that apply for the conversion of a simple adoption to a full adoption that does include termination of the pre-existing legal parent-child relationship. The converting full adoption made by authorities of the receiving State then replaces the simple adoption and is the adoption that is to be recognized pursuant to Article 23 in all other party countries.

The Convention is to apply to adoptions when an application pursuant to Article 14 is received after the Convention has entered into force for the State of origin and the receiving State, i.e., when the Convention will be in force to apply to all essential steps of the intercountry adoption process (Art. 41).

Only certain declarations (Arts. 22, 23, 25 and 45), but no reservations, are permitted (Art. 40).

A session of a special commission of the Hague Conference was convened in October 1994 in accordance with Article 42 to review implementation of the Convention. The experts prepared recommended forms for the required consents to intercountry adoption under Article 4(c) and for the certification of adoptions made in accordance with the Convention (Art. 23). That session also prepared a recommendation with regard to the availability of the Convention safeguards to protect refugee or other internationally displaced children that are to be adopted from (and within) their country of asylum.

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Summary of Issues in the Preparation of U.S. Federal Implementing Legislation

The Convention is self-executing in form and does not legally require federal implementing legislation. However, it is difficult to imagine effective implementation of the Convention by the 50+ U.S. jurisdictions without federal legislation to ensure its full and relatively uniform implementation. Such legislation (the International Child Abduction Remedies Act) substantially assisted authorities and others in the United States to understand and effectively implement the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Aspects of Convention implementation to be addressed in such legislation might well include:

- establishment of a U.S. Central Authority within the federal government and authorization and appropriation of funds for its operation (Art. 6);
- the possible authorization for the U.S. Central Authority to arrange for the more routine and ministerial functions of the Central Authority and research to be contracted out or otherwise to be performed by the private sector under Central Authority supervision -- such functions to include the use during the running-in period of management consultants to help set up sound and expeditious procedures and coordination and to develop training programs on implementation of the Convention and on pre- and post-placement counselling and services for intercountry adoptions;
- accreditation of "accredited bodies" in the United States under the Convention (Art. 22(1) pursuant to federal criteria developed with adoption community input, probably with an important role for State licensing authorities;
- screening and approval of U.S. providers of intercountry adoption services other than accredited agencies (Art. 22(2);
- implementation by the authorities in the States of the United States of obligations placed on the United States when a child resident in the United States is the subject of an adoption covered by the Convention (Art. 4) (i.e., when the United States is the sending State;
- amendment of the Immigration & Nationality Act (INA) to facilitate the entry for permanent residence of children being adopted under the Convention and possibly also provide for their more automatic acquisition of U.S. citizenship;

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- ensuring that children brought to the United States for adoption are in fact legally adopted after arrival;
- recognition of adoptions under the Convention (Art. 23), probably including recognition of adoptions covered by the Convention between other party countries made before the Convention enters into force for the United States;
- preservation of information concerning childrens' medical histories and their origins (Art. 30);
- handling and disposition of reported cases of violations of Hague Convention requirements (Art. 33);
- form and admissibility of documents that may be exempted from authentication and legalisation to facilitate paperwork.

There may be additional aspects that need to be covered by such legislation, and some of the issues mentioned above may not need to be addressed in federal legislation.

The State Department's intention is to consult on the manner in which draft proposed legislation deals with these matters with the members of its Study Group on Intercountry Adoption and others attending a fifth Study Group meeting at some future time before Administration clearance and before introduction of such legislation in Congress is sought. Once such legislation is before Congress, the adoption community will, of course, have a further opportunity to be heard with regard to the provisions of the proposed legislation.

The timing of transmission of the Convention to the Senate and of introduction of the legislation in both houses of Congress will largely depend on the support that the Convention and implementing legislation receive from the U.S. adoption community. The total process of obtaining Senate consent to U.S. ratification, Congressional enactment of federal legislation, and subsequent preparations for implementation of the Convention is likely to take longer in the United States than in most other countries that have centralized governments, a single legal system, and a parliamentary system of government.

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HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
HAGUE CONVENTION OF 29 MAY 1993
ON
PROTECTION OF CHILDREN AND CO-OPERATION
IN RESPECT OF INTERCOUNTRY ADOPTION

(Lasting as of 5 July 1996)

The following States have signed the Convention:

Costa Rica	29 May 1993	Ecuador	2 May 1994
Mexico	29 May 1993	Sri Lanka	24 May 1994
Romania	29 May 1993	Peru	16 November 1994
Brazil	29 May 1993	Cyprus	17 November 1994
Colombia	1 September 1993	Switzerland	16 January 1995
Uruguay	1 September 1993	Spain	27 March 1995
Israel	2 November 1993	France	5 April 1995
Netherlands	3 December 1993	Luxembourg	6 June 1995
United Kingdom	12 January 1994	Poland	12 June 1995
United States	21 March 1994	Philippines	17 July 1995
Canada	12 April 1994	Italy	11 December 1995
Finland	19 April 1994	Norway	20 May 1996
Burkina Faso	19 April 1994	Ireland	19 June 1996

TOTAL NUMBER OF SIGNATORIES: 26

The following States have ratified the Convention:

Mexico	14 September 1994	Entry into force:	1 May 1995
Romania	28 December 1994		1 May 1995
Sri Lanka	28 January 1995		1 May 1995
Cyprus	20 February 1995		1 June 1995
Poland	12 June 1995		1 October 1995
Spain	11 July 1995		1 November 1995
Ecuador	7 September 1995		1 January 1996
Peru	14 September 1995		1 January 1996
Costa Rica	20 October 1995		1 February 1996
Burkina Faso	11 January 1996		1 May 1996
Philippines	2 July 1996		1 November 1996

TOTAL NUMBER OF RATIFICATIONS: 11

THE CONVENTION ENTERED INTO FORCE ON 1 MAY 1995 —

(meaning at least 3
had ratified)

Extract from the Final Act
of the Seventeenth Session
signed on the 29th of May 1993*

ENGLISH TEXT --

Alternate pages only

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;

* For the complete text of the Final Act, see *Proceedings of the Seventeenth Session (1993)*, tome I, *Miscellaneous matters*.

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, subparagraphs 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.

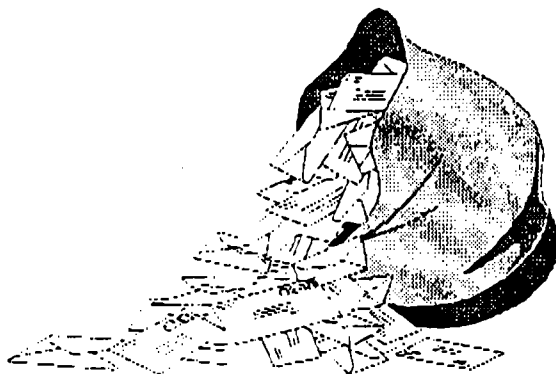
In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the day of 19..*, 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.

* The Convention was signed on the 29th of May 1993 and thus bears that date.

OFFICE OF MANAGEMENT AND BUDGET

*Legislative Reference Division
Labor-Welfare-Personnel Branch*

Telecopier Transmittal Sheet

FROM: Melissa Benton

395-7887

DATE: 11/20/97

TIME: 11:15 am

Pages sent (including transmittal sheet): 8

COMMENTS: Per our conversation, I'll plan to touch base with you Monday to get any comments you might have.

TO:

Nicole Rabner

PLEASE CALL THE PERSON(S) NAMED ABOVE FOR IMMEDIATE PICK-UP.

6-2878

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET**

Route Slip

To: See Distribution Below	Take necessary action	☒
	Approval or signature	☐
	Comment	☐
	Prepare reply	☐
	Discuss with me	☐
	For your information	☐
	See remarks below	☒

From: Melissa Benton

Date: November 4, 1997

Remarks: To follow are the substantive comments we've received to date on the State Department's draft bill, the Intercountry Adoption Act (LRM IMS173).

Please advise by 4:00 p.m. Thursday, November 6, whether you disagree with any of these comments and/or have comments on the draft bill. State is anxious to clear this legislation, and would like to try to do so before Congress adjourns.

Please call if you have any questions (5-7887). Thanks!

To: Evan Farley
Joseph Pipan
Steven Mertens
Debra Bond
Matthew McKearn
Steven Aitken
Maya Bernstein
Steven Warnath
Nicole Rabner
Jennifer Klein
Cynthia Rice

cc: James Murr
Janet Forsgren

JUSTICE COMMENTS**COMMENTS ON THE INTERCOUNTRY ADOPTION ACT
SUBMITTED TO OMB BY THE DEPARTMENT OF STATE**

From: Karen FitzGerald/Adjudications

Date: October 24, 1997

The following comments and edits were compiled in consultation with General Counsel (Alex Gisser, Doug Wood, Robert Brown, and Joanna London). However, there are some questions which remain for General Counsel to consider.

1. The letter from Barbara Larkin to President/Speaker states that the bill does not propose significant changes to the immigration procedures. However, the requirement that an adopted child meet the definition of "orphan" as stipulated in the INA will not apply under the Hague Convention and would be a significant departure from current law and regulations

The following comments and edits apply to both the section by section analysis and the proposed implementing legislation as submitted by the Department of State.

Section 3

This section indicates that the Act makes it possible for U.S. citizens residing abroad to adopt children, however, at other sections this appears to be limited to U. S. citizens domiciled in the United States. Article 2 of the Hague Convention states that the prospective adoptive parent(s) must be "habitually resident in the receiving State." This point needs to be made clear in the Act. (See also: Sections 301, 302, 303 of the Act).

Section 13

"STATE - The term "State" includes the fifty States, the District of Columbia... American Samoa and the Commonwealth of the Northern Mariana Island". American Samoa is a foreign territory which is an outlying possession of the United States. Persons born there are nationals, but not citizens of the United States. American Samoans in the United States have rights similar to those of Legal Permanent Residents. Legal Permanent residents may not file an I-600A or I-600. An American Samoan living in American Samoa is living in a foreign territory and therefore would not be subject to the INA.

~~We defer to General Counsel on this question.~~

Section 104

Would like an explanation as to why the grant-making authority section exists since it is clear that fees will be charged by the private entities (as set by the Secretary of State). A clear and compelling reason for this is not articulated in the section-by-section analysis.

Section 104(2)

The text which reads in part: "...notwithstanding any other provision of law..." is a disclaimer, but

is unclear as to the intended specific use. It would be more effective to use specific language rather than invoking broad exculpatory language which may not actually achieve the desired result.

Section 105

(b)

Establishment of Registry - "The Secretary of State, in coordination with the Secretary of Health and Human Services and the Commissioner of (correction) the Immigration and Naturalization Service shall (insert) cooperate in establishing case (insert) registries on...."

Comment: INS does not control or monitor the emigration of US citizens to other countries

Section 203

After 1st sentence *insert text*: "Consistent with Section 201 above, the Secretary of HHS will ensure oversight of the accreditation and approval process."

At the end of that paragraph *insert text*: "The Secretary of HHS is solely responsible for promulgating regulations to establish the regulation standards and procedures for the accreditation and approval process."

Section 204

"The subject of the action is entitled to reapply for accreditation or approval (or for termination of any other sanction"... (delete) at any time... Comment: Regulations should outline this procedure.

Section 301

Paragraph 2: "Subsection (b) directs...or a declaration that (insert) legal custody has been granted for the purpose of (insert) emigration and adoption..."

Paragraph 3: Subsection (c): Do we have the authority to do this?

Paragraph 4: "Subsection (d)...and local laws (insert) relating to adoption, with the....

Section 302

"(G) a child, under the age of sixteen...by a United States" (insert) citizen "and spouse...or by an unmarried United States" (insert) citizen...."

Section 303

Paragraph 2: Limitations on authority of State court (federalism issue?).

Last sentence should read: "This section implements Articles 4, and 15 through 21, 23 and 26 of the Convention."

Section 304

Insert: "Such prospective adoptive parents pursuant to the Hague Convention must enter

the United States in compliance with the INA."

Section 305

Subsection (a)

Comment: Must each of those conditions (305)(a)(1) through (5) be met or should there be an "or" between them.

subsection (c)

Insert after "to void the naturalization of the child as a citizen of the United States.) "Nothing in this provision shall be construed to limit the Attorney General's authority under Title III of the INA to revoke the naturalization of such a child, or to limit the Attorney General's ability to consider a finding of fact by a State Court relevant to such a determination." and delete remaining text.

Section 401

(c)(1)

Comment: General Counsel has noted that this exception to FOIA qualifies as an Exemption 3 Statute. Limiting access to records without an appropriate sanction appears meaningless. Such sanctions could be articulated in Section 404.

(c)(2)

delete "has" in first sentence and replace with "maintains";

delete "it" in the first sentence.

Insert (1) after "...and disclose it only" and insert: "(2) as provided in paragraph (3) of this subsection."

Use of the term "Federal law" is extremely broad.

(3)

Unofficial Uses of Identifying Information subsection (B): Comment: No such fees allowed under the Privacy Act (General Counsel).

That language has been deleted
no 401(c)(3) - checking which section this refers to...

(3)(C)

insert "any person" for "child, birth parent, or adoptive parent". Comment: What about deceased persons?

Section 402

Question the use of the word "legalization" in the first sentence.

With regard to the following text: "...unless a specific and supported claim is made that the documents are false..." Is there any limitation as to who can make such a claim?

Section 404

Add sentence: "These are in addition to any penalties, criminal or civil, for violation of immigration laws."

Section 502

Federalism issue.

Section 504

The Act and the Convention shall not apply, ...if the Application for Advance Processing of Orphan Petition I-600A application (*insert*) "or Petition to Classify an Orphan as an Immediate Relative (I-600 petition)" is filed before the effective date specified in paragraph (a); and..."

JUSTICE

Author: Sandra M Kopchik at HQ-002
Date: 10/23/97 11:01 AM
Priority: Normal
Receipt Requested
TO: William C Birkert at HQCOU, Ruth E Tintary at HQ-007
Subject: Fwd: Cursory Review of the Intercountry Adoption Act

2nd message on this:

There are comments on Privacy Act issues after all. See below.

Forward Header

Subject: Fwd: Cursory Review of the Intercountry Adoption Act
Author: Magda S Ortiz at HQ-REC-001
Date: 10/23/97 10:08 AM

Sandy, I'm sorry that we cut it so close (we didn't get the draft until 9:25), but here are the privacy concerns. Please let me know if you need anything else. Either Robin or I can help you. Magda

Forward Header

Subject: Cursory Review of the Intercountry Adoption Act
Author: Robin N Moss
Date: 10/23/97 9:59 AM

Veola:

I have made a cursory review of the Privacy Act (PA) portions regarding access to Hague records. The invasion of privacy clause is ok in (c)(1). I am a little leery of the wording in the (C)(2) portion. The PA states that if an agency maintains a record on an individual (LPR or USC), that person can have access to his or her record. This individual can give consent to another to review their record. The PA also states that "the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual." So as long as the Court has ruled that the individual can act on another's behalf, there is no problem with access. Hopes this helps.

Robin

Joseph G. Pipan 11/01/97 12:19:48 PM

Record Type: Record

To: Melissa N. Benton/OMB/EOP@EOP
cc: Bruce K. Sasser/OMB/EOP@EOP, Steven M. Mertens/OMB/EOP@EOP
Subject: Re: Intercountry Adoption Act

I have a problem with Section 403(b) -- addressing fee collections -- it should be deleted. The Secretary of State is already authorized to issue visas for adopted children and charges an appropriate fee. As stated in the letter, the bill does not propose significant changes to the immigration procedures underlying intercountry adoptions. Current visa fees (with the exception on non-immigrant machine-readable visa fees) go to the Treasury -- making this section subject to PAYGO for receipt loss and any additional direct spending. (We currently have no estimate of the fee diversion that would occur as a result of this new retention authority).

The Department of State, under current law, has authority to collect and retain a fee for machine-readable non-immigrant visas. These funds are used to help offset any additional costs of providing consular services resulting from implementation of this convention. The additional workload could also be accommodated from within existing appropriations for consular services (activity is authorized in the State Department Basic Authorities Act).

Justice and INS should have existing fee authorities that cover this also. We had a similar issue a few months ago regarding interior legislation that would extend Immigration Act coverage to the CNMI. In that case, as here, I think we can make the argument that existing fees and appropriations cover this activity without opening another tap on governmental receipts.



Holt International Children's Services

Every child deserves a home of his own.[®]
HARRY HOLT

January 16, 1998

Ms. Nicole Rabner
Office of the First Lady
The White House
1600 Pennsylvania Ave
Washington, D.C. 20500

Dear Nicole,

I hope you enjoyed the holidays and wish you the very best in the year ahead. I so appreciated the opportunity to finally meet you at the signing ceremony last November. As we discussed briefly, I am pleased to send you ongoing information and articles which are relevant to child welfare and adoption issues. I also discussed this with Mrs. Clinton and she expressed her desire to be updated as well.

Last week I was in Phoenix at a public policy meeting for the Child Welfare League of America. Several times during the meeting comments were made regarding the significant contribution of this Administration to elevate the lives of vulnerable children. I wish you could have been there to hear the grateful remarks.

I am in Washington regularly and look forward to spending time with you, especially regarding the Hague Convention. Please consider me a resource for you regarding child welfare and adoption issues and activity. Although I am not in your time zone, I certainly will accommodate your schedule if possible.

I'm enclosing a piece I wrote which I told Mrs. Clinton I would forward, along with some information on the recent vaccination legislation, and an update on the Hague. Please pass on the information with my best wishes to Mrs. Clinton. Thank you!

Sincerely,

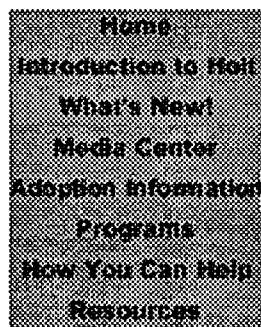
Susan Soon-Keum Cox
Director of Public Policy and External Affairs

Enclosures



The Hague Convention

Progress Report



[Advocacy](#)
[The Hague](#)



Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (listing as of January 22, 1997)

The following countries have signed the Convention:

Brazil	May 29, 1993	Burkina Faso	April 19, 1994
Canada	April 12, 1994	Colombia	September 1, 1993
Costa Rica	May 29, 1993	Cyprus	November 17, 1994
Ecuador	May 3, 1994	El Salvador	November 21, 1996
Finland	April 19, 1994	France	April 5, 1995
Ireland	June 19, 1996	Israel	November 2, 1993
Italy	December 11, 1995	Luxembourg	June 6, 1995
Mexico	May 29, 1993	Netherlands	December 5, 1993
Norway	May 20, 1996	Peru	November 16, 1994
Philippines	July 17, 1995	Poland	June 12, 1995
Romania	May 29, 1993	Spain	March 27, 1995
Sri Lanka	May 24, 1994	Sweden	October 10, 1996
Switzerland	January 16, 1995	United Kingdom	January 12, 1994
United States	March 31, 1994	Uruguay	September 1, 1993
Venezuela	January 10, 1997		

Total Number of Signatures: 29

The Following Counties have ratified the Convention:

Country	Signing Date	Entry Into Force
Burkina Faso	January 11, 1996	May 1, 1996
Canada	December 19, 1996	April 1, 1997
Costa Rica	October 30, 1995	February 1, 1996
Cyprus	February 20, 1995	June 1, 1995

Ecuador	September 7, 1995	January 1, 1996
Mexico	September 14, 1994	May 1, 1995
Peru	September 14, 1995	January 1, 1996
Philippines	July 2, 1996	November 1, 1996
Poland	June 12, 1995	October 1, 1995
Romania	December 28, 1994	May 1, 1995
Spain	July 11, 1995	November 1, 1995
Sri Lanka	January 28, 1995	May 1, 1995
Venezuela	January 10, 1997	May 1, 1997

Total Number of Ratifications: 13

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The following state has acceded the Convention:

Country	Signing Date	Entry Into Force
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Andorra	January 3, 1997	May 1, 1997
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This site is updated weekly.

The last update was 1-12-98

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Holt International Children's Services

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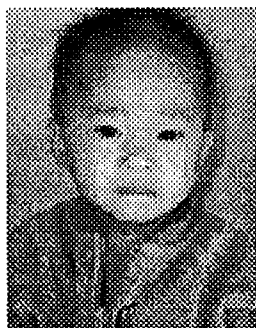
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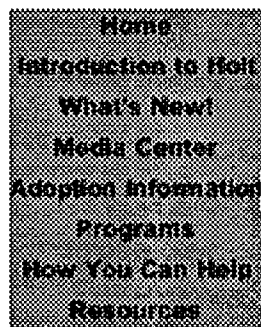
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Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (listing as of January 22, 1997)

The following countries have signed the Convention:

Brazil	May 29, 1993	Burkina Faso	April 19, 1994
Canada	April 12, 1994	Colombia	September 1, 1993
Costa Rica	May 29, 1993	Cyprus	November 17, 1994
Ecuador	May 3, 1994	El Salvador	November 21, 1996
Finland	April 19, 1994	France	April 5, 1995
Ireland	June 19, 1996	Israel	November 2, 1993
Italy	December 11, 1995	Luxembourg	June 6, 1995
Mexico	May 29, 1993	Netherlands	December 5, 1993
Norway	May 20, 1996	Peru	November 16, 1994
Philippines	July 17, 1995	Poland	June 12, 1995
Romania	May 29, 1993	Spain	March 27, 1995
Sri Lanka	May 24, 1994	Sweden	October 10, 1996
Switzerland	January 16, 1995	United Kingdom	January 12, 1994
United States	March 31, 1994	Uruguay	September 1, 1993
Venezuela	January 10, 1997		

Total Number of Signatures: 29

The Following Countries have ratified the Convention:

Country	Signing Date	Entry Into Force
Burkina Faso	January 11, 1996	May 1, 1996
Canada	December 19, 1996	April 1, 1997
Costa Rica	October 30, 1995	February 1, 1996
Cyprus	February 20, 1995	June 1, 1995

Ecuador	September 7, 1995	January 1, 1996
Mexico	September 14, 1994	May 1, 1995
Peru	September 14, 1995	January 1, 1996
Philippines	July 2, 1996	November 1, 1996
Poland	June 12, 1995	October 1, 1995
Romania	December 28, 1994	May 1, 1995
Spain	July 11, 1995	November 1, 1995
Sri Lanka	January 28, 1995	May 1, 1995
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Immigration: Vaccine Requirements for Children

Maria D. Gutierrez
Joyce C. Violet
Education and Public Welfare Division

Summary

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 required all incoming immigrants to receive certain vaccinations before entering the U.S. Enforcement of this provision by the Departments of Justice, State, and Health and Human Services began July 1, 1997. The intent of the vaccination requirement was to ensure that immigrants be fully vaccinated against all infectious diseases. In response to concern over its potential impact on children, particularly orphans, the 105th Congress passed legislation (H.R. 2464) exempting children under 10 adopted by U.S. citizens from the immunization requirement until the children reach the United States. It was signed into law on November 12, 1997 as P.L. 105-73. This report discusses the new vaccination procedures and the concerns that led to the amendment.

Introduction

The Immigration and Nationality Act (INA), the basic immigration law, was amended in 1996 to require immigrant visa applicants to obtain certain vaccinations as a condition for admission.¹ The new vaccination rule, which went into effect on July 1, 1997, applies only to immigrants who filed visa applications after September 30, 1996. Those with pending applications filed before September 30, 1996 are not affected.

The 1996 provision requires applicants for immigrant status to present evidence of vaccination against the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria, pertussis (whooping cough), influenza type B, and hepatitis B, and other diseases recommended by the Advisory Committee for Immunization Practices (ACIP). As authorized by the law, vaccinations for varicella (chickenpox), Hib (*Haemophilus influenzae* type b), and pneumococcal infection have been added to this list, based on

¹ The Illegal Immigration Reform and Immigrant Responsibility Act, P.L. 104-208 (September 30, 1996), Division C, Section 341, amending INA, Section 212(a)(1)(A) and Section 212(g).



recommendations by the ACIP.² The vaccination requirement can be waived if a physician designated by the State Department or the Immigration and Naturalization Service (INS) certifies that the vaccination would not be medically appropriate, or if the vaccination would be contrary to the alien's religious beliefs or moral convictions.

The vaccination of children abroad became an issue. In particular, some members of the international adoption community and children's health experts feared that requiring vaccination of adopted children in their home countries, prior to entering the United States, created potential health risks for these children. This led to the enactment of P.L. 105-73, further amending the INA to exempt children under age 10 adopted by U.S. citizens from the immunization requirement until the children are in the United States.

Procedures for implementing the 1996 requirement are discussed below, followed by a discussion of issues and legislative action.

Procedures

The Department of Justice's INS, the State Department's Visa Office, and HHS's Centers for Disease Control and Prevention (CDC) have all been involved in implementing the vaccination provision.

Examination. "Panel physicians" are now required by law to verify that immigrant visa applicants have met the new vaccinations requirement. A panel physician is a local practitioner selected by a U.S. Embassy or Consulate to conduct medical examinations of aliens applying for visas. Applicants must provide the panel physician with proof of inoculation. In the event that the applicant has not received the required vaccinations, he/she can obtain these by either going to his/her own physician, the panel physician or another health care provider as recommended by the panel physician. CDC has issued medical guidance to the panel physicians on how to administer the new vaccination requirements, and their performance will be monitored by consular officers. The State Department reports that consular officers have been working closely with their panel physicians to ensure that they understand the CDC guidelines and to identify potential problems.

Waivers. In certain cases, the applicant may be eligible for a waiver. INS is statutorily responsible for issuing waivers, but it has delegated some of this responsibility to the State Department. The decision to recommend a waiver based on medical findings rests with the panel physician. Upon the authorized physician's recommendation, consular officers may grant blanket waivers *when the alien is already vaccinated or when the vaccination is not medically appropriate*. Under a blanket waiver, an exemption can be granted without the need for the applicant to file an application form or pay a fee. INS has maintained responsibility for granting individual waivers based on religious or moral objections on a case-by-case basis.

² The ACIP is an advisory committee to the Public Health Service's Centers for Disease Control and Prevention, within the Department of Health and Human Services (HHS). The ACIP makes general recommendations on immunization, including safe and effective immunization schedules.

As mentioned previously, the law authorizes waivers under specific circumstances. According to the guidance offered by the multiple agencies involved, waiver eligibility is being interpreted as follows:

- Aliens who are inadmissible because they did not present documentation that they received the required vaccines *at the time of application* for an immigrant visa can receive a blanket waiver if they later present documentation for those vaccines which are lacking.³
- A civil surgeon, medical officer, or panel physician certifies that the vaccination would not be medically appropriate. Only a physician can determine which of the listed vaccines are medically appropriate.⁴ Such determination can be made in the following situations: a vaccine is not recommended for the alien's age group; a person exhibits a medical condition or symptom that makes the vaccine inadvisable; the alien received a dose of a required vaccine prior to the medical examination and the minimum interval for receipt of the next dose has not passed; and a vaccine is not appropriate for the season (i.e., the influenza vaccine is recommended for age-appropriate applicants during the fall (flu) season).⁵ According to CDC guidelines, completion of a vaccine series is not required to conclude the immigration medical examination, since such a requirement would require multiple visits to the panel physician and could lead to unnecessary delay in the immigration process. Also, the State Department has advised that if a required vaccine is not licensed or not available in the country, the applicant would be eligible to receive a blanket waiver on the grounds that the vaccination was not medically appropriate.⁶
- Compliance with the vaccination requirements is contrary to the alien's religious beliefs or moral convictions. INS interpretation of this waiver is forthcoming. A person who meets these conditions, however, will need to apply for a waiver on an individual basis with the INS by filing form I-601 and paying the required fee of \$95. Individual waivers are adjudicated by the INS on a case-by-case basis.

Issues

The negative reaction to the new vaccination requirement by the international adoption community caught many by surprise. The intent of the vaccination requirement was to ensure that immigrants are fully vaccinated against all infectious diseases. However, there was growing concern over its potential impact on children, especially orphans. These concerns were expressed, among other places, in a July 22, 1997 letter to the Attorney General, signed by a group of 24 Senators and eight Representatives. The letter urged the Attorney General to provide waivers from the immunization requirement for

³ INS guidance to field offices, January 17, 1997, cited in *Interpreter Releases*, January 27, 1997. p. 186.

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⁵ CDC "Addendum to the Technical Instruction for Medical Examinations of Aliens," issued to panel physicians on April 11, 1997, cited in *Interpreter Releases*, April 21, 1997. p. 640.

⁶ State Department cable issued June 2, 1997, cited in *Interpreter Releases* June 30, 1997. p. 1008.

infants and children awaiting adoption. Similar concerns were also expressed in the press. The most frequently raised health concerns are discussed below.

- *Unsanitary immunization procedures.* Some health experts specializing in medical issues for children adopted from abroad fear that the required injections will be administered with unsterile needles which can contribute to the transmission of dangerous diseases. According to the State Department, when vaccinations are administered by panel physicians, they are done with sterilized needles and syringes in accordance with CDC guidance. In many countries, the Embassy's or Consulate's staff rely on the same physicians for their own medical care. However, it is argued that the CDC does not have any control over the vaccination practices of private physicians or inoculations that may take place in the orphanages or other facilities prior to the adoption.
- *Use of substandard vaccines.* Others worry about the quality of the vaccines available in other countries.⁷ There is concern that many countries cannot afford high-quality vaccines. Instead, they may use biologically impotent products, those that have expired or have not been properly refrigerated or stored. According to the Consulate General in Guangzhou, China, in a recent visit by a CDC representative to the panel physician in Guangzhou, China, the largest sending country of immigrant orphans, the representative found "impressive facilities," "staff," and "equipment."⁸ Also the representative observed that the vaccines were of current use, were stored properly, and the facility met international safety standards.
- *A child may experience a reaction to the vaccine while abroad.* There is a fear that the child may have a negative reaction to the vaccine. Opponents paint scenarios of children experiencing major adverse reactions to vaccines on their flight to the U.S. The State Department has encouraged adoptive parents to take their children into the panel physician for the medical exam and vaccination assessment as early as possible. According to the State Department, this should ensure that children have adequately recuperated from any minor reactions to the vaccinations by the time they travel.⁹
- *A child may have problems with immune system.* There is also fear that the child may have an immune dysfunction that may not be ascertained by the panel physician. In the case of a child who is immunocompromised, certain vaccines may not be advisable. However, it takes extensive and highly sophisticated tests to make this determination. Neither panel physicians nor physicians practicing in the U.S. are required to administer such exams prior to inoculation to test for immunocompromised conditions.

⁷ Cimons, Marlene. Critics Finding Holes in Overseas Vaccination Law. *Los Angeles Times*, June 5, 1997.

⁸ Draft response prepared by the U.S. Consulate General in Guangzhou, China, faxed to the Congressional Research Service by Bob Hannan, Bureau of Consular Affairs, U.S. Department of State, on July 28, 1997.

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- *Lack of accurate health records.* Another concern is the possibility of unreliable records in some foreign countries. Children from orphanages may not have accurate health records on which a physician can base recommendations for vaccinations. Because the panel physician has a responsibility to verify that applicants have indeed received certain vaccines prior to signing their immigrant medical exam and recommending a waiver for them, the physician may refuse to accept orphanage records which he/she believes not to be credible. As is common practice in the U.S., in the event of questionable records, an alien may be considered susceptible and required to receive more doses of the same vaccine. For most of the required vaccines, receiving another dose is not a problem. According to the American Academy of Pediatrics' report on U.S. standards for the immunization of children, "no evidence indicates that administrations of MMR (mumps, measles, rubella), varicella (chickenpox), Hib, hepatitis B, or polio virus vaccine to already immune recipients is harmful."¹⁰
- *A child's age is unknown.* Also, there is concern that the exact age of the child may be unknown and as a result some children may receive age-inappropriate vaccinations. This, some contend, could endanger a child's health. Physicians suggest that there is no immediate medical harm in a younger child's receiving an age-inappropriate vaccine except that such vaccine would not be effective. For example, if a child under 12 months receives the measles (MMR) vaccine (a vaccine not appropriate for that age), it would not harm the child in the short run. However, the vaccine would not protect the child against measles in the long run since the child's immune system was not sufficiently developed to produce a protective level of antibodies. Administering the Hib vaccine to a child who is younger than 6 weeks, on the other hand, can induce tolerance, thus interfering with the child's ability to develop a proper immune response to subsequent doses of the vaccine.¹¹ Generally, physicians can determine the age of a child within a certain range and can waive age inappropriate vaccinations.

While some of the concerns raised such as unsanitary immunization procedures and substandard vaccines may be unique to conditions abroad, others may occur regardless of where the child is located. For example, problems with a child's immune system can occur while abroad or subsequently in the U.S. The lack of accurate health records and not knowing a child's age are also conditions that may exist whether the child receives vaccines in the U.S. or abroad.

¹⁰ For further discussion, see: American Academy of Pediatrics, *1997 Red Book: Report of the Committee on Infectious Diseases*, 24th ed. American Academy of Pediatrics. 1997, p.22. It is likely that a physician would have to individually assess a person before administering further doses of the diphtheria, tetanus and pertussis vaccine. A child can receive up to six doses of diphtheria and tetanus containing vaccines by age seven (Advisory Committee for Immunization Practices (ACIP), Diphtheria, Tetanus, and Pertussis: Recommendations for Vaccine Use and Other Preventive Measures. *Morbidity and Mortality Weekly Report*, August 8, 1991, v. 40. p. 5). More than six doses are associated with higher rates of adverse effects. According to ACIP guidelines to panel physicians, the influenza and pneumococcal vaccines are not recommended for children.

¹¹ Plotkin, Stanley A., and Edward A. Mortimer. edit. *Vaccines* 2nd ed. 1994. p. 364.

Although much of the discussion focused on the potential effect of the new vaccination requirement on children adopted from abroad, some questioned whether the potential impact is exclusive to orphans. They pointed out that since children in general are more vulnerable, the new requirement affects all potential immigrant children alike. During the brief Senate floor discussion of H.R. 2464, Senator Edward Kennedy said that he "had hoped that we could pass a bill that exempted all immigrant children, not just adopted immigrant children, from this [immunization] requirement."¹²

Some health experts proposed waiving the vaccination requirement for infants and children and allowing adoptive families to have the vaccines administered by their own pediatricians when children arrive (*Los Angeles Times*, June 5, 1997). As noted below, the enacted legislation includes a requirement that the adoptive families do this.

Legislative Action

There was virtually uncontested support for a legislative exemption of adopted children from the vaccination requirement. The House passed H.R. 2464, "to amend the Immigration and Nationality Act to exempt internationally adopted children 10 years of age or younger from the immunization requirement," by a vote of 420-0.¹³

As introduced on September 11, 1997 by Representative McCollum for himself and Representative Delahunt, H.R. 2464 amended the INA to exempt immigrant orphans adopted by U.S. citizens from the vaccination requirement. This exemption was limited to adopted children who were 10 years of age or younger at the time a petition was filed by the U.S. citizen to accord them immediate relative status (as the child of a U.S. citizen). The House Judiciary Committee accepted a McCollum amendment requiring that, prior to the child's admission, the sponsoring parent must execute an affidavit stating that the child would receive the specified vaccinations within 30 days, or at the earliest time which was medically appropriate. H.R. 2464 was reported on October 1, 1997 (H. Rept. 105-289), and passed the House on October 21.

The Senate had previously passed two amendments, sponsored by Senator Kyl and Senator McCain, to the Commerce, Justice, and State Departments (CJS) appropriations bill (S. 1022) that would have modified the vaccination requirement by expanding the waiver provision. However, it was decided that H.R. 2464, rather than the CJS appropriations bill, would be the vehicle for action. At the request of Senator Abraham and Senator Kennedy, respectively the chairman and ranking minority member of the Senate Judiciary Subcommittee on Immigration, the House-passed H.R. 2464 was held at the desk for expedited action, bypassing committee consideration. It passed the Senate without amendment by voice vote on November 4, 1997, and was signed by the President on November 12, 1997 as P.L. 105-73.

¹² *Congressional Record*, v. 143, November 4, 1997, p. S11703.

¹³ *Congressional Record*, v. 143, October 21, 1997, pp. H8870-72, pp. H8890-91.

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¹¹ Plotkin, Stanley A., and Edward A. Mortimer. edit. *Vaccines* 2nd ed. 1994. p. 364.

Although much of the discussion focused on the potential effect of the new vaccination requirement on children adopted from abroad, some questioned whether the potential impact is exclusive to orphans. They pointed out that since children in general are more vulnerable, the new requirement affects all potential immigrant children alike. During the brief Senate floor discussion of H.R. 2464, Senator Edward Kennedy said that he "had hoped that we could pass a bill that exempted all immigrant children, not just adopted immigrant children, from this [immunization] requirement."¹²

Some health experts proposed waiving the vaccination requirement for infants and children and allowing adoptive families to have the vaccines administered by their own pediatricians when children arrive (*Los Angeles Times*, June 5, 1997). As noted below, the enacted legislation includes a requirement that the adoptive families do this.

Legislative Action

There was virtually uncontested support for a legislative exemption of adopted children from the vaccination requirement. The House passed H.R. 2464, "to amend the Immigration and Nationality Act to exempt internationally adopted children 10 years of age or younger from the immunization requirement," by a vote of 420-0.¹³

As introduced on September 11, 1997 by Representative McCollum for himself and Representative Delahunt, H.R. 2464 amended the INA to exempt immigrant orphans adopted by U.S. citizens from the vaccination requirement. This exemption was limited to adopted children who were 10 years of age or younger at the time a petition was filed by the U.S. citizen to accord them immediate relative status (as the child of a U.S. citizen). The House Judiciary Committee accepted a McCollum amendment requiring that, prior to the child's admission, the sponsoring parent must execute an affidavit stating that the child would receive the specified vaccinations within 30 days, or at the earliest time which was medically appropriate. H.R. 2464 was reported on October 1, 1997 (H. Rept. 105-289), and passed the House on October 21.

The Senate had previously passed two amendments, sponsored by Senator Kyl and Senator McCain, to the Commerce, Justice, and State Departments (CJS) appropriations bill (S. 1022) that would have modified the vaccination requirement by expanding the waiver provision. However, it was decided that H.R. 2464, rather than the CJS appropriations bill, would be the vehicle for action. At the request of Senator Abraham and Senator Kennedy, respectively the chairman and ranking minority member of the Senate Judiciary Subcommittee on Immigration, the House-passed H.R. 2464 was held at the desk for expedited action, bypassing committee consideration. It passed the Senate without amendment by voice vote on November 4, 1997, and was signed by the President on November 12, 1997 as P.L. 105-73.

¹² *Congressional Record*, v. 143, November 4, 1997, p. S11703.

¹³ *Congressional Record*, v. 143, October 21, 1997, pp. H8870-72, pp. H8890-91.

First Generation Korean Adoptees express their support of

The Hague Convention on Intercountry Adoption

—WHEREAS—

under the auspices of the Hague Convention on Private International Law, 66 countries participated in the preparation and negotiation of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and

—WHEREAS—

the Convention sets out norms and procedures for the protection of children who are moving from one country to another in connection with their adoption, and

—WHEREAS—

the Convention as of this date has been ratified by 25 countries and signed by 37 countries, including the United States, and

—WHEREAS—

efforts are underway in many other countries to become parties to the Convention, and

—WHEREAS—

the United States is the receiving country for more children adopted from abroad than any other country

NOW, THEREFORE, BE IT RESOLVED THAT

the participants of the International Gathering of the First Generation of Korean Adoptees unanimously call upon the United States Senate to give its advice and consent to United States ratification of the Convention and upon the United States Congress to enact legislation effectively to implement its provisions.

September 1999—Washington, D.C.

The Gathering of the First Generation of Korean Adoptees

List of Attendees

Ames, Kacy	Derbyshire, Kathleen	Herzel, Amy
Amoros, Helena	Deters, Jennifer	Herzel, Susanne
Andersen, Ann	DeWolff, Dea	Hollon, Sun-Jin
Anderson, Stephanie	Dietrich, Joy	Holtan, Kimberly
Arndt, Jennifer	Dixon, Jennifer	Holtan, Seth
Aune, Wenche	Dodd-Waddington, Barb	Hotaling, Elizabeth
Baker, Timothy	Donahue, Rebecca	Hovey, Daniel
Barnett, Andrew	Dowd, Jennifer	Howey, Kimberly
Barrett, Tia	Drake, Kevin	Hudy, Zachary
Bauer, Kim	Drapeau, Amy	Hunziker, Brenda
Benhoff, Nena	Drucker, William	Hurley, Sara
Benjamin, Niko	DuFore, Lisa	Jensen, Anita
Bergquist, Kathleen	Duncan, Jennifer	Johnson, Franchelle
Bidol, Jonathon	Dwyer, Alix	Johnson, Kerri
Black, Michelle	Dwyer, Beth	Johnson, Lee
Bogart, Kappie	Eaton, Elizabeth	Johnson, Mary
Bogart, Kim	Efurd, Kim	Johnstone, Paula
Boswell, Nicole	Enrico, Dottie	Jones, Kara
Bouton, David	Erickson, Miya	Jullens, Melody
Brech, Joann	Erkman, Kimberly	Kaplan, Melissa
Brooks, Mara	Fair, Kimberlie	Kaplan, Thomas
Brown, Diane	Fairbanks, Jessica	Karsjens, Kari
Bruining, Mi Ok	Farber, Ben	Kauffman, Ellwyn
Burkett, Danielle	Faunce, Kimberly	Keith, Tonya
Camitta, Amy	Fermi, Mark	Keller, Duk-Jin
Camitta, David	Ferris-Grant, Karen	Ketcham, Eun-Joo
Card, Kialana	Fitch-Hauser, Margaret	Kianka, Jill
Carlisle, Kara	Floyd, Angela	Kim, Barbara
Carlson, Sonja	Franz, Amy	Kimbauer, Elli
Carlton, Kaye	Frey, Bella	Knowlton, Todd
Champod, Marc	Gale, Shira	Knudsen, Peter
Chell, Carrie	Garcia, Loryn	Kobus, Amy
Clayton, Brandon	Gennette, Bethanne	Kochan, Choi
Clement, Thomas	Gilbert, Katherine	Koscher, Jessica
Clift, Tammara	Ginther, Jennifer	Kraeuter, Susannah
Close, Amber	Ginther, Sarah	Krehbiel, Marsha
Corkhill, Christopher	Giovanniello, Michael	Kroll, Mei Lin
Costello, Michelle	Grimaud, Maureen	Kwak, Peter
Cotter, Lynn	Hague, Ginger	Kwapisz, Todd
Cox, Susan	Hajny, Debbie	Laddin, LuAnn
Cronkright, Kim	Hall, Holly	Lahman, MeeMee
Curtis, A. Haija	Hall, Sung Jin	Lande, Siri
Daly, Elizabeth	Hanham, Lee-Ann	Landis, Jan
Daly, Kathryn	Hanson, Kim	Landstrom, Jonas
Damiano, Kathleen	Harper, LeAnne	Langdon, Patti
Daneshyar, Melissa	Harrington, Kylee	Leibowitz, Mark
Dantzler, Will	Hashimoto, Lori	Leid, Shari
Day, Stephanie	Henke, Douglas	Levinthal, Doug

Lewis, Mary Alexandra
Liberty, Jonathan
Lieberthal, Joy
Lilley/Stockbridge, Kim
Lind, Lee
Lund, Dag
Luneborg, Ruth
Lyons, Christy
MacDonald, Christina
Mackie, Liz
Maddox, Theresa
Marshall, Jennifer
Mastantuono, Lucinda
Matthews, Melissa
McClary, David
McFadden, Wendy
McGinnis, Hollee
McGowan, Jon
McGowan, Melissa
McKinney, Peter
McKinnon, Ann
Meyer, Jonathan
Miller, Kimberly
Miller, Melinda
Milroy, Jim
Morrell, Jackie
Morrison, Stephen
Motel, Koren
Mulligan, Meagan
Munson, Marylinn
Murphy, Claudia
Naftzger, Katherine
Naftzger, Rebecca
Nafzger, Ami
Neff, Kelly
Nelson, Keri
Nelson, Rebecca
Nelson-Wang, Mea
Neumann, Heidi
Ng, Charlie
Ng, MinYung
Noren, Kristen
Novak, Suzanne
O'Beirne, Michelle
O'Reilly, Diane
Oddo, Marylee
Owen, Jane
Palmer, John
Palmer, Julianne
Palmer, Kimberly
Parise, Brian

Park, Pauline
Parnell, Sarah
Parsons, Lisa
Pedersen, Mary
Peluso, Kim
Perry, Joy Dawn
Perry, Laurie
Peters Joo, Lori
Petersen, Jennifer
Peterson, Ann-Sue
Petty, Karen
Price, Lisa
Quinn, Lauralea
Rakowski, Candace
Reddish, Sandra
Richards, Lynn
Ritter, Maelyn
Ritter, Marlyss
Rivet, Kristin
Robinson, Tammy
Roby, Beth
Rogers, Kimberly
Rosand, Kari
Rosenthal, Melinda
Rotheim, Jena
Rue, Christene
Rutherford, Kristin
Sacco, Kathleen
Sager, Sara
Savasta, Peter
Schlotterer, Jennifer
Schlueter, Sara
Schoen, Carrie
Scimeca, Cheryl
Shea, Mary
Sheldon, Suzanne
Siefert, Lisa
Simonson, Karen
Sinclair, Janice
Skeels, Kathleen
Sloth, Kirsten
Slotnick, Jamie
Smalligan, Kip
Smith, Jae Dell
Smith, Rebekah
Smith, Ruby
Smith, Staci
Soernsen, Peter
Spade, Emily
Sprunck-Harrild, Kim
Stafford, Deborah

Steiner, Kimberly
Stirling, Steven
Stock, Kim
Straker, Brother Titus
Strayer, Christina
Streyffeler, Kurt
Strong, Jennifer
Studaker, Becca
Summerton-Bias, Deidre
Svendsen, Louise
Swick, Rebecca
Symington, Jill
Tanis, Darlene
Tari, Mika
Taylor, Julie
Tessman, Tina
Thatcher, Stephen
Thompson-Isaacs, Eileen
Tomes, Kimberly
Traver, Kevin
Turner, Kat
Turner, Rebekah
Uehlein, Kerri
Unger, Zachary
Vance, Mary Lee
Vande Hei, Robin
VanderLinden, Valeta
Vick, Kathryn
Vincent, Andrew
Vincent, Mary
Waisanen, Melanie
Wallace, Kim
Wallen, Herschel
Wallen, Soo Jin
Wallner, Jenny
Warch, Karin
Warner, Kim
Waxler, Rebecca
Weiss, Sue
Wengerd, Jennifer
Widrick, Benjamin
Wilder, Xena
Wilkinson, Rachel
Williams, Raymond
Winn, Joan
Wise, Andrew
Wisner, Sarah
Wolf, Jae
Wong, Ruth
Woods, Rebecca
Zanda, Basil

**Testimony of Susan Soon-Keum Cox
Before the Senate Foreign Relations Committee
For Senate Bill 682-The Intercountry Adoption Act**

Tuesday, October 5, 1999

I wish to thank the Committee for the opportunity to testify on behalf of Senate Bill 682-The Intercountry Adoption Act. My name is Susan Soon-Keum Cox, and I am Vice President of Public Policy and External Affairs for Holt International Children's Services. Holt pioneered intercountry adoption from Korea in 1956 and has placed approximately 60,000 children with adoptive families. I have been an adoption professional for more than twenty years. I was president for four years of the Joint Council On International Children's Services, the largest affiliation of state licensed, not-for-profit international adoption and child welfare agencies in the U.S. For eight years, I served as a member of the board of directors of the North American Council on Adoptable Children, it was under the umbrella of this national organization that I participated at the Hague in 1993.

Worldwide, there have been approximately 200,000 who have come to their families through international adoption. I was number 167, and it is in that capacity, as an international adoptee that I am testifying today.

It is the fundamental right of every child to have a family. If this were a perfect world, every child would grow up loved and cherished by the parents who give birth to them. In reality, the world is far from perfect for children, and when a child cannot grow up with their birth family the second priority for children is to grow up in a permanent family in their birth country. However, when that is not possible---when the alternative is childhood in an institution or orphanage and there is no other viable option for a child to have a family, then intercountry adoption is appropriate, and preferable.

Intercountry adoption should never be the first line of defense for displaced children. It is not the solution to world poverty, civil unrest, or urbane migration. However, intercountry adoption does provide a lifelong response in the individual lives of children. To make that possible, we who are committed to that goal must understand that intercountry adoption is a matter of privilege, not a matter of right. Nations are responsible for the care and protection of their citizens--this includes homeless children who may be potentially adoptable. The mandate for those agencies or individuals involved in international adoption should be, indeed must be, to find families for children rather than children for families. This is a very real and significant distinction.

It must be a priority to respect both the dignity of the child's birth country, as well as the dignity of the child. Whenever a country supports intercountry adoption as a way for a child to have a family, they are giving a great deal. A nation's decision as a matter of policy to permit intercountry adoption of its homeless children is complex and complicated. It is imperative not to surcumvent the sending country's adoption system, or attempt to take shortcuts around their requirements. Rather, it is beneficial to inform, educate and assist countries as they develop and frame their adoption policies and practices in a way that is consistent with the best interest of children. While it is easy to say that children are a country's greatest resource, without investment of resources, they also become a nations greatest liability.

The Hague Convention on Intercountry Adoption is significant for many reasons. It provides consistency and clarifies the roles and responsibilities of sending and receiving nations. It promotes ethical practice and establishes a comprehensive process for review and evaluation. Ratification of the Hague Convention will protect the rights of children, birth parents and adoptive parents. As the acceptance of international adoption has expanded, so have the opportunities for exploitation and abuse. It is an unfortunate reality that there are those willing to

exploit the vulnerability of children as well as their birth parents, and potential adoptive parents.

For the first time within the international community, the Hague Convention elevates the appropriateness of intercountry adoption as preferred over institutionalization or long term foster care. It acknowledges in a global context the 'realness' of families who come together through intercountry adoption.

In the U.S. and Europe, more than 140,000 children have been placed for adoption from Korea. Two generations of children, now adults, have demonstrated the effectiveness of the adoption process as a means for children to have families. While it may have been considered a 'social experiment' in the 1950's, those successful adoptions prove that intercountry adoptions work. There have also been lessons learned. Including there are issues unique to intercounty adoption. Although we do not grow up in the country and culture of our birth, for most international adoptees, there is a sense of being connected to their birth country, even as it is acknowledged for many adoptees, it is a country and culture they do not remember.

Adoptive parents can never provide the same authenticity of cultural and ethnic connections as birth parents, however, they must acknowledge, accept and be committed to the cultural heritage of the child they adopt. When my parents adopted me in 1956 I was four and a half years old. I spoke only Korean. I came to live

in a rural community in Oregon where I was the only Korean. My parents were pioneers to this process and there was no road map to follow. The practice of the day was to help me become Americanized as quickly as possible.

What we know now is that happens simply by osmosis. For my parents there were no books, tapes, magazines, support groups or other organizations available to them. In the last decade there has been a dramatic emergence of these resources for adoptees, adoptive families and adoption practitioners. Today there are organized tours back to birth countries, heritage camps, cultural events and connections to ethnic communities which further promotes the on-going connections between adoptees and their birth countries.

As international adoptees, we are a unique population. Because we are generally a different race from our adoptive parents and families, we are constantly called upon to validate (often to strangers) that we are a 'real' family. Over the past 20 years I have worked with hundreds of international adoptees from a variety of countries through heritage camps, tours and other programs. I do not know an international adoptee who has not been asked "Who are your 'real' mom and dad?"

When I was at The Hague in 1993 I was overwhelmed by the enormity of the process. Experts from 66 countries examined and articulated their views and concerns regarding how the Hague

Convention should be drafted. In that forum of thinkers, with a variety of opinions, I was the only adoptee, the only person whose life experience personally reflected what the Hague is intended to accomplish. I felt an enormous responsibility to the thousands of adoptees whose life has been touched by international adoption. I felt an even greater responsibility to the thousands of children who will not have a family, except through international adoption.

It is children being adopted who are most directly affected by adoption laws and policies. However, it is also true that we grow up---we are not frozen in time as the children we were at the time of our adoption. On behalf of the 200,000 adoptees, many who are now adults, it is critical to acknowledge that adoption is a life-long process. Adoptees are affected not only at the moment of our adoption, but throughout our life time.

Three weeks ago, there was an International Gathering of the First Generation of Korean Adoptees here in Washington DC. More than 300 adoptees age 21 to 47, from the US and seven European countries attended. We came together to celebrate the commonality of our adoption experience. An issue of critical concern to all of us is the acknowledgment of the impact of adoption which made it possible for us to have families who loved and cherished us, as well as our ongoing connection to our common history which began in Korea. Participants at the Gathering signed a proclamation

expressing support of the Hague Convention and urging ratification of the treaty by the US and Korea. (attachment)

As adult adoptees, we are firmly committed to the necessity of preserving our records and other information related to our adoption. A number of adoptees have searched for and been reunited with their birth families. This is not an indication of discontent with our adoptive families, but rather an acknowledgment of the reality for some of us of a desire to know about our history and our beginnings. Particularly for international adoptees who have wondered throughout their lifetime 'who do I look like?' the issues of access to records and information is profound.

Medical issues for international adoptees and their families can be especially critical. In the terrifying circumstance that requires a bone marrow transplant, a donor match must be found not only from the birth family, but secondly from a same race donor. This is true for children regardless of their birth country. This gives access to information a very real urgency. In 1991 I assisted a young Korean adoptee with leukemia to find his birth mother. She was located and later became his successful bone marrow donor. Now cancer free, this young man would have died had this information not been available to him. Unfortunately this is not an isolated case but a scenario which will continue in the future.

I came full circle in my own adoption experience in 1992 when I searched for my biological family. It was a richly rewarding experience to find my Korean family and I am deeply grateful that my records were available to me. Finding my birth family validated that family is not simply shared biology but shared history. My adoptive family is my 'real' family.

Not every adoptee wants their information for the purpose of search. I will never forget how it felt when I first returned to Korea in 1978 and saw my adoption records in Korea for the first time. To know they were being cared for if I ever needed or wanted them. To know they were being carefully preserved and protected was deeply satisfying. This is a sentiment expressed by many adoptees.

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global, the contribution of international adoptees includes a unique role as world citizens.

Intercountry adoption can be complicated and complex. At times it is difficult and frustrating. It is often misunderstood. But it works. In its simplest essence, it allows a child who would never have a family, to be loved, nurtured and cherished.

**STATEMENT OF SENATOR JESSE HELMS
RE: THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION
(AND ON S.862, THE INTERCOUNTRY ADOPTION ACT)
OCTOBER 5, 1999**

Mr. HELMS. The Foreign Relations Committee today will hear from a distinguished group of experts in the field of international adoption. The focus will be on the questions of whether the United States should ratify The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

This is a long title for a significant proposed agreement now pending before our committee along with legislation that I introduced with Senator Mary Landrieu last March to implement the treaty.

I am pleased that Senator Mary Landrieu, who cares deeply about adoption, is participating in this important hearing.

The distinguished Senator from Louisiana and I agree that this treaty and legislation must remain linked as we consider intercountry adoption issues during this 106th Congress.

Recent statistics reveal that in 1998 almost 15,774 children were adopted by Americans from abroad. The majority of the children were brought to the United States from Russia, China, Korea, and Central and South American countries. Like many others, I strongly support adoption and believe international adoption represents a growing avenue for children without families, let alone adequate resources, to be given homes by parents who wish to love and adopt the children.

However, it is important to bear in mind that health-related problems of children adopted from abroad are increasingly coming to light, raising questions about the adequacy of preparation for adoptive parents. I am convinced that increased collection of data and analysis of international adoptions, as called for in S. 682, will surely improve our understanding of these problems.

Since states regulate domestic adoption, the oversight of international adoption has been lacking under U.S. law. Health problems, including psychological and emotional trauma, have led to a growing number of parents turning to health services of private agencies to take custody of their adopted children. Today's witnesses will address various aspects of these problems.

In some instances parents are not adequately prepared for --- or have not been informed of --- the health and emotional issues of adopted children. Only after the adoption, do some parents learn that the children suffer from symptoms of illnesses such as fetal alcohol syndrome, particularly in children from Russia and the former Soviet Union.

The Intercountry Adoption Implementation Act, S. 682, is intended to address some of these problems and bring accountability to agencies that provide intercountry adoption services in the United States. It will certainly strengthen the hand of the Secretary of State by ensuring that U.S. adoption agencies operating abroad engage in efforts to find homes for children in an ethical manner.

Agencies must be accredited to operate under the treaty and will receive accreditation only if they provide full health records to parents, basic instruction for dealing with previously institutionalized children, and preparation of parents for potential health and emotional issues.

A secondary rationale for ratification and implementation of the treaty is the ability to preserve international adoption as an option for U.S. parents. A number of countries are citing ratification of The Hague Convention, and implementation of its requirements, as a benchmark for permitting adoption agencies to continue operation in their countries. (Some of today's witnesses will address the importance of treaty ratification to ensuring maintenance of their operations.)

The treaty's minimal requirements are intended to provide a framework for ethical operation by adoption agencies, including the creation of a competent authority in treaty countries to oversee international adoption.

The competent authority in Senator Landrieu's and my bill, S. 682, will be the State Department meaning that this department will have "the final say" in the multitude of questions that surely will arise. Under our bill the states --- not the federal government --- will continue to oversee domestic adoption. As a result, S. 682 puts the State Department in the lead, and does not concede the oversight of international adoption to the Department of Health and Human Services (as the Administration has requested).

State Department consular officers are "on the ground" working with adoption agencies and parents on a daily basis and are best able to monitor the activities of these agencies.

Senator Biden.

**STATEMENT OF ASSISTANT SECRETARY MARY A. RYAN
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE ON
THE HAGUE CONVENTION ON PROTECTION OF CHILDREN AND CO-
OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION
TUESDAY, OCTOBER 5, 1999**

Mr. Chairman, Senator Biden, and members of the Senate Foreign Relations Committee, Senator Landrieu, I am delighted to have the opportunity to discuss international adoption and the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. Along with me today is Jamison Borek, Deputy Legal Advisor from the State Department, in case you have legal questions that could be better answered by an expert attorney.

I would like to thank you personally, Mr. Chairman, Senator Biden, and Senator Landrieu, for the interest you have shown in the Convention and its implementation. We also want to commend all staff who have worked so diligently on this effort. S.682, the implementing legislation you have introduced, and the Administration's proposed legislation were prepared with the best interests of the children in mind. While there are some differences, there are many similarities between these two proposals.

I would like to focus my remarks on the current situation in international adoption from the U.S. Government's perspective, including the federal government role. I would also like to outline the Hague Adoption Convention, its benefits, and how the Convention and its implementing legislation will work to remedy current problems in international adoption. My hope today is that the committee will understand the need for the Hague Adoption Convention.

The welfare and protection of American citizens is the State Department's highest

priority. This includes American parents building families through international adoption, as well as American children finding families abroad through international adoption. We want to ensure that our children are protected once overseas and that those brought to our shores and their adoptive parents are equally protected. These are concerns that you, Mr. Chairman, and Senator Landrieu have voiced, and that many Members of Congress share.

The United States, particularly since the end of World War II, has opened its arms to orphaned and abandoned children around the world, and many Americans have looked to international adoption to build families and to provide a better life for these children. The families are as diverse as America itself, including extended families, married couples, multicultural families, and single-parent households.

We believe that Americans currently adopt more children from abroad than the citizens of all other countries combined. In fiscal year 1998, 15,744 children were adopted from abroad. This is compared to the beginning of the decade, when international adoption totals were 7,093.

The majority of children adopted from overseas over the years have come from Asian countries, primarily Korea. Since 1955, more than 98,000 children have been adopted from South Korea alone. In the five-year period 1976 to 1981, Americans adopted more than 5,000 South American children, almost 80% coming from Colombia. It was not until the early 1990s with the breakup of the Soviet bloc, that Eastern European countries became the largest source of adoptable children for Americans. Since 1992, over 15,000 children have come from Russia, 3,900 have come from Guatemala, and 11,500 from China.

These adopted children have enriched families throughout the United States and have become an integral part of our community. Many have grown up to become business leaders, doctors, lawyers, scientists, teachers, community leaders; some have devoted their lives to giving children like themselves a chance to grow up in loving adoptive families.

The federal government's current role in intercountry adoption is small. In the United States, family law, including adoption and related laws, rules, and procedures, is set by the states. The federal government's role is limited primarily to immigration processing, providing information, and working with foreign governments to ensure Americans are not discriminated against when adopting from abroad. The State Department's Office of Children's Issues provides country-specific information about international adoption, general information about U.S. visa requirements, and other important information about travel situations, attorneys abroad, and authentication of documents for use abroad. The Immigration and Naturalization Service (INS) receives and processes applications by prospective adoptive parents for approval to adopt a child from abroad, and for the immigration and subsequent naturalization of such a child. The Department of Health and Human Services (HHS) works with the states to improve adoption practices through information exchange, training, and technical assistance on a variety of matters, including adoption agency licensing issues, and has extensive experience working with the states to further the adoption of U.S. children with special needs who are in foster care.

The Convention

Sadly, along with all the positive benefits of international adoption, I must

acknowledge that there have been some abuses. This fact ultimately prompted 66 countries to convene in The Hague to prepare a convention to provide standards and procedures for intercountry adoptions, which would protect children, their birth parents, and their adoptive parents. Intergovernmental negotiations began in 1991 under the auspices of the Hague Conference on Private International Law, after the international community realized that there was a need for internationally prepared standards for intercountry adoption. These efforts produced the 1993 Hague Convention on Intercountry Adoption, the first formal international mechanism to facilitate the process and protect the integrity of intercountry adoption. The Convention will enable many more children around the world to become part of loving and supportive families—something every child deserves.

The text of the Convention, the President's Letter of Transmittal, and the Acting Secretary of State's Letter of Submittal, may be found in Senate Treaty Doc. 105-51, issued on June 11, 1998.

The United States, as the world's major receiving country for children in intercountry adoption, played a very active role in the negotiations at The Hague. We believe that we were successful in ensuring that the Convention's requirements were realistic, would be effective in protecting children and biological and adoptive parents, and would serve to discourage child trafficking and associated child abductions and fraud. At the same time, we succeeded in ensuring that the Convention imposed no requirement that would be unconstitutional in the United States or would unduly burden the already daunting process of adopting a child from abroad.

The drafters of the Convention believed that a properly safeguarded international

adoption was a better alternative for care of an orphaned or abandoned child than institutional care in the child's country of origin. The Convention recognizes that growing up in a family environment is critical for the harmonious development of the child's personality, and it appropriately safeguards intercountry adoptions. The Convention is designed to ensure that adoptions will take place when they are in the child's best interests, and that the abduction of, and trafficking in, children and other abuses will be prevented.

In the years before negotiations began and throughout the lengthy deliberations, the U.S. delegation sought guidance from the U.S. adoption community, including adoption agencies, lawyers, social workers, and adoptive parents. Representatives from the adoption community were on our delegation to preparatory sessions. Following endorsement of the Convention by U.S. adoption interests and the American Bar Association, the United States signed the Convention in March 1994. Since its adoption, 35 countries have either ratified or acceded to the Convention, and 12 others have signed but not yet ratified, making it perhaps the most quickly, enthusiastically and broadly accepted Hague Convention in the more than 100-year history of the Hague Conference.

The Convention requires that:

- Certain determinations, such as adoptability of the child, eligibility to immigrate, parent suitability and counseling, be made **before** the adoption can proceed.
- Every country establish a national government-level Central Authority to carry out certain functions that include cooperating with other Central

Authorities, overseeing local implementation of the Convention, and providing access to information on its government's adoption laws. Case-specific functions under the Convention, such as adoption counseling, matching children with prospective adoptive parents, preparation of reports on the child and the adoptive parents, and post-placement services may be performed by adoption agencies and other international adoption service providers.

- Every country establish a national government-level process for uniform screening and authorization of adoption service providers.
- Certified Convention adoptions be recognized in all other party countries.

Last and most important, the Convention imposes requirements that protect a child's welfare throughout the adoption process. Under the Convention, a mechanism will be in place to track outgoing Hague adoption cases, providing a level of protection previously unavailable to U.S. children taken abroad for adoption.

Every party country is able to establish further conditions and restrictions beyond those specified in the Convention. The Convention leaves many details of implementation up to party countries.

Implementation

After the United States signed the Convention in 1994, the Department of State, the Immigration and Naturalization Service, and the Department of Health and Human Services consulted with the private adoption community, parents, lawyers, and other professionals on the general concepts of proposed federal implementing legislation. The

resulting Administration proposal was sent to Congress in June 1998 and submitted once again, with very minor changes, in May 1999. I would like to thank those from other government agencies and the private sector who contributed to this cooperative effort to prepare legislation.

Both the Helms-Landrieu bill (S.682) and the Administration's proposed implementing legislation would do the following:

- Place the U.S. Central Authority in the Department of State, within the Office of Children's Issues of the Bureau of Consular Affairs. Its responsibilities would include largely programmatic functions. It would not handle case-specific functions, which would continue under the Convention to be performed by U.S. private adoption service providers.
- Task the Department of State and INS to develop a case-tracking system for all adoptions of children coming to the U.S. and all Hague adoptions of children leaving the U.S.
- Amend the Immigration and Nationality Act to provide for a category of children adopted pursuant to the Convention, thereby streamlining U.S. immigration procedures for Hague cases.
- Allow for the use of private non-profit entities to perform peer review and the actual accreditation and approval of U.S. adoption service providers for intercountry adoption.
- Address the funding for the Department of State to ensure adequate resources for the effective performance of its functions as U.S. Central Authority and for

the provision of other new adoption-related services.

There are, of course, differences in the two bills. One important difference is the designation of the agency with responsibility to establish and monitor the accreditation and approval of international adoption service providers. While we are grateful to you, Mr. Chairman and Senator Landrieu, for the confidence you have placed in us, we firmly believe that the Department of Health and Human Services, the federal government agency with relevant experience in evaluating and working with domestic adoption programs and social service providers, is better suited to handle this function than the Department of State.

Problems in International Adoption Today

Despite the thousands of adoptions that proceed smoothly, some come to our attention which are problematic. Such adoptions are time consuming, extremely resource intensive, almost always generate Congressional interest, and often have implications that could jeopardize future adoptions for Americans. We provide all appropriate assistance to the individual American adoptive families, while at the same time recognizing that each country has the authority to determine the eligibility of its own children to be adopted by persons residing abroad. We work with these countries, case by case and issue by issue, to reassure them of our concern for the welfare of their children. We anticipate that the Hague Adoption Convention and its implementation will ameliorate the problems that currently occur without the Convention.

We have identified five major problem areas in international adoptions. First, there are instances when the child has been adopted in his/her country of origin by U.S. citizen parents, yet is subsequently found to be legally ineligible to immigrate to the U.S.

with them. The Convention addresses this problem by requiring a child's eligibility to immigrate to the receiving country to be determined before the adoption or placement for adoption occurs. The Convention also ensures that the necessary consents have been given and the child is actually available for adoption. If these criteria are not met, the Hague adoption will not proceed.

A second problem exists when foreign governments ask the U.S. Embassy or State Department for assurances that an adoption agency is legitimate, and that post-placement services and reporting on the child's welfare will be provided. Adoption in the United States is regulated by the states, which oversee home study standards and reviews, and child welfare programs. The federal government cannot give assurances with regard to matters within the competency of the states. Many foreign governments, in particular those where adoptions are regulated by a central legal authority, find it hard to accept that the national government of the U.S. cannot provide such assurances. The Convention and its implementation will help to resolve this problem, by requiring that a Central Authority be established at the national government level.

The third major problem area in intercountry adoption is lack of uniformity in rules and procedures for state licensing of adoption agencies. The vast majority of state licensing standards relate to domestic adoptions and therefore lack the means to ensure that agencies are competent to offer services for intercountry adoptions. Only a handful of states have international adoption licensing requirements. Information concerning complaints about providers is held by the states. Because prospective adoptive parents may often work with providers in a state other than the one in which they reside, parents generally have little recourse for complaint if problems arise. An agency may not be

involved in any adoptions in the state in which it is licensed, but may be placing children in states that have no oversight authority. The Convention and its implementation will require that all adoption service providers for intercountry adoption be screened uniformly and meet the same standards for accreditation approval.

The fourth problem we see is that some adoptive parents are not adequately prepared and counseled for an international adoption, and the adoption placement is disrupted, resulting in the child's removal from the home. The Convention will not cure this problem, but it will help by requiring that all prospective adoptive parents receive intercountry adoption counseling before the adoption. As all parents know, having a new child in the home can be stressful. Adding a different language and cultural factors, and in many international adoptions, the special needs factor as well, makes the situation untenable for certain parents. Adoption counseling will make prospective adoptive parents aware of all that international adoption entails. Furthermore, the Convention will require the adoption service provider to be responsible for follow-up services once a child is placed. In the rare instance when a placement is disrupted before the adoption is final, the service provider will have an obligation to seek a new adoptive home for the child.

The fifth problem area is the need for a single authoritative source of international adoption information. Currently in the U.S. a variety of organizations and government agencies provide information on adoption issues. Sometimes the information provided may be inconsistent or even inaccurate. Under the Convention, the U.S. Central Authority will arrange for access to a central source of information on U.S. state laws relevant to intercountry adoption.

Mr. Chairman, while there is some divergence of opinion as to which agency

might be best suited to establish and oversee the accreditation of international adoption service providers for intercountry adoption, the Administration strongly believes the accrediting function should rest with HHS, the only federal agency with the relevant and necessary experience evaluating social service and health service providers and their performance throughout the country. In addition to its adoption expertise, HHS has extensive experience with the process of accreditation in the health field and reviewing the standards and practices of accreditation bodies.

Just as we are concerned for our children who may leave the United States for adoption abroad, so have other sending countries expressed concern that their children will be properly protected by adoption service providers in receiving countries, including the U.S. In the vast majority of these sending countries, public social welfare authorities are responsible for issues regarding adoption. These authorities and their governments will be reassured to have HHS, a recognized player in the supervision of social services, charged with oversight for the accrediting of U.S. adoption service providers for intercountry adoption.

The world will watch how the U.S. implements this Convention and how it protects children, birth parents, and adoptive parents. Several of the largest source countries have indicated that they are looking to us to ratify and implement the Convention quickly, and that they plan to model their programs after ours. These concerns about U.S. ratification and implementation bear directly on the future ability of American parents to adopt children from abroad.

Mr. Chairman, we are pleased that you, members of the Committee, and Senator Landrieu have taken such an interest in this Convention that will benefit children and

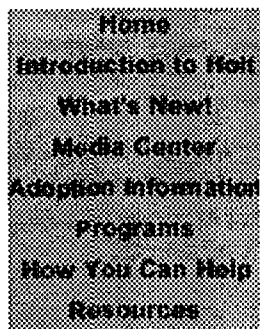
their birth and adoptive parents. Americans adopt more children internationally than any other country. Our citizens will benefit most from the safeguards in this important treaty. We believe it is crucial now that the Senate provide advice and consent to U.S. ratification of the Convention and that Congress pass implementing legislation. We are eager to work with the Congress and the adoption community to safeguard and facilitate intercountry adoptions for all those qualified, and to bring children and parents together to bond as quickly as possible.

Mr. Chairman, this concludes my testimony. Thank you for this opportunity to testify today.



The Hague Convention

Preamble



[Advocacy](#)
[The Hague](#)



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...

THE PPREAMBLE TO THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION

This site is updated weekly.

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[About this Website](#)



The Hague Convention

Text of the Treaty

Final Act of the Seventeenth Session

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belgium, Canada, Chile, China, Cyprus, the Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay and Venezuela, Member States, as well as the Delegates of the Governments of Albania, Belarus, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Colombia, Costa Rica, El Salvador, Ecuador, Haiti, the Holy See, Honduras, India, Indonesia, Kenya, the Republic of Korea, Lebanon, Madagascar, Mauritius, Nepal, Panama, Peru, the Philippines, the Russian Federation, Senegal, Sri Lanka, Thailand and Viet Nam participating as Invitees, convened at The Hague on 10 May 1993, at the invitation of the Government of the Netherlands, in the Seventeenth Session of the Hague Conference on Private International Law.

Following the deliberations laid down in the records of the meetings, have decided to submit to their Governments-

A-The following draft Convention

Convention on protection of children and co-operation in respect of intercountry adoption

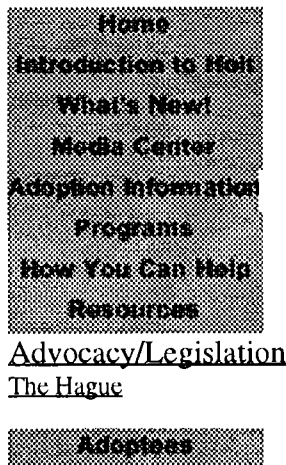
The States signatory to the present Convention,

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 - Requirement for Intercountry Adoption

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 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 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 and 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 depository of the Convention that the functions of the Central Authority under Articles 15

and 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-Recognitions 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 16 to 18 and 19 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 day of 19..1, 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.

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1 The Convention was signed immediately after the signature of the Final Act on 29 May 1993 and thus bears that date.

This site is updated weekly.

The last update was 9-29-99

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WHEREAS under the auspices of the Hague Conference on Private International Law, 66 countries participated in the preparation and negotiation of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and

WHEREAS the Convention sets out norms and procedures for the protection of children who are moving from one country to another in connection with their adoption, and

WHEREAS the Convention as of this date has been ratified by 11 countries and signed by 26 countries, including the United States, and

WHEREAS efforts are underway in many other countries to become parties to the Convention, and

WHEREAS the United States is the receiving country for more children adopted from abroad than any other country

Now, Therefore, Be It Resolved That,
the participants of the International Conference "Celebrating 40 Years of Intercountry Adoption" unanimously call upon the United States Senate to give its advice and consent to United States ratification of the Convention and upon the United States Congress to enact legislation effectively to implement its provisions.

September 7, 1996
Eugene, Oregon, U.S.A.

This site is updated weekly.
The last update was 9-29-99

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Holt International Children's Services
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The Hague Convention

Progress Report

Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (listing as of March 18, 1999)

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The following countries have signed the Convention:

Costa Rica	May 29, 1993		
Mexico	May 29, 1993	Spain	March 27, 1995
Romania	May 29, 1993	France	April 5, 1995
Brazil	May 29, 1993	Luxembourg	June 6, 1995
Colombia	September 1, 1993	Poland	June 12, 1995
Uruguay	September 1, 1993	Philippines	July 17, 1995
Israel	November 2, 1993	Italy	December 11, 1995
Netherlands	December 5, 1993	Norway	May 20, 1996
United Kingdom	January 12, 1994	Ireland	June 19, 1996
United States	March 31, 1994	Sweden	October 10, 1996
Canada	April 12, 1994	El Salvador	November 21, 1996
Finland	April 19, 1994	Venezuela	January 10, 1997
Burkina Faso	April 19, 1994	Denmark	July 2, 1997
Ecuador	May 3, 1994	Germany	November 7, 1997
Sri Lanka	May 24, 1994	Belarus	December 10, 1997
Peru	November 16, 1994	Australia	August 25, 1998
Cyprus	November 17, 1994	Austria	December
Switzerland	January 16, 1995		

Australia	18, 1998
Belgium	January 27, 1999

Total Number of Signatures: 35

The Following Countries have ratified the Convention:

Country	Signing Date	Entry Into Force
Australia	August 25, 1998	December 1, 1998
Brazil	March 10, 1999	July 1, 1999
Burkina Faso	January 11, 1996	May 1, 1996
Canada	December 19, 1996	April 1, 1997
Colombia	July 13, 1998	November 1, 1998
Costa Rica	October 30, 1995	February 1, 1996
Cyprus	February 20, 1995	June 1, 1995
Denmark	July 2, 1997	November 1, 1997
Ecuador	September 7, 1995	January 1, 1996
El Salvador	November 17, 1998	March 1, 1999
Finland	March 27, 1997	July 1, 1997
France	June 30, 1998	October 1, 1998
Israel	November 17, 1998	March 1, 1999
Mexico	September 14, 1994	May 1, 1995
Netherlands	June 26, 1998	October 1, 1998
Norway	September 25, 1997	January 1, 1998
Peru	September 14, 1995	January 1, 1996
Philippines	July 2, 1996	November 1, 1996
Poland	June 12, 1995	October 1, 1995
Romania	December 28, 1994	May 1, 1995
Spain	July 11, 1995	November 1, 1995
Sri Lanka	January 23, 1995	May 1, 1995
Sweden	May 28, 1997	September 1, 1997
Venezuela	January 10, 1997	May 1, 1997

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Total Number of Ratifications: 24

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The following state has acceded the Convention:

Country	Signing Date	Entry Into Force
Andorra	January 3, 1997	May 1, 1997
Burundi	October 15, 1998	February 1, 1999
Moldova	April 10, 1998	August 1, 1998
Lithuania	April 29, 1998	August 1, 1998
Paraguay	May 13, 1998	September 1, 1998
New Zealand	September 18, 1998	January 1, 1999

Total Number of Accessions: 6