

Report on International Abductions of Minors in the
Americas by one of their Parents.
Meeting of Government Experts

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Inter-American Children's Institute
IIN

Organization of the American States
OAS

I.- Introduction.

1.- We present here a Special Report from the General Directorate of the Inter-American Children's Institute in compliance with Resolution AG/RES. 1835 (XXXI-0/01) of the 5th of June 2001, in relation to the convocation of a Meeting of Government Experts on the topic of the international removal of minors by one of their parents. The general objective is the adoption of an *"Inter-American Program of Cooperation to Prevent and Deal with cases of International Removal of minors by one of their parents."*

2.- This report is presented in sections depending on the application that the related international documents have for each Member State. It may apply at the universal level (The Hague Convention of October 25, 1980 on the civil aspects of international child abduction) or at the Inter-American level (Inter-American Convention of July 15, 1989 on the international repatriation of minors and the 1994 Inter-American Convention on international trafficking of minors).

3.- It is appropriate to note from the beginning that both the universal Convention of The Hague and the Inter-American Conventions should be considered complimentary to each other. In that sense we are lucky to have, at the Inter-American level, specialized agreements on the topic of international abduction of minors both from the civil perspective (repatriation of minors) and the penal perspective (international trafficking of minors).

These instruments not only do not prevent but rather foster the application of The Hague Convention on this matter.

II.- INTERNATIONAL AGREEMENTS ON WHICH THIS NORMATIVE IS BASED.

The International Convention of the Rights of the Child of 1989.

4.- The International Convention of the Rights of the Child of 1989, guarantees in several articles the right of every child to family life (article 8). This right includes the right not to be separated from his parents (article 9), family reunification (article 10), right of access even in cases when the parent resides in another State (article 10), the right not to be illegally moved to a foreign country (article 11), the principle that both parents have common duties in bringing up the child (article 18), the right to protection from the State in case of absence of family (article 20) and the right to adoption (article 21).

5.- Within this broad context of family relations, the parents or relatives may commit excesses in the exercise of their rights in relation to children. Among them, the Convention on the Rights of the Child foresees international abduction of minors and, even worse because of its illicit intent, international trafficking of minors.

6.- Another guiding principle of the Convention on the Rights of the Child of 1989 is the one established in article 3, the best interest of the child. As we will see in this report, this principle should be applied by the Central Authorities by listening to the opinions of children affected by illicit abductions. This Convention confirms, in the context of international norms, the need to consider children as subjects of rights and to universally apply in a practical way, the principle of the best interest of the child. This ratifies the understanding that children are not "property" of their parents and that they should be listened to according to their age and capacities.

Significance of the Convention on Civil Aspects of the International Abduction of Minors and on the related Inter-American normative.

7. In order to guarantee the right of access and the right of custody (without making any pronouncements on the legal validity of this title in either country), it was ratified by Private International Law (and specifically in the International Conference in The Hague) the *Convention on the civil aspects of international child abduction of October 25, 1980* and in the Americas the *Inter-American Convention on international repatriation of minors of July 15, 1989*. On the question of illicit international transfer of minors, the *Inter-American Convention on international traffic of minors was proclaimed on March 18, 1994*.

8.- The words used to define the problem of the abduction of minors varies in different countries and languages depending on their approach to the problem. Expressions such as "Inter-parental kidnapping", "illicit transfer", "illegal detention", or in French

"enlevement" are all used, although it seems that the English expressions "kidnapping" or "abduction" are becoming the internationally accepted words.¹

9.- In the context of this international directive, the term "international abduction of minors" means:

- a) the transfer or retention of a minor in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident² immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

10.- In similar terms, the Inter-American Convention on international Repatriation of minors states that "the present Convention has as its goal the prompt repatriation of minors whose habitual residence is in one of the Member States and who have been illegally taken from any State to a Member State or who having been taken legally, eventually were illegally retained there. It is also the goal of this Convention to uphold the rights of access and of custody to those who have been granted them".

11.- As can be seen, both Agreements have the same goal: to guarantee the rights of access and custody. But they differ in procedures as we will see later. According to José Carlos Arcagni, *"The domestic reality of failed marriages, already a conflictive one, gets aggravated when the couple has liaisons in several countries. The ease and speed of international transportation facilitates the movement of people, making it common the marriage between people of different cultures as part of the pattern of migration towards countries or places that offer better living conditions. After the marital conflict, the father or the mother often returns to their country of origin or to their former place of residence taking with them the children under their custody. The fact that the other parent does not know of this move or opposes it, makes it an abduction...The perpetration of aberrant crimes such as the kidnapping of children or the search for places that would sanction irregular juridical custodial situations, calls for the drafting of proper instruments that would allow the fast localization and repatriation of minors, and any fair punishment for the crime."*³

12.- We understand that the international abduction of minors has as its main purpose to deprive one of the parents of access or custodial rights by the removal of the child to another country either by the other parent or a relative. Usually there is also the attempt to gain some judicial⁴ or administrative advantage in the new country to prevent forced repatriation. This prevents the relationship of the child with his/her custodial father or

¹ See "Inter-parental abduction in mixed marriages". Adolfo Alonso Carbajal and Nuria Chamorro Alonso. Madrid, Spain. www.derecho-familia.com

² "Habitual residence" means the country where the child has his center of life.

³ José Carlos Arcagni. Revista La Ley, No 153, p,1 10/08/95

⁴ Changing jurisdiction in order to obtain a favorable ruling (forum conveniens).

mother in an absolute way (international kidnapping) or makes it very difficult (international removal)⁵

13.- The Hague Agreement does not deal with conflicts of laws or their application nor with the validity of judicial or administrative resolutions of one country over another's jurisdiction⁶. It does not deal either with custodial rights, awarded or not, to one parent or another. The specific goal of the Agreement is to guarantee the immediate return of the abducted child so that the other parent can exercise his/her right either of access or of custody.

III.- MEMBER STATES AFFECTED BY THIS INTERNATIONAL NORMATIVE.

14.- The Hague Agreement is semi-open. In principle, any country can subscribe to it but its adhesion "will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession" (article 38). According to Chapter VI of The Hague Agreement called "Final Clauses", the agreement can be signed, ratified, accepted or approved. Any country can subscribe to it and it will come into effect the first day of the third month following its adhesion.

15.- In this way universality is guaranteed as well as application among States whose adhesion is mutually recognized.

16.- One of the weak points of the Agreement is the limited number of countries subscribed to it. This facilitates the "menu" of options for abducting parents. As expressed by Julia A Todd: "The most significant limitation of the Agreement is the number of countries not subscribed to it and where the resolutions of the Agreement have no effect. This situation creates "Paradise-States" used by abducting parents who find in those countries legal ways to regain the right to custody"⁷

17.- In view of this, it is important to know which countries signed the universal agreement of The Hague and which ones signed the Inter-American agreements, having in mind that in matters of international law, agreements only have validity in law among the countries which signed them. Still, if a country, which has not signed the Convention, makes bilateral agreements with countries which have signed, it becomes automatically bound by its resolutions.

18.- The Hague Convention on civil aspects of international child abduction, has been ratified⁸ by the following countries of the Americas:

| | |
|-----------|---|
| Argentina | Came into effect on June 1 st , 1991 |
| Canada | Came into effect on December 1 st , 1983 |

⁵ Paráfrasis. Alonso y Chamorro, Madrid, España.

⁶ For those concerns, the International Conference of The Hague issued the Convention on Competence of Authorities and applicable Law in matters related to the protection of Minors of October 5th, 1961

⁷ The Hague Convention on the Civil Aspects of international Child Abduction: Are the Convention's Goals Being Achieved?. Indiana University.

⁸ Understood as Member States of the International Conference.

| | |
|---------------|--|
| United States | Came into effect on July 1 st , 1988 |
| Venezuela | Came into effect on January 1 st , 1997 |

19. Member countries of the OAS which have not signed The Hague Conference but which have signed bilateral agreements with other countries, thus adhering themselves to its tenets are:

| | |
|-----------------------|--|
| Bahamas | Came into effect on January 1 st , 1994 |
| Belize | Came into effect on September 1 st , 1989 |
| Brazil | Came into effect on January 1 st , 2000 |
| Chile | Came into effect on May 1 st , 1994 |
| Colombia | Came into effect on March 1 st , 1996 |
| Costa Rica | Came into effect on February 1 st , 1999 |
| Ecuador | Came into effect on April 1 st , 1992 |
| El Salvador | Came into effect on May 1 st , 2001 |
| Honduras | Came into effect on March 1 st , 1994 |
| Mexico | Came into effect on September 1 st , 1991 |
| Nicaragua | Came into effect on March 1 st , 2001 |
| Panama | Came into effect on May 1 st , 1994 |
| Paraguay | Came into effect on August 1 st , 1998 |
| Peru | Came into effect on August 1 st , 2001 |
| Saint Kitts and Nevis | Came into effect on August 1 st , 1994 |
| Trinidad y Tobago | Came into effect on September 1 st , 2000 |
| Uruguay | Came into effect on February 1 st , 2000 |

20.- Member States of the OAS, which neither ratified nor signed agreements are:

Antigua and Barbuda
 Barbados
 Bolivia
 Cuba
 Dominica
 Dominican Republic
 Grenada
 Guatemala
 Guyana
 Haiti
 Jamaica
 Saint Lucia
 St Vincent and the Grenadines
 Suriname

21.- INTER-AMERICAN CONVENTION ON INTERNATIONAL REPATRIATION OF MINORS. JULY 15TH, 1989

Member States:

| | |
|------------|------------|
| Argentina | 11/24/1992 |
| Bolivia | 07/15/1989 |
| Brazil | 07/15/1989 |
| Colombia | 07/15/1989 |
| Costa Rica | 05/22/1997 |
| Ecuador | 07/15/1989 |
| Guatemala | 07/15/1989 |
| Haiti | 07/15/1989 |
| Mexico | 04/06/1992 |
| Peru | 07/15/1989 |
| Uruguay | 07/15/1989 |
| Venezuela | 07/15/1989 |

22.- INTER-AMERICAN CONVENTION ON INTERNATIONAL TRAFFICKING OF MINORS. MARCH 18TH, 1994.

Member States:

| | |
|------------|------------|
| Bolivia | 03/18/1994 |
| Brazil | 03/18/1994 |
| Costa Rica | 05/22/1997 |
| Ecuador | 06/11/1998 |
| Mexico | 11/27/1995 |
| Panama | 05/28/1998 |
| Paraguay | 08/07/1996 |
| Uruguay | 03/18/1994 |
| Venezuela | 03/18/1994 |

IV.- PRESENT PATTERNS IN RELATION TO THE RETENTION AND REMOVAL OF MINORS AT THE INTERNATIONAL LEVEL.

23.- The best known Agreement, The Hague Conference⁹, was unanimously adopted by the participant States¹⁰ in plenary session, on October 24, 1980, in the 14th period of sessions of The Hague Conference on Private International Law.

24.- Came into effect on October 25th, 1980. Immediately after the session, four countries signed the Agreement: Canada, France, Greece and Switzerland.

⁹ The term Agreement, to the effect of CIDIP in synonym of Convention.

¹⁰ Germany, Australia, Austria, Belgium, Canada, Denmark, Spain, United, States, Finland, France, Greece, Ireland, Japan, Luxembourg, Norway, Portugal, United Kingdom, Sweden, Switzerland, Czechoslovakia, Venezuela and Yugoslavia.

25.- The Convention is composed of 44 articles preceded by the following preamble:

"Firmly convinced that the interests of children are of paramount importance in matters relating to their custody, Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access"

26.- The immediate return of the minor is of paramount importance in the Agreement since its intention is to prevent that time would consolidate the artificial situation created by the abduction. Otherwise the abductor would have the advantage over the other parent by being able to choose a jurisdiction that he/she expects to be in his/her favor in the family dispute.

27.- Since 1980, the number of cases of international abduction of minors has been increasing. "The countries with the greatest number of cases brought forward under the International Convention of The Hague were United States, with 256 cases brought to the National Center for missing and exploited children, England and Wales (174 cases).

In relation to the gender of abductors, 70% were women (mothers) and 29.2% men (fathers). Based on the same study, it was established that in the year 1999, in the 744 applications, the total number of children involved was 1080 whose age distribution was the following: 37.2% were children under 5; 41.4% were children from 5 to 9; 21.3% were children 10 to 16 and 0.1% were children over 16 years of age. About the gender of the children, 53.3% were boys and 46.7% were girls. Finally, regarding the solution of the cases or cases still pending, the following was established: 10.5% refused repatriation; 18% were repatriated voluntarily; 32.2% had the repatriation ordered by the courts; 10% had the repatriation denied by the courts; 10.2% of cases were withdrawn; 16% of cases are still pending and 3.1% of cases fall into a non specified category"¹¹

28.- The magnitude of this phenomenon, studied by the Member States of the International Conference of The Hague, keeps growing, with increasing number of parental abductions of minors, for different purposes, being reported.

29.- According to Dra Eliza Pérez Verá, "As a whole, the Convention reflects a compromise between two concepts partially different than the intended objective. In the preparatory work, it is evident the tension between the desire to protect, on one side, de facto situations created by the minor's abduction and on the other side to guarantee the respect of juridical dispositions. In that sense, the balance achieved by the Agreement is rather fragile. On one hand, it is clear that the Convention does not make reference to the right of custody (article 19) but, on the other hand, it is evident that the fact of considering illicit the abduction or non return of a minor implies the acceptance of custodial rights as juridical basis to judge the irregularity of this situations".¹²

30.- In the case of the Inter-American system of child protection, the very existence of the International Agreement of 1994 on international trafficking of minors emphasizes the need

¹¹ Dilia Leticia Jorge Mera. Gaceta Judicial. Dominican Republic, May 2001

¹² Report explaining The Hague Agreement on international abduction of minors. Dra Eliza Pérez Vera.

for regulation both in civil as well as in penal aspects of the illicit abduction of minors. It even defines clearly in article 2: "International trafficking of minors means the abduction, transporting or retention of minors, or the attempt to abduct, transport or retain minors for illicit purposes¹³ or by illicit means¹⁴."

31.- In view of this, the civil and penal consequences of abduction have to be considered at the international level in order to balance the present inequities in which different countries deal with this phenomenon in very different ways.

32.- As we will see below, the inter-American system is already adopting this tendency through the proclamation of two Agreements, one on international repatriation (civil aspects) and another on international trafficking of minors (penal aspects).

33.- Another aspect to highlight is that the States have recently proclaimed national directives in an attempt to harmonize their legislation with the International Convention on the Rights of the Child (1989). They have also implemented preventive measures, such as authorization by both parents to travel outside the country, that is usually demanded as part of travel requirements. This tendency to deal with the problem "from within" each country should not be overlooked.

¹³ Illicit purposes include, among others, prostitution, sexual exploitation, servitude or any other ill purpose, either in the country of habitual residence of the minor or in the country to which the minor has been taken.

¹⁴ Illicit means include, among others, kidnapping, forced or fraudulent consent, buying consent from parents, tutors, or institutions in charge of the minor in exchange of payments or benefits, or any other illicit means either in the country of habitual residence of the minor or in the country to which the minor has been taken.

V.- THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION.

SCOPE OF THE CONVENTION

34.- The first chapter of the Convention called "Scope" defines the realm of its material application (For what?) and its personal application (For whom?) (*ratione materiae* and *ratione personae*). It is based in the following principles:

a.-) The principle of prompt return of the minor.

35.- It is a fact that in the majority of abductions by one of the parents, the intent is to create a new juridical situation in the new country's jurisdiction, in order to obtain custody of the minor, thus violating the situation established in the country of habitual residence of the minor.

36.- To address this, the agreement deals with "the transfer of a minor to a place outside his/her habitual residence where he/she was living under the tutelage of a physical or juridical person who had a legitimate right to custody over him/her."¹⁵

37.- About the abductor responsible for the transfer, what he hopes is "to acquire the right to custody of the minor from the authorities of the country he/she has taken the minor to."

38.- This open intention of the illicit transfer (to obtain artificial judicial or administrative resolutions in the country of refuge) has to be confronted by international mechanisms based on immediate action.

39.- To achieve this, articles 1 and 2 of the Agreement make reference to "the prompt return of children" and the adoption of "the most expeditious procedures available" by the signing countries.

40.- The immediate goal of this urgent action is to reestablish *ipso facto* the juridical relations broken by the abrupt and illicit transfer of the minor by one of his parents or close relatives.

b.-) Return from the "de facto" situation to the previous established status quo of the minor.

41.- It is understood that with the engagement on the part of the signing countries not to permit the illicit practice of parental abduction, what they want to achieve is the fundamental guarantee of a prompt return to the status quo in the country of origin, without questioning its laws or their application to the new country. This will oblige the parties to settle their disputes in the country of habitual residence without unfair advantages of one over the other.

¹⁵ Eliza Pérez Vera. Op. cit.

42.- "It can be affirmed that the problem dealt with by the Agreement - with all its dramatic connotation of protecting children in international relations - acquires its juridical relevance by the fact that at the present, individuals have the possibility of playing with different judicial systems and establish through them contradictory or artificial relationships. Such a resolution, even if coexisting with other contradictory ones, might have limited geographical validity but, in any case, will have enough clout to legalize a de facto situation that none of the judicial systems wanted"¹⁶

43.- In this sense, the Agreement has as its goal to dissuade abductions by cooperation and agreements between States.

c.- To guarantee the universal validity of the parent's right of custody and access.

44.- A central objective of the Convention is to guarantee essential family rights, such as the right of custody and access to both parents. The Convention clearly states that it is not its goal to make pronouncements on the legal validity of the right to custody of the parents but to reestablish the original conditions previous to the abduction.

45.- The guarantee of the universal validity of the right of custody and access is intimately related to the best interest of the child, since the Convention bases its decisions on the de facto situation of the minor, that is his habitual residence and on his best interest.

46.- Still quoting Dra Vera: "While the immediate return of the minor responds to the desire of reestablishing a situation unilaterally altered by the abductor, the effective respect for the rights of custody and access should work as a prevention, since it would nullify one of the main reasons for abduction."

47.- It is generally acknowledged that the right of access is the natural counterpart of the right of custody. It balances the rights of the parent in charge of the child and the rights of the parent denied of that opportunity.

d.-) Definition of illicit removal of children¹⁷

48.- Article 3 of the Convention defines when the removal or retention of minors is considered illicit:

a) when it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and¹⁸

¹⁶ Ms. Eliza Pérez Vera. Explaining report.

¹⁷ The Hague Convention uses the term "subtraction" and avoids the term "kidnapping". According to Basz and Feldstein de Cárdenas "this tends to avoid misunderstandings since the word kidnapping has obvious penal connotations and would not be the appropriate expressions to define the action of the parent. Basically we are dealing here with a situation based on the abuse of the exercise of parental rights"

- b) when at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The right to custody mentioned in a) can be by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

e.-) The habitual residence.

49.- The Convention does not define the term "habitual residence" and there has been discussions about the different interpretations of its meaning within the legislation of each country. Finally the consensus has been to accept the generalized interpretation that habitual residence is the place where the family had its permanent domicile.¹⁹

f) Age limits.

50.- The Agreement establishes the age of 16 as the maximum age to consider the child a minor in cases of parental abduction.

51.- Article 4 of the Convention says that: "The Convention shall cease to apply when the child attain the age of 16 years."

g.-) The best interest of the child in the decisions to take on international abductions of minors.

52.- Considering the undeniable fact that it is the child the one who suffers the most the consequences of illicit transfer, the Convention defends the respect for his/her opinion, depending on the child's degree of maturity and development, but the Convention is also oriented to solve each case based on his/her best interest.

53.- Occasionally this principle applied by the central Authority may even favor the abductor, thus denying the very postulates of the Agreement. For such cases the Convention admits exceptions to the principle of repatriation based precisely on the best interest of the child.

CENTRAL AUTHORITIES.

54.- Article 6 of the Agreement establishes: "A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such

¹⁸ This possibility is the typical abuse of the right of access, since it usually happens when the parent who has the right to custody gets consent to the removal within the context of the other parent's right of access but abuses it by abducting the minor.

¹⁹ Based on the principle of the best interest of the child, habitual residence is the place where the child's life is centered.

authorities. Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State."

55.- Central Authorities shall co-operate with each other. In particular, either directly or through any intermediary, they shall take all appropriate measures -

- a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- d) to exchange, where desirable, information relating to the social background of the child;
- e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- i) to keep other each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

56.- It is understood that each central authority will work in co-ordination with the competent national organisms, such as the police and judicial, migratory or administrative authorities, to carry on its mission As an example, one of the agencies that keeps international records of abductions or retention of minors at the world level is INTERPOL.

SECURING THE RETURN OF THE MINOR.

57.- Article 8 of the Convention establishes that: "Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain -

- a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- b) where available, the date of birth of the child;
- c) the grounds on which the applicant's claim for return of the child is based;
- d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.
- e) an authenticated copy of any relevant decision or agreement;
- f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- g) any other relevant document. "

58.- The voluntary return of the minor is, without doubt, the ideal solution to all demands of international return. The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain this (art. 10).

59.- The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children. If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be. (art. 11)

60.- Article 12 establishes deadlines:

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less

than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

61.- According to article 13 of the Convention, there may be reasons to deny the return of the minor.

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."

62.- Other circumstances that may grant the negation of the request are expressed in article 20: "The return of the child under the provision of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms."

63.- "In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally

recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable" (art. 14)

64.- This principle is rather unorthodox in matters of decisions based in a concrete legitimacy or legality. But we must understand that the contracting state should not make any pronouncements on the pre-existence of a legal situation in the contracted state.

65.- The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination. (art. 15)

66.- The judicial or administrative authorities of the Contracting State shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention. (art. 16).

67.- The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention. (art. 17)

68.- The Convention affirms two basic principles: the first is that the provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time. The second is that a decision under this Convention concerning the return of the child shall not be taken to be determination on the merits of any custody issue (such as the right of access and the right of custody) (art. 18 and 19)

RIGHT OF ACCESS.

69.- Article 21 establishes regulating principles for the right of access in the context of illicit transfers and retention:

"An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of such rights may be subject. The central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or

assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject."

GENERAL DISPOSITIONS

a) Prohibition of using security bonds or deposits.

70.- Article 22 states: "No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention."

b) Neither legalities nor formalities.

71.- The procedure established in the Convention must be agile and free of formalities (art. 23)

c) The language of the applications.

72.- For the proper functioning of the application made to the central authority of the requesting State, the language or languages used should be those of the country where the application must become effective. This formality must be respected (art. 24)

d) Right to juridical assistance.

73.- Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State. (art. 25). Still, according to article 42, the States can express their reservations.

e) Defraying of expenses in the application of the Convention.

74.- Each central authority will defray its expenses in the application of the Convention. The applicants or the person who removed or retained the child, should pay the necessary expenses incurred - or which will be incurred -, before the return of the minor. (art. 26). States can express their reservations to these provisions according to art. 42.

f) Inadmissibility of the application.

75.- When it is obvious that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. (art.27)

g) Need of an authorization to act on behalf of the applicant.

76.- A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act. (art. 28)

h) Public action to promote the application of the Convention.

77.- This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention. (art.29)

i) Admissibility of applications submitted to the judicial or administrative authorities of a Contracting State.

78.- Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States. (art. 30)

j) Rules for Federated States with several systems of law or different autonomous territorial units:

79.- In relation to a State which in matters of custody of children has two or more systems of law 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 the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.(art.31)

80.- In relation to a State which in matters of custody of children 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.(art.32)

81.- A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.(art. 33)

k) Priority of application of this Convention. How it complements other international instruments.

82.- Given the autonomous character of The Hague Convention, its resolutions have priority over the Convention on the competency of authorities and the applicable law in the protection of minors of Oct. 5, 1961.

83.- The Hague Convention does not restrict the application of an international instrument that exists between the State of origin and the contracting State, nor the application of other juridical norms of the contracting State, that will help to obtain the return of a child who has been illicitly transferred or detained or to re-establish the right to access of one of his/her parents.

l) To whom this Convention applies.

84.- The present Convention will only apply to signing States in cases of illicit abductions that took place after its date of application in those States.

85.- Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies. (art. 35)

m) Derogation of provisions of the Convention by agreement between States.

86.- Nothing in this Convention shall prevent two or more Contracting State, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provision of this Convention which may imply such a restriction. (art. 36)

VI.- INTER-AMERICAN CONVENTION ON THE INTERNATIONAL RETURN OF CHILDREN.

87.- The Inter-American Convention on the International Return of Children of July 15, 1989, is a hemispheric instrument similar to the Convention on civil aspects of international child abduction. Nevertheless, as it was pointed out before, there are some differences²⁰ between them. We will highlight the most important differences:

a) The action for the return of the child has to be initiated by whoever has the right of custody (legitimization) .

88.- The Hague Convention gives the right to any person, institution or other body claiming that a child has been removed or retained in breach of custody rights, to apply to the Central Authority of the child's habitual residence for assistance in securing the return of the child. (art. 8 of The Hague Convention). Contrary to that, article 5 of the Inter-American Convention on the international return of children, stipulates: "Any party designated by Article 4 may, in the exercise of custody or similar rights, bring an action for the child's return". The parties designated in article 4 are parents, institutions or others having such rights.

²⁰ We agree with Basz and Feldstein de Cárdenas in their appraisal that this instrument is the one which uses the most appropriate terminology, since it deals mainly with "return". This appraisal is based on the fact that this normative text dwells more on the actions demanded of the signing State to deal with illicit removal or retention of minors than on the activities of the parents.

b) The process is more formal.

89.- The Hague Convention prefers to avoid formal processes in favor of a prompt resolution. It seems that the resolutions of the Inter-American Convention on the international return of children favors the institution of a process with more precise prerequisites than that of The Hague Convention and with clear deadlines established by the Agreement.

c) Makes provisions to localize the minors illicitly taken.

90). An important contribution of the Inter-American Convention on the international return of children is the provision for the collaboration of the central authority in localizing in its territory minors who have been illicitly taken there.

d) Provides the Inter-American Children's Institute with the role of coordinator

91.- As a Specialized Organization of the Organization of American States, the Inter-American Children's Institute shall be responsible for coordinating the activities of the Central Authorities within the scope of the Convention and for receiving and evaluating information from the States Parties in respect of application of the Convention. (art.27)

e) Provides for the application of the Inter-American Convention on the international return of children to prevail over the Hague Convention on the civic aspects of international child abduction.

92.- Article 34 of the Inter-American Convention on the international return of children reads: " Among the Member States of the Organization of American States that are parties to this Convention and to the Hague Convention of October 25, 1980 on the civil aspects of international child abduction, this Convention shall prevail."

PROCEDURES FOR RETURN.

93.- The established procedure is that only the parties designated by Article 4 (parents, institutions or others having such rights) may bring an action for the child's return". They must do so through one of the following means:

- a) By a letter of petition;
- b. By filing a request with a central authority; or
- c. Directly, or through diplomatic or consular channels.

94.- The application or petition shall contain:

- a. An account of the removal or retention and sufficient information to identify the applicant, the removed or retained child and, where possible, the person alleged to have removed or retained the child;

b. Information on the presumed location of the child and on the circumstances and dates of the removal to a foreign country or of the expiration of the authorized length of stay; and

c. The legal grounds for the child's return.

The application or petition shall be accompanied by:

a. A full and certified copy of a judicial or administrative opinion, if any, or of a determination on which the request is based; concise evidence of the existing situation or, if appropriate, a statement of the pertinent applicable law;

b. Certified documents establishing the standing of the applicant;

c. Certification of or information on the applicable law of the State of the child's habitual residence issued by the Central Authority of, or by any other competent source in, that State;

d. Where necessary, translations into the official language of the requested State of all documents referred to in this article; and

e. A statement of the measures required to effect the return of the child.

A competent authority may dispense with any of the requirements or the presentation of documents called for by this article if, in its opinion, the child's return is justified.

95.- The requested court, Central Authority, or other competent authorities of the State where the child is found shall, where appropriate, take all measures conducive to the voluntary return of the child (art.10). Should a voluntary return not take place, the judicial, or administrative authorities will take the necessary measures to provide for the child's temporary custody or care as the circumstances may dictate, and shall, where appropriate, immediately order his/he return. The competent authorities shall take the necessary steps to prevent the child from leaving their jurisdiction.

96.- The return is not required if:

a. The party seeking the child's return was not actually exercising its rights at the time of the removal or retention, or had consented to or subsequently acquiesced in such removal or retention; or

b. There is a grave risk that the child's return would expose the child to physical or psychological danger.

Article 25 of the Convention adds another cause for the denial of return: "A child's return under this Convention may be refused where it would be manifestly in violation of the fundamental principles of the requested State recognized by universal and regional instruments on human rights or on the rights of children."

97.- The objections on the part of the supposed abductor shall be raised within a period of eight working days from the time the authorities meet with the child and bring such period to the attention of the person retaining the child.

98.- The judicial or administrative authorities shall assess the circumstances and the evidence furnished by the opposing party to support its objections to the child's return. It shall also ascertain the applicable law and judicial or administrative precedents of the State of the child's habitual residence (applicable right, juridical or administrative precedents, etc.)

99.- If within forty-five calendar days after the requesting authority has received notice of a decision to return the child, the steps necessary for the child's return have not been taken, the return order shall become inoperative and any measures taken shall be lifted.

100.- Proceedings under this Convention shall be commenced within one calendar year of the wrongful removal or retention.

101.- The fact of a child's return shall not prejudice the ultimate custody decision. (art. 15)

102.- The foregoing provisions shall not limit the power of a judicial or administrative authority to order the child's return at any time.

XXVIII. CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

(October 25, 1980)

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions:

CHAPTER I - SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are:

- a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where -

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention -

- a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
- b) 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II - CENTRAL AUTHORITIES

Article 6

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

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

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures -

- a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- d) to exchange, where desirable, information relating to the social background of the child;
- e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

- f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- i) to keep other each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III - RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain:

- a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- b) where available, the date of birth of the child;
- c) the grounds on which the applicant's claim for return of the child is based;
- d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by -

- e) an authenticated copy of any relevant decision or agreement;
- f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay.

If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that-

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the

child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under the Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be determination on the merits of any custody issue.

Article 20

The return of the child under the provision of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV - RIGHTS OF ACCESS

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise

of such rights may be subject. The central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V - GENERAL DISPOSITIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed

or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law 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 the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children 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 33

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

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions.

Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provision of this Convention which may imply such a restriction.

CHAPTER VI - FINAL CLAUSES

Article 37

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 Fourteenth Session.

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.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this 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.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservations shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force -

1. for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

2. for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following -

- 1- the signatures and ratifications, acceptances and approvals referred to in Article 37;
- 2- the accession referred to in Article 38;
- 3- the date on which the Convention enters into force in accordance with Article 43;
- 4- the extensions referred to in Article 39;
- 5- the declarations referred to in Articles 38 and 40;
- 6- the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
- 7- the denunciation referred to in Article 44.

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

Done at The Hague, on the 25th day of October, 1980, 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 Fourteenth Session.

Inter-American convention on the international return of children

SCOPE

Article 1

The purpose of this Convention is to secure the prompt return of children habitually resident in one State Party who have been wrongfully removed from any State to a State Party or who, having been lawfully removed, have been wrongfully retained. This Convention further seeks to secure enforcement of visitation and custody rights of parties entitled to them.

Article 2

For the purposes of this Convention, a child shall be any person below the age of sixteen years.

Article 3

For the purposes of this Convention:

- a. Rights of custody include rights relating to the care of the child and, in particular, the right to determine the child's place of residence;
- b. Rights of visitation include the right to take a child for a limited period of time to a place other than the child's habitual residence.

Article 4

The removal or retention of a child shall be considered wrongful whenever it is in breach of the custody rights that parents, institutions or others having such rights individually or jointly exercise over the child under the law of the child's habitual residence immediately prior to the removal or retention.

Article 5

Any party designated by Article 4 may, in the exercise of custody or similar rights, bring an action for the child's return.

Article 6

Judicial or administrative authorities of the State Party in which the child habitually resided immediately before the removal or retention shall have jurisdiction to consider a petition for the child's return.

In urgent cases, the applicant may choose, instead, to file a request for the child's return directly with authorities of the State Party in whose territory the wrongfully removed or retained child is or is thought to be when the request is made, or with the authorities of the State Party in which the wrongful act giving rise to the request took place.

Making a request in the manner described in the preceding paragraph shall in no way alter the jurisdiction authorized by the first paragraph of this article.

THE CENTRAL AUTHORITY

Article 7

For the purposes of this Convention, each State Party shall designate a central authority to ensure fulfillment of the obligations established under this Convention and shall inform the General Secretariat of the Organization of American States of that designation.

Specifically the Central Authority shall assist the applicant and competent authorities of the respective States in locating and returning the child. It shall also facilitate the prompt return and delivery of the child to the applicant and assist the parties in obtaining the necessary documents for proceedings under this Convention. The Central Authorities of the States Parties shall cooperate with one another and exchange information on the operation of the Convention in order to secure the prompt return of children and to achieve the other purposes of this Convention.

RETURN PROCEEDINGS

Article 8

A party seeking a child's return may file an application or petition with the competent authorities in accordance with Article 6:

- a. By a letter rogatory;
- b. By filing a request with a central authority; or
- c. Directly, or through diplomatic or consular channels.

Article 9

1. The application or petition referred to in Article 8 shall contain:

- a. An account of the removal or retention and sufficient information to identify the applicant, the removed or retained child and, where possible, the person alleged to have removed or retained the child;
- b. Information on the presumed location of the child and on the circumstances and dates of the removal to a foreign country or of the expiration of the authorized length of stay; and
- c. The legal grounds for the child's return.

The application or petition shall be accompanied by:

- a. A full and certified copy of a judicial or administrative opinion, if any, or of a determination on which the request is based; concise evidence of the existing situation or, if appropriate, a statement of the pertinent applicable law;
- b. Certified documents establishing the standing of the applicant;
- c. Certification of or information on the applicable law of the State of the child's habitual residence issued by the Central Authority of, or by any other competent source in, that State;
- d. Where necessary, translations into the official language of the requested State of all documents referred to in this article; and

e. A statement of the measures required to effect the return of the child.

A competent authority may dispense with any of the requirements or the one set at ion of documents called for by this article if, in its opinion, the child's return is justified.

Letters rogatory or requests, and the documents attached thereto, shall not require certification if they are transmitted through diplomatic or consular channels or through the Central Authority.

Article 10

The requested court, Central Authority, or other competent authorities of the State where the child is found shall, where appropriate, take all measures conducive to the voluntary return of the child.

Should a voluntary return not take place, the judicial, or administrative authorities, after verifying compliance with Article 9, shall forthwith meet with the child and take such measures to provide for its temporary custody or care as the circumstances may dictate, and shall, where appropriate, immediately order its return. Further, the agency charged by domestic law with protecting the child's welfare shall be notified.

In addition, while the application for return is pending, the competent authorities shall take the necessary steps to prevent the child from leaving their jurisdiction.

Article 11

A judicial or administrative authority of the requested State is not required to order the child's return if the party raising objections to the return establishes that:

a. The party seeking the child's return was not actually exercising its rights at the time of the removal or retention, or had consented to or subsequently acquiesced in such removal or retention; or

b. There is a grave risk that the child's return would expose the child to physical or psychological danger.

The requested authority may also refuse to order the child's return if it finds that the child is opposed to it and if, in the judgment of the requested authority, the child's age and maturity warrant taking its views into account.

Article 12

The objections mentioned in Article 11 shall be raised within a period of eight working days from the time the authorities meet with the child and bring such period to the attention of the person retaining the child.

The judicial or administrative authorities shall assess the circumstances and the evidence furnished by the opposing party to support its objections to the child's return, shall ascertain the applicable law and judicial or administrative precedents of the State of the child's habitual residence, and, if necessary, shall request assistance from Central Authorities, diplomatic agents or consular officers of the States Parties.

The judicial or administrative authority shall issue its decision within sixty calendar days after receipt of the objection.

Article 13

If within forty-five calendar days after the requesting authority has received notice of a decision to return the child, the steps necessary for the child's return have not been taken, the return order shall become inoperative and any measures taken shall be lifted.

Costs of the return shall be borne by the claimant; should the claimant lack the means, the authorities of a requesting State may defray the costs, which may be recovered from the person responsible for the wrongful removal or retention.

Article 14

Proceedings under this Convention shall be commenced within one calendar year of the wrongful removal or retention.

As to children whose location is unknown, the period shall run from the time they are located.

Nevertheless, expiration of the one-year period shall not bar the child's return if, in the opinion of the requested authority, the circumstances so warrant, unless it is demonstrated that the child is settled in its new environment.

Article 15

The fact of a child's return shall not prejudice the ultimate custody decision.

Article 16

After receiving notice of a child's wrongful removal or retention as defined in Article 4, the judicial or administrative authorities of the State Party to which the child has been removed or where it is retained shall refrain from deciding on the merits of custody claims until it is determined either that the child is not to be returned under this Convention or that no request pursuant to this Convention has been lodged within a reasonable time following receipt of such notice.

Article 17

The foregoing provisions shall not limit the power of a judicial or administrative authority to order the child's return at any time.

LOCATING MINORS

Article 18

Any person mentioned in Article 5 may directly, through the Central Authority, or through the judicial or administrative authorities of one State Party request the competent authorities of another State Party to locate children whose habitual residence is in the State of the requesting authority and who are thought to be wrongfully in the requested State.

The request shall be accompanied by any information supplied by the person making the request or gathered by the requesting authority relevant to the locating of the child and the identity of the person with whom the child is presumed to be.

Article 19

The Central Authority or judicial or administrative authorities of one State Party which, upon learning from a request pursuant to Article 18 that a child wrongfully outside its habitual residence is located within their jurisdiction, shall immediately take all appropriate measures to safeguard its health and prevent its concealment or removal to another jurisdiction.

The location of the child shall be reported to the authorities of the requesting State.

Article 20

The measures adopted pursuant to Article 19 may be lifted if the child's return is not requested within sixty calendar days after the authorities of the requesting State have been informed of the location of the child.

A lifting of such measures shall not preclude exercise of the right to request the child's return in accordance with the procedures and time limits specified in this Convention.

VISITATION RIGHTS

Article 21

Any person with visitation rights may, pursuant to Article 6, address a request for their enforcement to the competent authorities of any State Party. The same procedures shall be followed as those governing a request for a child's return under this Convention.

GENERAL PROVISIONS

Article 22

Letters rogatory and requests for the return or the locating of children may be transmitted, as appropriate, to the requested authority by the parties themselves, or through judicial, diplomatic, or consular channels, or through the Central Authority of the requesting or the requested State.

Article 23

The processing of letters rogatory or requests under this Convention and the measures arising therefrom shall be free of charge and exempt from any tax, deposit or bond, however named.

The parties initiating a letter rogatory or request that have appointed a person to represent them in the requested forum shall bear any expenses incurred in connection with such representation.

Nevertheless, upon ordering a child's return under this Convention, the competent authorities may, where appropriate, direct the person who wrongfully removed or retained the child to pay the necessary expenses incurred by the applicant, those incurred in locating the minor, and the costs of return.

Article 24

The arrangements and measures necessary to give effect to letters rogatory shall not require the intervention of the petitioner, and shall be implemented directly by the requested authority. This procedure, however, shall not bar any party from intervening either personally or through a duly appointed representative.

Article 25

A child's return under this Convention may be refused where it would be manifestly in violation of the fundamental principles of the requested State recognized by universal and regional instruments on human rights or on the rights of children.

Article 26

This Convention shall not bar the competent authorities from ordering the child's immediate return when its removal or retention is a criminal offense.

Article 27

As a Specialized Organization of the Organization of American States, the Inter-American Children's Institute shall be responsible for coordinating the activities of the Central Authorities within the scope of the Convention and for receiving and evaluating information from the States Parties in respect of application of the Convention.

It shall also be responsible for cooperating with other international organizations competent in the matter.

FINAL PROVISIONS**Article 28**

This Convention shall be open for signature by the Member States of the Organization of American States.

Article 29

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 30

This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 31

Each State may, at the time of signature, ratification or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the purposes and objectives of this Convention.

Article 32

If a State has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the

General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 33

In the case of a State that, with respect to the custody of children, has two or more systems of law applicable in different territorial units:

a. Any reference to the habitual residence in that State refers to habitual residence in a territorial unit of that State;

b. Any reference to the law of the State of habitual residence refers to the law of the territorial unit in which the child has its habitual residence.

Article 34

Among the Member States of the Organization of American States that are parties to this Convention and to the Hague Convention of October 25, 1980 on the civil aspects of international child abduction, this Convention shall prevail.

However, States Parties may enter into bilateral agreements to give priority to the application of the Hague Convention.

Article 35

This Convention shall limit neither the provisions of existing or future bilateral or multilateral conventions on this subject entered into by the States Parties, nor the more favorable practices that those States may observe in this area.

Article 36

This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying; or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 37

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State, but shall remain in force for the other States Parties.

Article 38

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of that Organization and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession and denunciation, as well as of reservations, if any. It shall also transmit the declarations provided for in the pertinent articles of this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE AT MONTEVIDEO. EASTERN REPUBLIC OF URUGUAY, this fifteenth day of July, one thousand nine hundred and eighty-nine.

Rev. July 15, 1989

B-53 INTER-AMERICAN CONVENTION ON THE INTERNATIONAL RETURN OF CHILDREN.

Signed in Montevideo, Uruguay, on July 15, 1989, at the Fourth Specialized Inter-American Conference on Private International Law.

ENTER INTO FORCE: This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

DEPOSITORY: OAS General Secretariat (Original instrument and ratification)

TEXT: Series on treaties, OAS No 70

REGISTRY UN

SIGNING COUNTRIES. DEPOSIT OF RATIFICATION

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| Uruguay | . | . | . | . | . | . | . | . | . |
| Venezuela | . | . | . | . | . | . | . | . | . |

For each State ratifying; or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

INTER-AMERICAN CONVENTION ON INTERNATIONAL TRAFFIC IN MINORS

The States Parties to this Convention,

CONSIDERING the importance of ensuring comprehensive and effective protection for minors, through appropriate mechanisms to guarantee respect for their rights;

AWARE that the international traffic in minors is a universal concern;

TAKING INTO CONSIDERATION conventions on international protection of minors, particularly the provisions of Articles 11 and 35 of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989;

CONVINCED of the need to regulate civil and penal aspects of the international traffic in minors; and

REAFFIRMING the importance of international cooperation to achieve effective protection of the best interests of minors,

Have agreed upon the following:

CHAPTER ONE

GENERAL PROVISIONS

Article 1

The purpose of the present Convention, with a view to protection of the fundamental rights of minors and their best interests, is the prevention and punishment of the international traffic in minors as well as the regulation of its civil and penal aspects.

Accordingly, the States Parties to this Convention undertake to:

- a) ensure the protection of minors in consideration of their best interests;
- b) institute a system of mutual legal assistance among the States Parties, dedicated to the prevention and punishment of the international traffic in minors, as well as adopt related administrative and legal provisions to that effect; and
- c) ensure the prompt return of minors who are victims of international traffic to the State of their habitual residence, bearing in mind the best interests of the minors.

Article 2

This Convention shall apply to any minor who is habitually resident in a State Party or is located in a State Party at the time when an act of international traffic occurs in respect of him or her.

For the purpose of the present Convention:

- a) "Minor" means any human being below the age of eighteen.
- b) "International traffic in minors" means the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means.

c) "Unlawful purpose" includes, among others, prostitution, sexual exploitation, servitude or any other purpose unlawful in either the State of the minor's habitual residence or the State Party where the minor is located.

d) "Unlawful means" includes, among others, kidnapping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institution having care of the child, or any other means unlawful in either the State of the minor's habitual residence or the State Party where the minor is located.

Article 3

This Convention shall also cover the civil aspects of the wrongful removal, transfer, or retention of minors internationally, not dealt with by other international conventions on this subject.

Article 4

To the extent possible, States Parties shall cooperate with States that are not Parties in preventing and punishing international traffic in minors, and in protecting and caring for minors who are victims of that wrongful act.

The competent authorities of a State Party are to notify the competent authorities of a State that is not a Party whenever a minor is within its territory who has been a victim of international traffic in minors in a State Party.

Article 5

For the purposes of the present Convention, each State Party shall designate a Central Authority and shall inform the General Secretariat of the Organization of American States of that designation.

A federal State, or a State in which several legal systems apply, or a State with autonomous territorial units may designate more than one Central Authority, specifying the legal or territorial area covered by each of them. The State making use of this possibility shall designate the Central Authority to which all communications should be addressed.

Should a State Party designate more than one Central Authority, it shall so inform the General Secretariat of the Organization of American States.

Article 6

States Parties shall protect the minor's interests with a view to ensuring that all procedures applied pursuant to the present Convention shall remain confidential.

CHAPTER TWO PENAL ASPECTS

Article 7

The States Parties undertake to adopt effective measures, under their domestic law, to prevent and severely punish the international traffic in minors defined in this Convention.

Article 8

The States Parties to the present Convention undertake to:

a) assist each other promptly and expeditiously through their Central Authorities, as permitted by the domestic laws of each State and by applicable international treaties, to conduct judicial and administrative proceedings, to take evidence, and to take any other procedural steps that may be necessary for fulfilling the objectives of this Convention;

b) establish through their Central Authorities mechanisms for the exchange of information about any domestic statute, case law, administrative practices, statistics and modalities regarding international traffic in minors in their States; and

c) order such measures as may be necessary to remove any obstacles that might affect the enforcement of this Convention in their States.

Article 9

The following shall have competence in cases of crimes involving international traffic in minors:

a) the State Party where the wrongful conduct occurred;

b) the State Party that is the habitual residence of the minor;

c) the State Party in which the alleged offender is located if said offender has not been extradited.

d) the State Party in which the minor who is a victim of said traffic is located.

For the purposes of the preceding paragraph, the State Party that first conducted formal proceedings concerning the wrongful act shall have preference.

Article 10

If one of the States Parties where extradition is subject to the existence of a treaty receives a request for extradition from a State Party with which it has no such treaty, or if it has such a treaty, this crime is not among the extraditable offenses, it may consider the present Convention as the legal grounds needed to grant extradition in the case of the international traffic in minors.

Further, States Parties that do not make extradition conditional on the existence of a treaty shall recognize the international traffic in minors as a basis for extradition between them. Where no extradition treaty exists, extradition shall be subject to the other conditions required by the domestic laws of the requested State.

Article 11

The actions taken in accordance with the provisions of this chapter shall not prevent the competent authorities of the State Party where the minor is located from ordering, at any time, said minor's immediate return to the State of his or her habitual residence, bearing in mind the best interests of the minor.

CHAPTER III
CIVIL ASPECTS

Article 12

A request for locating and returning a minor under the present Convention shall be lodged by those entitled to do so by the laws of the State where the minor habitually resides.

Article 13

The judicial or administrative authorities of the State Party of the minor's habitual residence, or those of the State Party where the minor is or is assumed to be retained, shall be competent to hear the request for the minor's location and return, at the option of the complainants.

When in the complainants' view there are urgent reasons, the request may be submitted to the judicial or administrative authorities of the State Party where the wrongful act occurred.

Article 14

The request for locating and returning shall not require authentication and shall be processed through the Central Authorities or directly through the competent authorities referred to in Article 13 of the present Convention. The requested authorities shall decide upon the most expeditious procedures for effecting it.

After receiving the request, the requested authorities shall order the necessary steps taken in accordance with their domestic laws to initiate, facilitate, and assist the judicial and administrative procedures involved in locating and returning the minor. In addition, steps shall be taken to ensure the immediate return of the minor, and where necessary, to ensure his or her care, custody or provisional guardianship, depending on the circumstances, and, as a preventive measure, to bar the minor from being wrongfully removed to another State.

The request, stating grounds for location and return of the minor, shall be lodged within one hundred and twenty days after the wrongful removal or retention of the minor has been detected. If the request for location and return is lodged by a State Party, the latter shall do so within one hundred and eighty days.

When it is necessary to take action before locating the minor, the above-mentioned period shall run from the day on which a person or authority entitled to file the request is informed that the minor has been located.

Irrespective of the above, the authorities of the State Party where the minor is retained may at any time order his or her return if it is in the minor's best interests.

Article 15

The authentication or similar formalities otherwise required shall be unnecessary when requests for cooperation encompassed by this Convention are transmitted via consular or diplomatic channels or via the Central Authorities, and when conveyed directly from one tribunal to another in the border area of the States Parties. No authentication in the requesting State Party shall be required in the case of related documents returned via the same channels.

Where necessary, the requests shall be translated into the official language or languages of the State Party to which they are addressed. With respect to attachments, a translation of the summary of the essential information shall suffice.

Article 16

Having confirmed that a victim of traffic in minors is present within their jurisdiction, the competent authorities of a State Party shall take such immediate measures as may be necessary for the minor's protection, including those of a preventive nature to ensure that the minor is not improperly removed to another State.

The Central Authorities shall inform the competent authorities of the State of the minor's previous habitual residence of all such measures. The intervening authorities shall take such steps as may be necessary to keep the persons or authorities seeking the minor's location and return duly informed of the measures adopted.

Article 17

In keeping with the purposes of this Convention, the Central Authorities of the States Parties shall exchange information and cooperate with their competent judicial and administrative authorities on all matters concerning control of the entry of minors into and departure from their territories.

Article 18

Adoptions and other similar legal proceedings performed in a State Party shall be subject to annulment if they had their origin or purpose in international traffic in minors.

In such annulment, the minor's best interests shall be taken into account at all times.

The annulment shall be subject to the law and the competent authorities of the State where the adoption or legal proceedings concerned took place.

Article 19

Care or custody of a minor may be revoked whenever it has its origin or purpose in the international traffic in minors, under the same conditions provided for in the preceding article.

Article 20

A request for locating and returning a minor may be lodged without prejudice to the annulment and revocation actions provided for in Articles 18 and 19.

Article 21

In any proceeding provided for under this chapter, the competent authority may order the person or organization responsible for international traffic in minors to pay the costs and expenses of locating and returning the minor if such person or organization is a party to the proceeding.

A person or authority lodging a request for the return or, where applicable, the competent authority may bring a civil action to recover costs, including legal fees and the expenses of locating and returning the minor, unless said costs were already assessed in a criminal proceeding or a proceeding under this chapter.

The competent authority or any injured person or authority may bring a civil action for damages against the persons or organizations responsible for the international traffic in minors involving the minor.

Article 22

The States Parties shall adopt the measures needed to ensure that no costs are charged for proceedings to secure the return of the minor, in accordance with their laws and shall advise persons legitimately interested in the return of the minor of the public defender services, benefits to the needy and other forms of free legal aid to which they may be entitled under the laws and regulations of the respective States Parties.

CHAPTER IV FINAL CLAUSES

Article 23

Each State Party may, at the time of signature, ratification, or accession to the present Convention or at any time thereafter, declare that it will recognize and execute criminal judgments handed down in other States Parties in respect of awards of damages resulting from the international traffic in minors.

Article 24

In the case of a State which has two or more systems of law applicable in different territorial units with respect to matters covered by the Convention, any reference to:

- a) the law of the State shall be construed as referring to the law in the territorial unit in question;
- b) habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- c) the competent authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit.

Article 25

If a State has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or to only one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective ninety days after the date of their receipt.

Article 26

Each State Party may, at the time of signature, ratification or accession to the present Convention or at any time thereafter, declare that it will not entertain in any civil suit a challenge to

the existence of the facts of the crime or the guilt of the person convicted when a conviction has been handed down for this crime in another State Party.

Article 27

The competent authorities in border areas of the States Parties may, at any time, directly agree on more expeditious procedures to locate and return minors than those provided for in the present Convention and without prejudice thereto.

None of the provisions in the present Convention shall be interpreted as restricting the more favorable practices that the competent authorities of the States Parties may agree to follow for the matters covered by this Convention.

Article 28

This Convention shall be open to signature by the member states of the Organization of American States.

Article 29

This Convention shall be subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 30

This Convention shall remain open for accession by any other State after it has entered into force. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 31

Each State may, at the time of signature, ratification or accession, make reservations to this Convention, provided that each reservation concerns one or more specific provisions and is not incompatible with the purposes and objectives of this Convention.

Article 32

None of the provisions in this Convention shall be construed as limiting other bilateral or multilateral treaties or other agreements entered into between the Parties.

Article 33

This Convention shall enter into force for the ratifying States on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 34

This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization

of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State.

Article 35

The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of its Charter. The General Secretariat of the Organization of American States shall notify the Member States of the Organization and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession and denunciation, as well as of reservations, if any, and of their withdrawal.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, do hereby sign the present Convention.

DONE AT MEXICO, D.F., MEXICO, this eighteenth day of March, one thousand nine hundred and ninety-four