

ANNEX 5

HAGUE RECOMMENDATION ON REFUGEE CHILDREN

5. HAGUE RECOMMENDATION ON REFUGEE CHILDREN (ADOPTED ON 21 OCTOBER 1994)

Pursuant to the Decision of the Seventeenth Session of the Hague Conference on Private International Law, held at The Hague from 10 to 29 May 1993, to convene a Special Commission to study the specific questions concerning the application to refugee children and other internationally displaced children of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

The Special Commission gathering at The Hague from 17 to 21 October 1994, in consultation with the Office of the United Nations High Commissioner for Refugees,

Adopts the following Recommendation –

RECOMMENDATION

Whereas the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* was concluded at The Hague on 29 May 1993,

Considering that in the application of the Convention to refugee children and to children who are, as a result of disturbances in their countries, internationally displaced, account should be taken of their particularly vulnerable situation,

Recalling that according to the Preamble of the Convention each State should take as a matter of priority appropriate measures to enable the child to remain in the care of his or her family of origin, and that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State,

The Hague Conference on Private International Law recommends to the States which are, or become, Parties to the Convention that they take into consideration the following principles in applying the Convention with respect to refugee children and to children who are, as a result of disturbances in their countries, internationally displaced –

1 – For the application of Article 2, paragraph 1, of the Convention, a State shall not discriminate in any way in respect of these children in determining whether they are habitually resident in that State.

With respect to these children, the State of origin referred to in Article 2, paragraph 1, of the Convention, is the State where the child is residing after being displaced.

2 – The competent authorities of the State to which the child has been displaced shall take particular care to ensure that–

- a) before any intercountry adoption procedure is initiated,
 - all reasonable measures have been taken in order to trace and reunite the child with his or her parents or family members where the child is separated from them; and
 - the repatriation of the child to his or her country, for purposes of such reunion, would not be feasible or desirable, because of the fact that the child cannot receive appropriate care, or benefit from satisfactory protection, in that country;
- b) an intercountry adoption only takes place if
 - the consents referred to in Article 4 c) of the Convention have been obtained; and
 - the information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, the child's upbringing, his or her ethnic, religious and cultural origins, and any special needs of the child, has been collected in so far as is possible under the circumstances.

In carrying out the requirements of sub-paragraphs a and b, these authorities will seek information from the international and national bodies, in particular the Office of the United Nations High Commissioner for Refugees, and will request their co-operation as needed.

3 – The competent authorities shall take particular care not to harm the well-being of persons still within the child's country, especially the child's family members, in obtaining and preserving the information collected in connection with paragraph 2, as well as to preserve the confidentiality of that information according to the Convention.

4 – The States shall facilitate the fulfilment, in respect to children referred to in this Recommendation, of the protection mandate of the United Nations High Commissioner for Refugees.

The Hague Conference also recommends that each State take these principles and those of the Convention into account for adoptions creating a permanent parent-child relationship between, on the one hand, spouses or a person habitually resident in that State and, on the other hand, a refugee or internationally displaced child in the same State.