

**Comments by Japan
relating to the Hague Convention of 29 May 1993**

We are very pleased to be given an opportunity to submit our following comments at the request of the Permanent Bureau in L.c. ON No 14(05).

1. Questionnaire 9 and 21

Paragraph 2 of Article 26 of the Convention provides that:

In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

But the content of this paragraph is not necessarily clear for us. We hope that the forthcoming Special Commission will discuss such issues as are following.

- (1) How is this paragraph interpreted in the Contracting States of the Convention?
- (2) What interpretation should be appropriate in light of a purpose of the Convention?
- (3) Have any Contracting States experienced difficult problems in implementing this paragraph?

In Japan, rights which an adopted child has shall be governed by the applicable law which articles 20 and 21 of *Horei* (private international law provisions) designate, and an adoption by a permission or decision of an overseas court is recognized in Japan with effects equivalent to those of originating State as long as the adoption meets required conditions. In this way, the content of Japanese private international law differs from that of paragraph 2 of article 26 of the Convention. As we suppose that many of Contracting States have their private international law, which basically has the same provisions as those of Japan. Therefore, we consider it important to know how Contracting States are interpreting and implementing paragraph 2 of article 26.

2. We do not have any further comments.

Horei

Article 20

- (1) An adoption shall be governed by the law of the country of which the adoptive parent is a national at the time of the adoption. If the law of the country of which a child is a national requires, as a prerequisite for adoption, the approval or the consent of the child or of a third party, or the permission of or any act by the public authorities, such prerequisite shall also be satisfied.
- (2) The termination of the family relationship between a child and his or her kindred or the dissolution of adoption shall be governed by the law provided for in the first sentence of the preceding paragraph.

Article 21

The legal relationship between parents and a child shall be governed by the law of the country of which the child is a national, if it is the same as the law of the country of which either parent is a national or, where there is only one parent, the same as the law of the country of which that parent is a national. In other cases the law of the place of the child's habitual residence shall govern.