

**AMERICAN BAR ASSOCIATION
SECTION OF FAMILY LAW
REPORT TO THE HOUSE OF DELEGATES**

RECOMMENDATION

RESOLVED, That the American Bar Association urges that the
Senate of the United States give its advice and consent to the
ratification of the Hague Convention on Protection of Children
and Cooperation in Respect of Intercountry Adoption, the final
text of which was adopted by the Hague Conference on Private
International Law on May 29, 1993. 1
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BE IT FURTHER RESOLVED, That the Congress of the United
States enact implementing legislation to permit the United States
to participate in this multilateral Convention. 7
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REPORT

Two of the most pressing and serious problems involving the protection of children have been recognized and measures have been taken for dealing with them by the Hague Conference on Private International Law. In 1980, the Conference completed the Convention on the civil aspects of international child abduction, one of the most widely ratified and effective of the Hague Conventions, which is now in effect in 30 states, and has proven its value in preventing and resolving cases of parental child abduction. The American Bar Association endorsed this Convention by resolution in 1981, and it was ratified by and went into effect in the United States in 1988.

On May 29, 1993, at the conclusion of its 17th session, the Hague Conference adopted the final text of the Convention on the protection of children and cooperation in respect of intercountry adoption, by unanimous vote of the 55 countries then present. The Convention covers all adoptions between countries that become parties to it, whether these adoptions are partly adoptive parent initiated or are arranged by adoption agencies or by private/independent providers of adoption related services, explicitly recognizes intercountry adoption as a means of affording children the advantage of permanent families where suitable families cannot be found in their countries of origin, ensures that adoptions are made in the best interests of the child with respect for fundamental rights, and seeks to prevent the abduction, the sale of and traffic in children. To do this, the Convention establishes a system of cooperation among the contracting states, establishes internationally agreed minimum norms and procedures designed to protect the children involved as well as the interests of both birth parents and adoptive parents, and secures the recognition of adoptions made in accordance with the Convention.

At the time the Final Act was adopted, 4 of the 66 States involved in its development -- Brazil, Costa Rica, Mexico and Romania -- signed the Convention, indicating that they would proceed to seek ratification. Since that time, Columbia and Uruguay have also signed the Convention.

As adopted in its final form, the Convention applies to all adoptions that create a permanent parent-child relationship with the adoptive parents and occur between the State parties to the Convention (limited by age). The basic protections are contained in Chapter II: an adoption may take place only if the competent authorities of the State of origin have determined that the child is adoptable, that an intercountry adoption is in the child's best interests and the necessary consents have been given; and

the competent authorities of the receiving State have determined that the prospective adoptive parents are eligible and suitable to adopt and the child will be authorized to enter and reside permanently in that country. The procedural requirements are spelled out in Chapter IV (articles 14-21), and involve the application, the home study and the entrusting and transfer of the child.

Like the abduction Convention, the adoption Convention establishes a mandatory Central Authority to which it assigns both non-delegable and delegable functions, including the procedural functions of Chapter IV. (Ch. III, Art. 6-10.) In addition the Convention establishes a system of non-profit and regulated accredited bodies to which most functions may be assigned (Ch. III, Art. 10-12, Ch. IV, Art. 22(1)), and permits, if both States approve, the procedural requirements to be carried out by specially qualified persons and bodies who are not in the category of the specially accredited bodies. (Ch. IV, Art. 22 (2-4).) The Convention requires the recognition by operation of law of any adoption taking place in accordance with the Convention and certified by the appropriate authority. The recognition provisions, including the effect of an adoption, are contained in chapter V, Articles 23 to 27, and require recognition by operation of law, application of the most favorable law in a contracting State, and provide an approved means of converting simple into full adoptions.

The general provisions of the Convention in Chapter VI include important articles involving contact (Art. 29), financial gain (Art. 32), and preservation and access to information (Art. 30-31). Article 29 prohibits contact (except under conditions established by the Central Authority of the State of origin) between the prospective adoptive parents and the parents or other person in charge of the child until certain conditions have been fulfilled, but the article does not prohibit contact with the child, thereby making it more difficult to "overlook" potentially adoptable children in institutions. Article 32 prohibits improper financial gain and controls excessive fees and remuneration.

Meetings to review the operation of the convention are required to be convened at appropriate intervals by the Secretary General of the Conference. (See Art. 42.)

Filling a need as great as the abduction Convention and with more states participating in its development, the adoption Convention appears headed for rapid ratification and similar success. It is important for the United States to lead in this process, and endorsement by the American Bar Association is an important step. Members of the American Bar Association have participated in the development of this Convention as members of a study group convened by the United States State Department and

through attendance at the commission meetings preparing the draft Convention and at the final three-week diplomatic session which resulted in the final Act. A representative of the President of the American Bar Association was a member of the United States delegation at this final meeting.

Endorsement of this Convention is consistent with the longstanding support given by the Association to improvements in the law relating to the adoption of children. In 1972, it endorsed a Revised Uniform Adoption Act; in 1993, it endorsed reforms in the federal program facilitating adoption of children with special needs; and recently, Association members have been working with the National Conference on Commissioners on Uniform State Laws on a new version of the Uniform Adoption Act which will contain provisions consistent with the provisions of the Convention.

Respectfully submitted,

James J. Podell, Chair

February, 1994

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GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: Section of Family Law

Submitted By: James J. Podell, Chair

1. Summary of Recommendation(s).

The ABA urges that (1) the Senate give its advice and consent to the ratification of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and (2) the Congress enact implementing legislation to permit the U.S. to participate in this multilateral Convention.

2. Approval by Submitting Entity.

Approved by the Section of Family Law Council in August, 1993.

3. Has this or a similar recommendation been submitted to the House or Board previously?

N/A

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

This recommendation is consistent with the following ABA policies:

1. Urged approval and ratification of the Convention on Civil Aspects of International Child Abduction as proposed by the Hague Conference on Private International Law in February, 1981.

2. Approved revised Uniform Adoption Act in February, 1972. [The National Conference of Commissioners on Uniform State Laws is currently drafting a new version of this Act which will contain provisions consistent with the provisions of the Convention.]

3. Endorsed reforms in the federal program facilitating adoption of children with special needs in February, 1993.

5. What urgency exists which requires action at this meeting of the House?

This Convention recognizes intercountry adoptions as a means to provide permanent families where suitable families cannot be found in their countries of origin, and it ensures that adoptions are made in the best interests of the children.

6. Status of Legislation. (If applicable.)

N/A

7. Cost to the Association. (Both direct and indirect costs.)

N/A

8. Disclosure of Interest. (If applicable.)

N/A

9. Referrals.

Referred to all Sections, Divisions and National Conference of Commissioners on Uniform State Laws in October, 1993.

10. Contact Person. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the House.)

Samuel V. Schoonmaker III and Harvey L. Golden

12. Contact Person Regarding Amendments to This Recommendation. (Are there any known proposed amendments at this time? If so, please provide the name, address, telephone, fax and ABA/net number of the person to contact below.)

N/A