

## PRELIMINARY DRAFT CONVENTION ON THE PROTECTION OF CHILDREN

(Adopted by the Special Commission on 22 September 1995)

### CHAPTER 1- SCOPE OF THE CONVENTION

#### *Article 1*

- 1 The objects of this Convention are-
  - a to determine which State's authorities have jurisdiction to take measures directed to the protection of the person or property of the child :
  - b to determine which law is to be applied by such authorities in exercising their jurisdiction :
  - c to determine the law applicable to parental responsibility;
  - d to provide for the recognition and enforcement of such measures in all Contracting States :
  - e to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.
- 2 For the purposes of this Convention the term 'parental responsibility' includes parental authority, or any analogous responsibility or authority in relation to the person or the property of the child.

#### *Article 2*

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

### Article 3

The Convention does not apply

- a* to the establishment or contesting of a parent-child relationship :
- b* to decisions on adoption and measures preparatory to adoption. However, Chapter IV applies to such measures if they have been taken on the application of rules of jurisdiction which correspond to those of Chapter II :
- c* to maintenance obligations :
- d* to social security:
- e* to public measures of a general nature in matters of education or health :
- f* to measures taken as a result of criminal offences committed by children :
- g* to decisions on the right of asylum and on immigration.

### Article 4

The measures referred to in Article I may deal in particular with.

- a* the attribution exercise termination or restriction of parental responsibility, as well as its delegation:
- b* rights of custody, including rights relating to the care of the person of the child and in particular, the right to determine the child's place of residence as well as rights of access including the right to take a child for a limited period of time to a place other than child's habitual residence :
- c* guardianship, curatorship and analogous institutions:
- d* the designation and functions of any person or institution having charge of the child's person or property, representing or assisting the child:
- e* the placement of the child in a foster family or in institutional care or the provision of care by *kafala* or an analogous institution :
- f* the administration conservation or disposal of the child's property.

## CHAPTER II-JURISDICTION

### Article 5

- 1 The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of

- 2 In case of a change of habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.
- 3 For refugee children and children who, due to disturbances occurring in their country are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph I.
- 4 The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

#### *Article 6*

- 1 By way of exception the authority of the Contracting State of the child's habitual residence, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child may
  - either request that other authority, directly or with the assistance of the Central Authority of its State to assume jurisdiction to take such measures of protection as it considers to be necessary.
  - or suspend consideration of the case and invite the parties to introduce such a request before the authority or that other State
- 2 The Contracting States whose authorities may be addressed as provided in the preceding paragraph are
  - a State of which the child has the nationality.
  - a State in which property of the child is located.
  - a State whose authorities have taken jurisdiction over a request for divorce or legal separation of the child's parents or for annulment of their marriage
  - a State with which the child has a substantial connection.
- 3 The authorities concerned may proceed to an exchange of views.
- 4 The authority addressed as provided in paragraph I may assume jurisdiction, in place of the authority of the State of the habitual residence of the child, if it considers that acceptance of such jurisdiction is in the child's best interests.

#### *Article 7*

- 1 If the authorities referred to in Article 6 paragraph 2. consider that they are better placed in the particular case to assess the child's best interests they may

- either request the competent authority of the State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorized to exercise jurisdiction to take the measures of protection which they consider to be necessary, or
  - suspend consideration of the case and invite the parties to introduce such a request before the authority of the State of the habitual residence of the child.
- 2 The authorities concerned may proceed to an exchange of views.
  - 3 If such request is accepted by the authority of the State of the habitual residence of the child or if it does not respond to such a request within a reasonable period of time of no less than six months after the request has been lodged, the authority at the origin of the request has jurisdiction in place of the authority of the State of the habitual residence of the child.

#### *Article 8*

- 1 In all cases of urgency the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.
- 2 The measures taken under the preceding paragraph shall lapse as soon as the authorities which have jurisdiction under Articles 5, or 7 have taken the measures required by the situation.

#### *Article 9*

- 1 The authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5, 6 or 7.
- 2 The measures taken under the preceding paragraph shall lapse as soon as the authorities which have jurisdiction under Article 5, 6 or 7 have taken the measures required by the situation.

#### *Article 10*

The measures taken in application of Articles 5, 6 or 7 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdic-

tion was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

### CHAPTER III-APPLICABLE LAW

#### *Article 11*

- 1 In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their internal law.
- 2 However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply the internal law of another State with which the situation has a substantial connection.
- 3 If the child's habitual residence changes, the internal law of the State of the new habitual residence governs, from the time of the change, the application of the measures taken in the State of the former habitual residence.

#### *Article 12*

- 1 The attribution or extinction of parental responsibility by operation of law without intervention of a judicial or administrative authority, is governed by the internal law of the State of the habitual residence of the child at the time of the event on which this attribution or extinction is based.
- 2 The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the internal law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.
- 3 This parental responsibility subsists after a change in the child's habitual residence to another State. As from this change, it shall be exercised in accordance with the internal law of the State of the new habitual residence.
- 4 If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person to whom such responsibility had not been attributed in accordance with paragraphs 1 and 2 under the internal law of any former State of the child's habitual residence, is governed by the internal law of the State of the new habitual residence.
- 5 The parental responsibility referred to in the preceding paragraphs may be terminated or the conditions of its exercise modified, by measures taken under this Convention.

- 6 The application of the law designated by the preceding paragraphs can only be refused if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

### *Article 13*

A third person cannot be held liable, nor the validity of a transaction contested, for the sole reason that the transaction was concluded in the name of the child with a person entitled to act as legal representative of the child under the law of the place where the transaction was concluded, unless the third person knew or should have known that the parental responsibility was governed by another law in application of Article 11 or 12.

## CHAPTER IV-RECOGNITION AND ENFORCEMENT

### *Article 14*

- 1 The measures taken by the authorities of a Contracting State shall be recognized by operation of law in all other Contracting States.
- 2 Recognition may however be refused-
- a* if the measure was taken by an authority whose jurisdiction was not founded on the provisions of Chapter II :
  - b* if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, either directly or with the assistance of a representative or an appropriate body in violation of fundamental principles of procedure of the requested State :
  - c* on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency without such person being given an opportunity to be heard :
  - d* if such recognition is manifestly contrary to public policy in the State where recognition of the measure is sought taking into account the best interests of the child :
  - e* if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State.

### *Article 15*

Without prejudice to Article 14 first paragraph, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or

non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

#### *Article 16*

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

#### *Article 17*

- 1 If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.
- 2 Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.
- 3 The declaration of enforceability for registration may be refused only for one of the reasons set out in Article 14.

#### *Article 18*

Without prejudice to such review as is necessary in the application of the preceding Articles there shall be no review of the merits of the measure taken.

#### *Article 19*

Measures taken in one Contracting State and declared enforceable or registered for the purpose of enforcement in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State.

### CHAPTER V- CO-OPERATION

#### *Article 20*

- 1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on 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 21*

- 1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.
- 2 They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of and services available in their States relating to the protection of children.

*Article 22*

The Central Authorities of the Contracting States, either directly or through public authorities or other designated bodies, shall take all appropriate steps to

- a facilitate the communications and offer the assistance provided for in Articles 6, 7, 23, 24 and 25:
- b facilitate, by mediation conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies :
- c provide, on the request of a competent authority of another Contracting State assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

*Article 23*

- 1 Where a measure of protection is contemplated the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.
- 2 The requested authority shall refuse to comply with the request where it determines that the transmission of this information would place the child or a member of his or her family in danger.

*Article 24*

The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.



*Article 25*

In any case where the child is exposed to a serious danger the competent authorities of the contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child has changed his or her residence to or is present in another Contracting State shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

## CHAPTER VI-GENERAL PROVISIONS

*Article 26*

- 1 The authorities of the Contracting State of the child's habitual residence or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility of to the person entrusted with protection of the child's person or property, at his or her request a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.
- 2 The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.
- 3 Each Contracting State shall designate the authorities competent to draw up the certificate.

*Article 27*

Personal data gathered or transmitted under the Convention shall be used only for purposes for which they were gathered or transmitted.

*Article 28*

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

*Article 29*

All documents forwarded or delivered under this Convention shall be exempt from legalization or ??? analogous formality.

*Article 30*

The Secretary General of the Hague Conference on private international law shall at regular convoke a Special Commission in order to review the practical operation of the Convention.