

HAGUE CONVENTIONS OF 1996 ON CHILD PROTECTION AND 1993 ON INTER-COUNTRY ADOPTION

HAGUE CONVENTION OF 1996 ON CHILD PROTECTION

Overview

- Applies to parental responsibility and the protection of children in international situations
- Determines which country has jurisdiction over the protection of the person and property of the child and which laws are to be applied
- Provides for recognition and enforcement of protective measures across jurisdictions
- Provides for inter-country cooperation
- Makes best interests of the child a primary concern
- There are 40 signatories, including the U.S.

Rights Covered

- Attribution, exercise, termination, or restriction of parental responsibility
- Rights of custody and visitation
- Determination of the child's place of residence
- Right to take the child for a limited time
- Guardianship
- Representation of or assistance for the child
- Placement in foster care or institutional care
- Supervision by a public authority
- Administration of the child's property

Rights Not Covered

- Establishment of a parent-child relationship
- Adoption (this is covered by the 1993 Convention)
- Name and forenames of the child
- Emancipation
- Maintenance and support obligations
- Social security
- General public rights of education or health
- Criminal offenses committed by the child
- Rights of asylum and immigration

Summary of Jurisdictional Provisions

- The country of habitual residence has jurisdiction over the child's person and property
- If the country of habitual residence changes, the new country of habitual residence has jurisdiction
- The country with jurisdiction can request that another country assume jurisdiction if in a better position to determine the best interests of the child
- Displaced children are under the jurisdiction of the country where they are presently located
- A country can assume emergency or provisional jurisdiction where necessary to protect the child

Summary of Parental Responsibility Provisions

- The attribution or extinction of parental responsibility is governed by the laws of the country of habitual residence of the child
- Parental responsibility once established continues after a change in the child's habitual residence
- If the child's habitual residence changes and parental responsibility is attributed to a new person, the laws of the new country govern
- The exercise of parental responsibility is governed by the laws of the child's present habitual residence

HAGUE CONVENTION OF 1993 ON INTER-COUNTRY ADOPTION

Overview

- Applies where a child habitually resident in one country is to be adopted into another country
- Every country must designate a Central Authority to accredit adoption service providers under the Convention: in the U.S., it is the Department of State
- There are 88 signatories to the Hague Convention of 1993 on Inter-country Adoption, including the U.S.

Duties of Country of Origin

- Determine that the child is adoptable
- Determine that an inter-country adoption is in the child's best interest
- Provide counseling to parties who must consent regarding the effects of the adoption, including possible termination of parental rights
- Assure that consent was given freely and legally, was not induced by payment, and was given by mother, if required, only after birth of the child
- Provide age-appropriate counseling to the child and obtain consent of the child, if required

Duties of Receiving Country

- Determine that the prospective adopting parents are eligible and suitable to adopt
- Provide appropriate counseling to the prospective adopting parents
- Determine that the child is or will be authorized to enter and reside permanently in the receiving country