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IMPLEMENTATION OF THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION

HEARING

BEFORE THE

COMMITTEE ON INTERNATIONAL RELATIONS HOUSE OF REPRESENTATIVES

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CONTENTS

WITNESSES

	Page
The Honorable Tom Bliley, a Representative in Congress from the State of Virginia	7
The Honorable Mary A. Ryan, Assistant Secretary for Consular Affairs, U.S. Department of State, accompanied by Jamison Borick, Deputy Legal Adviser, Office of Legal Advisers, U.S. Department of State	9
Ms. Patricia Montoya, Commissioner for Children, Youth, and Families, Department of Health and Human Services	11
Ms. Susan Freivalds, Hague Coordinator, Joint Council on International Children's Services	32
Dr. Jerri Ann Jenista, American Academy of Pediatrics	34
Mr. David Liederman, President and CEO, Council on Accreditation of Services for Families and Children	36
Mr. Sam Pitkowsky, Adoptive Parents Committee of New York	38
Ms. Kathleen Sacco, Adoptee	39

APPENDIX

The Honorable Benjamin A. Gilman, a Representative in Congress from New York and Chairman, Committee on International Relations	169
The Honorable Sam Gejdenson, a Representative in Congress from Connecticut	171
The Honorable William Delahunt, a Representative in Congress from Massachusetts	173
Representative Tom Bliley	103
Ambassador Mary Ryan	107
Ms. Patricia Montoya	115
Ms. Susan Freivalds	122
Dr. Jerri Ann Jenista	130
Mr. David Liederman	147
Mr. Sam Pitkowsky	158
Ms. Kathleen Sacco	164

Additional material submitted for the record:

Statement of the Honorable Mary Landrieu, a United States Senator from Louisiana, submitted in lieu of appearance	176
Statement of the Honorable Dave Camp, a Representative in Congress from Michigan	180
Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption	44
H.R. 2909, The Intercountry Adoption Act of 1999	57
Statement of the American Academy of Adoption Attorneys concerning H.R. 2909, The Intercountry Adoption Act of 1999	182
Supplement to Statement of the American Academy of Adoption Attorneys	188
Statement of the National Council of Birthmothers concerning H.R. 2909, The Intercountry Adoption Act of 1999	192
Statement of the Child Welfare League of America, Inc. concerning H.R. 2909, The Intercountry Adoption Act of 1999	195

IMPLEMENTATION OF THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION

Wednesday, October 20, 1999

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
WASHINGTON, D.C.

The Committee met, pursuant to notice, at 10 a.m. in Room 2172, Rayburn House Office Building, Hon. Benjamin A. Gilman (Chairman of the Committee) presiding.

Chairman GILMAN. The Committee will come to order.

I want to welcome all of you here today for this hearing on The Hague Convention on Protection of Children and co-operation in respect of Intercountry Adoption. We greatly appreciate the experts in the room who have made an effort to be here to share their views with us.

[The information referred to appears in the appendix.]

As an adoptive parent of two children, I can understand the importance of developing policies that work for the best interests of the child. I also understand that when parents are seeking to adopt, they should expect the highest standards in ethical behavior of the agencies or persons involved with an adoption.

The fact is that there have been serious abuses in intercountry adoptions, enough so that the international community coalesced to produce The Hague Convention. The U.S. signature to this convention affirmed a commitment to approving the intercountry adoption process, and recognized that international adoptions are increasingly part of establishing families in the United States.

With the volume of foreign adoptions in this Nation, more than 15,000 in 1998, it is important that international standards be in place. These standards will provide parents with the confidence that this emotional undertaking will not leave them open to fraud or abuse. It will also protect the children and the rights they inherently hold.

Ratification of the Convention by the Senate triggers a need for implementing legislation. In September, I introduced a bipartisan bill, H.R. 2909, the Intercountry Adoption Act, that provides the Administration with the necessary authorities to implement the Convention. This bill also reflects the extensive work of key Members, Mr. Gejdenson, Mr. Camp, Mr. Delahunt, and Mr. Bliley. I am grateful to them for their assistance. Today we have 41 cosponsors on that measure.

[The information referred to appears in the appendix.]

Chairman GILMAN. We have made an earnest attempt to craft a bill that matches our Nation's obligations under the Convention.

We have followed the recommendation of the Administration to designate the Department of State as a central authority, and to assign responsibility for the accreditation process, including oversight and enforcement, to the Department of Health and Human Services.

The purpose of today's hearing is to encourage a discussion of The Hague Convention and H.R. 2909 by those in the international adoption sector, adoptive parents, adoptees, and the Administration. The intent is to further our understanding of the range of concerns, and, if necessary, to try to improve the bill. This measure is designed to carry out our international obligations and to institute consumer protections in the adoption process.

There are issues within the adoption community that do divide and polarize. One such issue is access to identifying information and privacy concerns. I know there are strongly held views on these issues. The moderate approach taken in our measure, H.R. 2909, reflects an effort to try to accommodate both of those interests. There is no consensus on the exact formula for access to records, as evidenced by the variance in the 50 State laws. In essence, the bill defers access to identifying information and records to State law.

I believe our interests are best served by moving the process along as promptly as possible. At this point, 36 countries have already ratified the convention. Our Nation should be the 37th. We need to affirm to the international community the U.S. commitment to ethical and expeditious adoption practices.

For today's hearing we have three panels. First, if they arrive on time, we will hear from two Members of Congress. If they do not, we will proceed with the next panel.

We will hear from our representatives of the Administration who will be responsible for administering the obligations of the Convention. Last, we have a panel of experts in various areas of adoption.

At this point, I yield to the Ranking Member, Mr. Gejdenson.

Mr. GEJDENSON. Thank you, Mr. Chairman. I will be very brief. I want to commend you and Mr. Delahunt for all the work you have done in this area.

In the last decade we have had 150 percent growth in the number of international adoptions. As the globe continues to shrink, we will see more and more of these international adoptions. While we are at the beginning of this process—and this bill will go through further changes trying to adjust to what the consensus is or the general best approach is here—it is important for us to come forward with clear rules that make it easier for parents, that give them the best and most accurate health care records available, and that make sure America continues in its attempt to work within the international community.

Clearly, international adoption solves problems. Children living without loving families and in often terrible conditions have an opportunity for a very bright and optimistic future here in the United States or with adoptive parents in other countries. We want to make sure that the families that get involved in these adoptions are not tortured by a bureaucratic process that often makes it difficult to make these children citizens, makes it difficult to change their names, and complicated in so many ways.

We want to make sure that some individuals who might be inclined toward unethical behavior in this area, as in any other, do not have an opportunity to victimize these people who have such great intentions.

I commend the Chairman and Mr. Delahunt again for their great work in this area, and I hope that we will learn from these hearings and then expeditiously be able to move our legislation forward.

Chairman GILMAN. Thank you, Mr. Gejdenson.

[The information referred to appears in the appendix.]

Chairman GILMAN. Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman.

Last month I was very proud to join with you and Mr. Gejdenson and over 30 of our colleagues in introducing the Intercountry Adoption Act of 1999. I genuinely want to commend you and Mr. Gejdenson for your many months of hard and diligent work on this bill and for holding this hearing today.

Prompt U.S. ratification and implementation of The Hague Convention is of enormous importance to many thousands of needy children throughout the world and the American families who adopt them. U.S. ratification will signal our desire to encourage intercountry adoption and our commitment to creating a legal framework that will better protect adoptive families and their children.

As many of my colleagues are aware, my younger daughter Kara was born in Vietnam and came to this country as part of Operation Baby Lift during the mid-1970's, when Saigon was falling to the Communists. So I am personally aware of how important it is that we make it possible for children like my daughter to find safe and loving homes through intercountry adoption, when they cannot be placed in their country of origin.

The bill we are considering today is a blueprint that will enable the United States to carry out its obligations under the Convention. It is, as you, Mr. Chairman, reviewed, the culmination of many months of hard work, during which time we consulted extensively with the Administration and many interested parties within the United States adoption community.

Again, I want to thank you as well as Mr. Gejdenson, Mr. Smith, Mr. Bliley, and Mr. Camp for what has been a thoughtful and bipartisan effort.

From the outset of this project, we agreed that we should adopt a minimalist approach, deferring wherever possible to the State laws by which we have always regulated adoption in this country. We tried to steer clear of extraneous and controversial issues, and have resisted attempts to use this bill to carry out changes to domestic adoption practices that are not strictly required to bring our laws into compliance with the Convention. I believe that process was fundamentally sound, Mr. Chairman, and resulted in what is in most respects a fine piece of legislation.

Having said that, I recognize that there are features of the bill as introduced that can be improved. That is, after all, why we have hearings. I want to assure those in the adoption community who have concerns about the bill that we are listening.

This is particularly important with regard to one provision of the bill which I understand has caused considerable consternation

within the adoption community. I refer to the provision related to disclosure of adoption records. To say this is an emotionally charged issue would be a serious understatement. As an adoptive parent myself, I share the feelings of many thousands of parents about their children's right to their birth records, whether for serious medical reasons or simply to satisfy the need we all have to understand who we are and where we came from.

The Convention requires that records be preserved and that access be provided to the extent permitted by law. Most of the countries that send children to the United States do permit access. On the other hand, some sending countries do not. In those countries, birth families have a reasonable expectation that records would not be disclosed. So in drafting this bill, we tried to balance the equities, to be sensitive to the concerns of all segments of the adoption community, and to craft language that would allow access in cases of genuine need while permitting the laws that govern access to adoption records, both here and abroad, to continue to evolve.

Now we have reached that part of the legislative process when we hear reactions from the field. The early returns suggest that we may not have achieved the balance we were seeking. Some have read our provision as barring access to records which today are freely available as part of the preadoption process, as curtailing access even when permitted by the laws of the sending country, and as subjecting those who share information to criminal penalties even when this is done with the full knowledge and consent of the birth family.

Without prejudging the merits of these concerns, I think we need to listen to them and consider their ramifications for children and for their families, and for the very goal we are trying to advance, international adoption itself. I am sure that none of us would want to create a situation in which penalties and restrictions we impose on adoptees and their families might cause other countries to stop sending children to the United States.

I know my colleagues and I will remain open to all points of view on these issues, Mr. Chairman. I want to assure all segments of the adoption community that Members of Congress will be listening carefully to what they have to say. That is what this process is for. I have faith in the process, and I believe that in the end we will get it right.

Again, Mr. Chairman, I want to express my appreciation to you for scheduling this hearing. I look forward to the testimony.

Chairman GILMAN. Thank you, Mr. Delahunt.

[The information referred to appears in the appendix.]

Chairman GILMAN. Mr. Burr.

Mr. BURR. Thank you, Mr. Chairman. Thank you for your willingness to hold this hearing.

I also would like to take this opportunity to thank my colleagues who have joined us to discuss the intercountry adoptions. In particular, I would like to thank Senator Mary Landrieu, who, along with Senator Helms, got the ball rolling on this important process by introducing S. 682.

I would also like to thank my other Committee Chairman, Tom Bliley, who will testify this morning, for his active interest and participation in the process.

Mr. Chairman, in the last 10 years almost 100,000 children have joined U.S. families through intercountry adoption. For too long we have heard horror stories from our constituents about the process of adopting children from overseas. While the adoption process can run smoothly, it is all too often plagued by unnecessary delay, fraud, duplicative court processes, and exorbitant cost.

We are here today to discuss legislation that will make the process more transparent, more orderly, and less stressful for those who want to provide a child with nothing more than a loving home.

On June 24, Representative Ballenger and I introduced H.R. 2342, the Intercountry Adoption Convention Implementation Act. I am sure that it was not the Committee's intent to leave that out of the briefing papers.

This legislation, which is a companion to that introduced by Senator Helms and Senator Landrieu, would provide the framework by which the United States will carry out its obligations under The Hague Convention on Intercountry Adoption, which the United States signed in 1995.

The single largest difference between S. 682, H.R. 2342, and H.R. 2909 is the role of the Department of Health and Human Services. One version of the legislation leaves HHS out. The other gives the Department a major role.

It is a fundamental difference, though, Mr. Chairman. I am concerned about adding yet another layer of bureaucracy to an already unwieldy, inefficient, and bewildering structure of HHS. Doing so, in my opinion, will do no one any good, let alone the children and parents involved in intercountry adoptions.

Second, I feel that opening the door of agency accreditation to HHS, a domestic agency, will only encourage the agency to pursue greater involvement in domestic adoptions, where most regulations are left to the States, and the Federal role is limited.

This hearing and this legislation is largely about overseeing the activities of adoption providers overseas. If further staffing and resources are needed to allow the State Department Office of Children's Issues to meet its obligation under S. 682 or 2342, so be it. But to say that State is not up to dealing with the issue is disingenuous.

To quote from the State Department's Web site, "The Office of Children's Issues formulates, develops and coordinates policies and programs and provides direction to Foreign Service posts on intercountry adoption. The Office of Children's Issues coordinates policy and provides information on international adoption to the public. We offer general information and assistance regarding the adoption process in over 60 countries."

I fail to understand how State is suddenly incapable of dealing with accreditation of agencies it works with on a daily basis.

I am pleased to see that representatives of both State and HHS are scheduled to be here today, and I hope that they can address my concerns that I have raised this morning.

Mr. Chairman, once again, thank you for your willingness to hold this hearing, and as one who has ventured through some 43 hearings on electricity restructuring, and we are still not there, I am hopeful that you will not go for 43 on this. But I am hopeful, Mr.

Chairman, that you will air this issue, because I think there is a huge difference between the HHS and the State Department.

Chairman GILMAN. Thank you. We will try to short-circuit the hearing.

Chairman GILMAN. Mr. Pomeroy.

Mr. POMEROY. Mr. Chairman, thank you. I regret that after giving this statement, I have to go to the Committee on the Judiciary to present testimony.

Chairman GILMAN. We understand those problems.

Mr. POMEROY. I commend you for holding this hearing, and commend the sponsors for introducing this important legislation.

For years American families have reached across cultural and national boundaries to embrace children through international adoption. In 1998 alone, almost 16,000 children are uniquely and forever enriching families into whom they were accepted in this country.

By signing The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, the United States and over 60 other nations recognize the importance of international adoption. The Hague Convention creates a structure to strengthen cooperation among nations in adoption, protects adoptive families from fraud and abuse.

Although this was signed in 1994, we have yet to ratify it. The Intercountry Adoption Act provides the necessary changes to implement The Hague Convention. It would strengthen the process that builds thousands of international adoptive families every year. Our legislation sends a strong signal that the United States is committed to providing permanent homes for its children and for children all across the world that need those homes.

There are some individuals in the audience who I would just like to recognize for their outstanding work in this area: Bill Pierce, the head of the National Council on Adoption; and Susan Cox of the Holt Agency, who herself was one of the very first young children brought over from Korea and placed with a home, which became a wonderful family in Oregon.

I just want to say, my interest in this legislation perhaps exceeds in a very personal way any other legislative proposal that not just this Committee will consider, but Congress will consider, in light of the fact that since I have been a Member of Congress my family has been changed with the adoption of two children born in Korea. Kathryn and Scott have made such a profound difference in our lives that I can only know too well the beauty and the blessing and the miracle of intercountry adoption, and also the absolute imperative of making certain that adoptions across countries, across cultures, are free of fraud and free of the kinds of issues addressed in The Hague Convention.

So this is truly the Lord's work this Committee is attending to this morning, Mr. Chairman. I commend you for your leadership in it.

Chairman GILMAN. Thank you, Mr. Pomeroy.

Chairman GILMAN. Now we are pleased to welcome our first panel. We have testifying as part of the first panel Chairman Tom Bliley, and we are still expecting Senator Mary Landrieu of Louisiana, both on our first panel.

Chairman Bliley represents the Seventh Congressional District in Virginia. In addition to his duties as Chairman of the Committee on Commerce, he also Chairs the Adoption Caucus.

We welcome Chairman Bliley, and I invite you to summarize your statement. Your full statement can be made part of the record. Please proceed.

STATEMENT OF HON. TOM BLILEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BLILEY. Thank you very much, Mr. Chairman. Thank you for allowing me to testify.

As an adoptive father, I have taken a great interest in the subject of intercountry adoption. Over the last couple of years, I have had the pleasure to meet with Russian Duma Deputies, Russian judges and prosecutors, and the Director General of the China Center on Adoption Affairs.

All of these officials raised concern about the lack of a Federal Government authority they can turn to in case there is a problem with an international adoption. Accordingly, I cosponsored The Hague Intercountry Adoption Act because it establishes a central authority in the State Department to monitor intercountry adoptions.

Prior to my cosponsorship of The Hague Convention, I was deeply alarmed by the terrible conditions of Russian orphanages. Most orphanages lack sufficient funds to pay for food, clothing, training, health care, and fuel. It pains my heart to know that the majority of these children are never adopted and are consequently in need of a loving family.

As a result of the dire news and the fact that Americans have adopted more children from Russia than any other country, Representative James Oberstar and I were able to secure $3 million in foreign aid for orphans and displaced children in Russia in the Fiscal Year 1999 Omnibus Appropriations Act last October.

I believe helping disadvantaged children overseas is an important investment that improves our relationships with other countries and advances our foreign policy objectives. Accordingly, Representative Oberstar and I set out to significantly increase the foreign aid budget for orphans and displaced children to $30 million for fiscal year 2000. We were successful in securing these funds in the House-passed Foreign Operations Appropriations Act this year. Unfortunately, we lost out in conference, but as you know, the President's veto means we will have another attempt to increase aid for orphans.

As a supporter of The Hague Intercountry Adoption Act, you and I and many other Members of this Committee are answering the cries of help of thousands of Russian orphans and abandoned children worldwide in their search for a loving family to join by working to keep intercountry adoption as a viable option.

I owe it to my constituents to view legislation with a wary eye if it tramples the rights of the States. In particular to The Hague Intercountry Adoption Act, there are some activist groups with a political agenda of opening State adoption records. It is their right to work in the States to advance their legislative goal. It is my right to say that this matter is best left to the States.

I also understand the Committee is getting pressure to open adoption records. My response to you is to leave access to adoption records for the States to decide. I can assure you that you will always hear from people advocating support for open adoption records. You will rarely hear from birth mothers who desire to preserve the privacy guaranteed to them when they placed their child up for adoption.

During the drafting process, we adhered to what is required by The Hague Convention in the area of adoption records. If the legislation is amended, and a precedent is established by the Congress regarding access to identifying information to adoption records for international adoptees, it will lead to the Federalizing and disclosure of identifying information for all domestic adoptions. In doing so, we will set a precedent that ignores the laws of 50 States.

Access to identifying information is an issue that deeply divides men and women of good character throughout the adoption community. I speak from experience when I say that the Congress should defer this issue to the 50 States.

Passage of The Hague Intercountry Adoption Act will rely on two strong and simple principles. If there is a conflict unrelated to The Hague Convention between the Federal Government and the State government, the Congress should side with the States. If there is a conflict unrelated to what is required in The Hague Convention concerning access to adoption records and the disclosure of identifying information between foreign governments, our Federal Government and our 50 States, the Congress should side with the States.

Thousands of children worldwide are waiting helplessly for parents to read to them, to teach them how to tie shoelaces, to say bedtime prayers with them, and to eat ice cream with them on a summer night. It is in the best interests for a child to be part of a loving family. The Hague Intercountry Adoption Act gives the U.S. Congress an opportunity to stand up and reaffirm our support for intercountry adoption. I am proud to support this bill because I have been blessed by my own experiences with adoption, so now I am doing what I can to help thousands of innocent children find a home.

[The prepared statement of Mr. Bliley appears in the appendix.]

Chairman GILMAN. Thank you, Chairman Bliley. I want to thank your staff as well for their assistance in helping to draft this bill. We know you are in a markup, so we will not detain you. Again, thank you for taking your time and for your contribution today.

We will now proceed to panel No. 2, and we may have to interrupt that panel if the Senator arrives, and give her an opportunity to make her statement.

Our second panel consists of Ambassador Mary Ryan and Commissioner Patricia Montoya.

Ambassador Ryan is currently the Assistant Secretary of State for Consular Affairs. She has been in that job, much to this Nation's benefit, since 1993. Secretary Ryan holds the distinction of rank of Career Ambassador, reflecting an outstanding career in the Foreign Service. She has served in many nations in her more than 30 years in the Foreign Service and holds degrees from St. John's University in New York.

Ms. Montoya is a Commissioner on Children, Youth, and Families at the Department of Health and Human Services. In that position she oversees the implementation of Federal programs that assist vulnerable children and youth. She also serves as the Administration's spokesperson on issues relating to child and youth development, child protective services, foster care, and adoption.

Prior to this position, she was Regional Director of Region 6 for HHS, where, among other duties, she was the liaison to Federal, State, and local elected officials and businesses and community leaders. She is a nurse by training, and throughout her career she has worked to improve outcomes for children and families, through her work in pediatrics, school health, and community outreach. We welcome you to this panel.

Ambassador Ryan and Commissioner Montoya, you may summarize your statements. Your full statements will be made part of the record. The entire statements will be accepted by the Committee, without objection.

Please proceed, Ambassador Ryan.

STATEMENTS OF MARY A. RYAN, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, ACCOMPANIED BY JAMISON BOREK, DEPUTY LEGAL ADVISER, OFFICE OF LEGAL ADVISER, U.S. DEPARTMENT OF STATE

Ms. RYAN. Thank you, Mr. Cairman and Members of the Committee, I am delighted to be here today to have the opportunity to discuss with you international adoption and the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, and the proposed implementing legislation for that Convention.

I have with me today Jamison Borek, the Deputy Legal Adviser from the State Department's Office of Legal Adviser, in case you should have legal questions that are better answered by an expert attorney.

I would like to thank you, Mr. Chairman, and other Members of the Committee and the Congress who have shown such an interest in the Convention and its implementation, as well as the dedicated staff who have devoted long hours and worked so diligently on H.R. 2909.

While there are some differences, we are pleased that the legislation is very similar to the Administration's own proposal. The protection and welfare of American citizens is the State Department's highest priority. This includes American parents building families through international adoption, and American children finding families abroad through international adoption.

We want to ensure that our children are protected once overseas and that those brought to this country and their adoptive parents are equally protected. These are concerns that many Members of Congress and the Senate share.

The United States, particularly since World War II, has opened its arms to orphaned and abandoned children around the world, and many parents look to international adoption to build American families and to provide a better life for these children. These families are as diverse as America itself, including extended families,

married couples, multicultural families, and single-parent households.

However, sadly, along with all the positive benefits of international adoption, there have been some abuses. This fact ultimately prompted 66 countries to convene in The Hague to prepare The 1993 Hague Convention on Intercountry Adoption, which provided standards to protect children, their birth parents, and their adoptive parents.

State, the Immigration and Naturalization Service, and Health and Human Services have consulted with the private adoption community, with parents, with lawyers, and with other professionals on the general concepts of the proposed Federal implementing legislation, which resulted in the Administration's submission to the Congress in May 1999. Senate bill 682 was introduced in March 1999, and H.R. 2909 in September 1999.

Mr. Chairman, while there is some divergence of opinion between H.R. 2909 and S. 682 as to which agency might be best suited to establish and oversee the accreditation of international adoption service providers, the Administration strongly believes that the accrediting function should rest with the Department of Health and Human Services, as proposed in H.R. 2909. HHS, as the only Federal Government agency with relevant experience in evaluating and working with domestic adoption programs and social service providers, is better suited to handle this function than the Department of State.

In our collaboration over the past two years with Health and Human Services in working on the implementing legislation, we have built a strong working relationship which has only convinced us all the more that HHS is the appropriate agency to handle the accreditation function. It has the experience, it has the knowledge, and it is best for the children.

The world will watch how the United States implements this Convention and how it protects children, birth parents, and adoptive parents. Several of the largest source countries have indicated to us that they are looking to us to ratify and implement the Convention quickly, and that they plan to model their own programs after ours. This latter point is particularly important as it bears directly on the ability of Americans to adopt abroad.

Mr. Chairman, we are very pleased that the Congress has taken such an interest in this Convention's implementing legislation. Americans adopt more children internationally than any other country. Our citizens will benefit the most from the safeguards in this important treaty. We are eager to work with the Congress and the adoption community to safeguard and facilitate intercountry adoptions for all those qualified, and to bring children and parents together to bond as quickly as possible.

Mr. Chairman, as I conclude my testimony today, I would like to reiterate my thanks to you, to the Members of your Committee, and to the Committee staff for the wonderful spirit of collegiality and cooperation which we have enjoyed as this important implementing legislation was developed.

I very much appreciate the opportunity to testify before you today. Thank you, sir.

Chairman GILMAN. Thank you, Ambassador Ryan.

[The prepared statement of Ms. Ryan appears in the appendix.]

Chairman GILMAN. Commissioner Montoya, please proceed.

STATEMENT OF PATRICIA MONTOYA, COMMISSIONER FOR CHILDREN, YOUTH, AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. MONTOYA. Chairman Gilman and Members of the Committee, I am pleased to appear before you to discuss the role that HHS expects to play should we be given responsibility for implementing the accreditation provision contained in the Intercountry Adoption Act of 1999.

I would like to commend the approach that Members of the House have taken in the bipartisan and cross-committee development of H.R. 2909. Both the Administration's proposed legislation and your bill represent sincere efforts to develop consensus on the issues raised by the treaty and to implement the Convention's provisions with the best interests of children firmly at the forefront.

As you know, this treaty is an important step toward protecting the interests of children, birth parents, and adoptive parents in the rapidly expanding practice of intercountry adoption. In my statement I will comment on the purposes of accreditation under The Hague Adoption Convention, address why we believe that HHS is the Federal agency best suited to implement the accreditation provisions of the bill, and discuss how we envision the accreditation process working once legislation is enacted.

The purpose of accreditation is to measure an organization's compliance with national standards of best practice. The Hague Adoption Convention requires that adoptions between party states be conducted only by organizations or persons that meet certain standards. Intercountry adoption services performed in the U.S. under the Convention would be covered by accreditation and approval here, while those performed in another country would be performed by providers accredited by that nation.

Accreditation and approval are intended to assure that agencies and persons operating under the Convention have the organizational capacities to perform the functions for which they are responsible.

Accreditation will not replace the process of State licensure under which adoption agencies now operate, but rather will supplement it where intercountry adoptions under the Convention are concerned. It is not our intent to create an excessive or burdensome set of rules, but only, as the Convention specifies, to establish a sound standard of practice.

The vast majority of States' licensing standards currently relate only to domestic adoptions, and therefore, lack the means to assure that agencies are knowledgeable about intercountry adoptions or their responsibilities under The Hague Adoption Convention. In addition, licensing standards vary greatly among States, while accreditation standards must be consistent in order to assure other nations that we have a uniform standard of quality that they may rely on when they entrust their children to a U.S. agency and the prospective adoptive parents that they represent.

As you are aware, there has been some discussion as to whether HHS or the State Department should be assigned responsibility for

implementing the accreditation provisions of the legislation. While either HHS or the State Department would carry out the accreditation function through one or more private entities, the responsible Federal agency would need to be involved in establishing the accreditation standards through promulgation of regulations and in overseeing the accreditation process. Because HHS has extensive experience in adoption and child welfare issues, the Administration believes that HHS is better positioned than the State Department to have responsibility for this function.

As you may know, this Administration, along with Members of Congress from both parties, has focused a great deal of attention on the issue of adoption over the past several years. Within the Federal Government, HHS has primary responsibility for carrying out a wide range of programs and activities related to adoption. HHS operates the Adoption Assistance Program authorized under Title IV–E of the Social Security Act, which provides nearly $1 billion to States to operate programs of subsidized adoptions for special needs children leaving the foster care system for loving homes.

We are also implementing very successfully the Administration's Adoption 2002 Initiative, the goal of which is to double by the year 2002 the annual number of children from the public child welfare system placed in adoptive homes or other permanent living arrangements.

Our Adoptions Opportunities Program provides $25 million per year in grants to public and nonprofit agencies to demonstrate a variety of adoption-related services to increase the number of children with special needs adopted from the foster care system.

HHS also operates a National Adoption Information Clearing house, which, although it specializes in domestic adoption issues, does provide information about intercountry adoption. Approximately 30 percent of the requests received deal with intercountry adoption.

We fund a National Resource Center on Special Needs Adoption, which provides technical assistance and training to States. HHS's institutional experience in working with State and local agencies involved in adoption will be invaluable to our national efforts to establish an accreditation process for intercountry adoptions.

I would now like to address briefly how we anticipate the accreditation process being implemented. Once legislation is passed, HHS would designate one or more accrediting entities and would work with them to develop accreditation standards to be established by regulation. Agencies seeking accreditation would apply to an accrediting entity which would, through visits to the agency's site and examination of their established procedures and policies, determine whether or not the standards for accreditation are met.

The accrediting entity would collect fees from adoption agencies applying for accreditation to cover the costs of the accreditation process. We hope to keep these fees as low as possible and to scale them to agency size so they will not become burdensome.

As you are aware, the Convention requires that accredited agencies be not-for-profit service providers. But in many nations, including the U.S., adoption services are offered by a variety of agencies, only some of which are nonprofit organizations. Under the Conven-

tion, each nation may decide whether for-profit entities or persons may participate in intercountry work.

Both your bill and the Administration's proposal allow for approved persons as well as accredited agencies to perform adoption under The Hague Convention. The Administration believes that the qualifications of the agency, not its IRS status, should determine whether it is allowed to offer intercountry adoption services. Provided a for-profit entity or person is able to meet accreditation standards, we do not believe it should be barred from operation under The Hague Adoption Convention.

Let me conclude by assuring the Committee that in implementing the accreditation provisions of the bill, we envision full cooperation with the State Department and the Immigration and Naturalization Service to assure that each of our activities enhances the process of intercountry adoption for children and families.

Over the past 2 years, as our agencies have discussed implementation of the Convention, we have developed a positive working relationship. We have taken the time to learn about each other's agencies, activities, and organizational culture, and have learned about each agency's strengths. We developed our proposal with these strengths in mind to best make use of the strategic advantages of each agency. We fully expect that this positive working relationship will continue as the implementation phase of activity begins.

This concludes my prepared statement. I would be happy to answer any questions that you may have.

[The prepared statement of Ms. Montoya appears in the appendix.]

Chairman GILMAN. Thank you.

We will be continuing right on through the votes. We intend to vote and continue without a recess.

Let me start the questioning, and I am sure my colleagues have some questions.

Secretary Ryan, regarding the new fee collection provisions in the bill, I know you have experience with the use of fees for consular services. There will be a lag between initiating the new office and collecting fees to cover the cost of the office.

Will appropriated funds need to be used to cover the gap? Do you have an estimate of startup costs and what is included in that cost assessment? Do you have an estimate of the amount that will be collected in fees during the first year?

Ms. RYAN. Mr. Chairman, I will get those answers to you for the record.

We are going to engage in a cost-of-service study which will determine the fee, and I am not sure at this point whether we will be able to operate just on the fees or whether we will continue to need appropriated funds. I would have to get that answer to you, sir.

Chairman GILMAN. If you would supply it for us, and we will make that part of the record.

Ms. RYAN. Yes, sir. Thank you.

[The information referred to appears in the appendix.]

Chairman GILMAN. Does the Consular Affairs Bureau in the fiscal year 2001 budget request to OMB reflect the increase in the workload and the responsibilities the Department is going to have to assume as the Central Authority?

Ms. RYAN. Yes, sir, it does. We have asked for an additional five positions in 2000. If we should be given the accreditation function, however, we would need additional staff, and we believe that we would have to at least double that number. But we have in both the fiscal year 2000 and the 2001 budget requested additional staff for the Office of Children's Issues.

Chairman GILMAN. Have you made that request?

Ms. RYAN. Yes, sir, we have.

Chairman GILMAN. Will there be any new responsibilities or instructions to consular officers working at the overseas posts with regard to international adoptions? Who will act as the State Department's liaison with foreign governments on the convention issues?

Ms. RYAN. Sir, in anticipation of The Hague Convention, we have asked each post that issues visas to identify an officer who will be responsible for children's issues and who will be responsible for dealing with these cases with us. We will also, once the legislation is passed, should it be passed, instruct posts as to the new procedures that will be required under The Hague Convention. I do not anticipate any problems in doing that at all, sir.

Chairman GILMAN. Thank you, Ambassador.

The American Bar Association has posed that there should be a requirement for a nationwide criminal background check for foreign persons adopting American children. Do you have any thoughts with regard to that?

Ms. RYAN. Yes, sir. I certainly do understand the concern of the American Bar Association. I frankly share it, because we want to make sure that children adopted from the United States are going to loving homes with people who really want them as children and who are not engaged in any nefarious practices like trafficking in children or anything like that.

I just do not know how it would be carried out. I think it would be very difficult. I am not quite confident about the criminal records in a lot of countries, and so it would be a difficult process, but I do share the concern that the ABA has.

Chairman GILMAN. Thank you.

Commissioner Montoya, one last question. Concerns have been raised that the cost of accreditation, meeting the requirements of the regulations, would unduly hurt smaller adoption agencies.

Has there been any consideration of that problem? Is it something which HHS will work with the accrediting entity on? Does HHS anticipate some form of subsidy for agencies to encourage other organizations to enter the accreditation field?

Ms. MONTOYA. Mr. Chairman, as mentioned in my testimony, we have looked at this issue regarding the smaller adoption agencies and have said that we would scale the accreditation fee to the agency size.

HHS will work in partnership with an accrediting entity to ensure that fees do not become a barrier. But we are not considering any type of subsidy at this time.

Chairman GILMAN. Thank you, Commissioner.

Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman. I only have one question. I understand the rationale for conferring the accreditation process on HHS. You are correct, Commissioner, when you stated that it falls within the gambit of the experience and knowledge of your agency.

But in response to the concern that others have expressed in terms of creating an additional bureaucracy, and I would pose this question to both the Ambassador and you, Commissioner, it is my understanding that HHS in effect contracts out the accreditation process to the private sector, presumably nonprofit operations, to do the evaluation and the assessment.

Ms. MONTOYA. Right.

Mr. DELAHUNT. Whether it was the Department of State or HHS, that process would be exactly the same, so I have reached the conclusion that, in fact, there is no additional bureaucracy here. In effect, it is just expanding what you do domestically into the realm of intercountry adoption.

Is that a fair statement on my part?

Ms. MONTOYA. Yes, it is, sir.

Mr. DELAHUNT. Ambassador Ryan?

Ms. RYAN. Yes, sir.

Mr. DELAHUNT. In other words, if there is an additional bureaucracy that would be created, it would presumably be created within the Department of State by the addition of more personnel within a separate division within the Department of State to do exactly what the mission or the purpose of the accreditation process is.

Ms. RYAN. That is precisely right, sir. There would be great opportunity costs to our doing it, because we have no experience. We would have to learn how to do it. We would have to have additional staff, whereas HHS already has the staff to do it. That is one of the reasons why we are concerned about that.

Mr. DELAHUNT. Presumably, in terms of tax dollars, the expenditure of public moneys would be considerably more if the Senate bill were enacted as opposed to the House bill that we are presently considering?

Ms. RYAN. Yes, sir. That is what we think, too.

Mr. DELAHUNT. Thank you.

Chairman GILMAN. Thank you, Mr. Delahunt.

Just a few more questions before we have to break for the vote.

Commissioner Montoya, an important issue that is going to have to be addressed is the matter of privacy or openness of adoption records, as you have already indicated in your testimony. What is the position of HHS with regard to full access to these records?

Ms. MONTOYA. Mr. Chairman, I would actually have to defer for a fuller response on that to my colleague from the Department of State. The Department of Health and Human Services expects only general information, not identifying information about individual adoptions, and therefore privacy issues would not apply.

Chairman GILMAN. Thank you.

I understand that the consortium, The Hague Alliance, has prepared standards based on the requirements of The Hague Convention. Has HHS started to review these standards? Since HHS will

be involved with drafting regulations for the accreditation process, can you give us an idea of how complete these standards are?

I'm looking for some estimate of how much work is left to be done in drafting regulations with respect to the accreditation process: 6 months, 2 weeks? What is your estimate?

Ms. MONTOYA. Mr. Chairman, I have to say that we have not fully focused on the pieces that have already been pulled together. We are aware of them, and they definitely would provide a base from which we would start, which would definitely increase our efficiency in being able to move along in moving through the process.

Chairman GILMAN. Thank you.

Mr. Smith of New Jersey will take over.

Mr. SMITH. [Presiding.] Good morning.

First of all, I want to thank you for your testimony. I think this is, again, one of those issues where we can all join together and work on what will be a mutually satisfying outcome.

I have read The Hague Convention and was very touched by its repeated insistence of the best interests of the child language, and I think it clearly does that, and hopefully it will be implemented faithfully by the many countries.

I do have a couple of questions I would just like to pose, the first being that the American Bar Association proposes that there should be a requirement for a nationwide criminal background check for foreign persons adopting American children.

I was wondering if you could tell us what your thoughts were on that.

Ms. RYAN. Yes, Congressman. Thank you.

I said earlier that I share the ABA's concern. We certainly want to make sure that American children who are adopted by foreign couples or foreign people are protected and are not being taken abroad for criminal purposes.

I just do not know how we could do it, because a lot of countries' criminal records are not as complete or perhaps not as honest as ours. I do not know how we would do it. I share the concern. I understand the concern, and it is something that we are worried about as well. But making it work is something that I think will need a lot of time and consideration, and also I am not so sure that we will get honest answers, perhaps, from criminal records checks in some countries.

Mr. SMITH. Do you have a sense as to how it might be——

Ms. RYAN. No, sir, Congressman.

Mr. SMITH. Is it something under review by yourselves——

Ms. RYAN. We will certainly look at it. We will talk to the American Bar Association to see what ideas they might have. But we are talking about people from any number of countries, not just Hague countries or countries that have signed onto The Hague Convention on Intercountry Adoption, but any number of countries where people may wish to adopt children and may wish to adopt American children.

It is a concern. It is certainly a very legitimate concern and one that we share. We would just have to figure out how we might do the criminal checks.

Mr. SMITH. I look forward, as that evolves, to have a dialogue with you. I think criminal checks, whether it be for teachers or for

those who are in proximity to children, certainly have been in ascendancy with the explosion of pedophilia and other kinds of misdeeds.

Ms. RYAN. Absolutely. It is the same worry that we have.

Mr. SMITH. Let me just flip that. Do you think that background checks ought to be applied to American parents who are adopting overseas children?

Ms. RYAN. As I understand it, the American parents go through a very thorough home study and review by the adoption agencies, so I think that children who are being adopted by American parents are protected well by the mechanisms that are in place currently.

Mr. SMITH. Is that something that you could at least take a look at, because it has been my observation that some home studies are extraordinarily well done. Others are less than adequate. It all depends on the agency, and it depends on how aggressive the individual might be.

It would seem to me, just like we do, and I fully support it, it may seem like a stretch, but like background checks for handguns just to make sure that there is no record, there is no criminality involved with the person or any kind of mental problems, it seems to me when you are thinking of the best interests of the child, it would be in the best interests of that child that we go the extra mile to ensure, because there have been problems, as we all know, with adoption.

I take second place to no one in supporting adoption. I believe it is one of the greatest ways of building a family on the face of the Earth, and for helping the child and parent, as well as birth mother complete something that is very good.

Mr. SMITH. Let me just ask you, do international adoptions compete with adoptions out of foster care?

Ms. RYAN. What we have seen with international adoptions, Congressman, is that people who are adopting internationally are looking for infants or very, very young children. Somewhere over 89 percent of the children who are adopted from overseas are under the age of three or four or something like that, whereas children in the United States are older. Also, American children who are in foster care often have special needs, and parents seeking children from abroad are seeking children who have only, perhaps if they have any special needs, very minor special needs. So I don't think that there is a real competition between American children in foster care and children from abroad.

Mr. SMITH. Let me just ask you, in terms of when there is a disruption in the adoption case, I know I have worked on a number in Russia with my own constituents. We have also, my staff and I, and I have actually gone to Romania when Ceaucescu failed to work on a number of adoption cases that were pending, and very often those kids get lost in the bureaucratic tangle.

What is your sense as to what happens when there is a disruption? Do you think The Hague Convention will help mitigate those disruptions?

Ms. RYAN. Yes, I think The Hague Convention will mitigate the disruption. First, it will assure that the child is really adoptable before the case can go forward. Second, there is a provision for very

stringent release of medical information, and we will have a panel of physicians on contract, as we do now, to us for the medical exams, and those doctors will sit down with the parents and go over any medical problems that the child might have to make the parents aware and understand what they may be confronting in the future with a child who may have, separation anxiety or any of the problems that we see in children who have been in orphanages in Eastern Europe certainly for any length of time.

So I think that the protections are enhanced even by The Hague Convention on Intercountry Adoption over and above what we are trying to do now with the way we do it currently.

Mr. SMITH. Mr. Ballenger.

Mr. BALLENGER. Thank you, Mr. Chairman.

Ms. Ambassador, if I may, let me throw out a personal experience that has occurred in an adoption situation in Vietnam because of a cousin of mine who happens to be on TV and the lady who is the producer of Seventh Heaven, that TV program, you may or may not have seen it, but anyhow she was having all this trouble. There was a young girl—she went to Vietnam with the intent of adopting a young lady. I think she was 6 years old. She met the young lady. She did everything, filled out all the paperwork, came back to this country, and nothing happened. So she went back to Vietnam and she ran into a stone wall. She didn't know what it was that was causing all the difficulty, but there was nothing she could do. She somehow would not be allowed to adopt this child.

So by this time the child had gotten to be 8 years old and she was still trying—she spent close to a hundred thousand dollars in an effort to somehow make the arrangements to bring this child back to this country. She went to the star of the program. He happened to be my cousin. He said why don't you get in touch with Cass Ballenger in Congress.

So this lady got in touch with me and my wife, and we got to work on the thing and I would say in a period of 6 months with an effort on our part to somehow ease this whole difficulty that was going on, eventually we got an Ambassador there. It turns out the embassy itself, without an Ambassador, was one of the reasons—there were people actually in the embassy somehow not wanting children to be adopted and brought to the United States. Anyhow, the Ambassador worked out and straightened the whole thing out and we got her to this country.

But the difficulty—here is a lady that was perfectly qualified as far as I could tell. She now has the daughter. They are all getting along fine, and we get pictures and all this other stuff about the child, but my understanding is in this situation now for adopting children, is anybody in our government overseas responsible for the adoption of children?

Ms. RYAN. Yes, sir. In every consular section in every embassy and consulate, that is one of the things that we do is to assist parents to adopt foreign children. There is, however, a considerable amount of fraud involved in this. There is in some countries the buying and selling of children, and I don't know the particular case that refers to. It sounds as if that woman went through more than she really should have had to experience, and so I apologize to you and to her for that. But it is possible that there was some suspicion

on the part of the consular officer that there was something wrong with the adoption proceeding, that the child was not really an orphan, that the child might have been taken from a birth mother against the birth mother's will. I don't know, but those are the kinds of considerations that come into play sometimes in some countries on adoption, and I think that The Hague Convention will ameliorate those problems because the child will be identified early on as being adoptable and also being able to come into this country, and so there shouldn't be any further problem like that.

It is one of the most satisfying things that we do as consular officers, is to issue an immigrant visa to a child who is being adopted by American parents. I find that frankly, sir, one of the most moving and one of the most rewarding things that we do as consular officers, and so I apologize for the delay and the problem that that woman had.

Mr. BALLENGER. I haven't had the same difficulty in Honduras, where it turns out the Honduran government is well organized as far as helping friends, that we just happen to be very involved in Honduras.

But let me ask you a question. If the State Department and the embassy and the consular people are the ones that are doing the job now, what changes would our bill do to that? Since they are the ones on the ground, how could somebody else do it?

Ms. RYAN. It wouldn't change that. They would still continue to do it, but what it would do is to ensure that the child is in fact adoptable as the process begins instead of having a couple or a parent, would-be parent going to a country, finding a child that they bond with and that they want and then coming in to us and finding that there is some problem with the fact that the child is not really an orphan or that the child has been taken from a birth mother. Those kinds of things are what happens. That is what we are trying to get at with this Hague Convention, to eliminate that, to ease that terrible sorrow that people have if they have found a child that they think of as their own, that they desperately want, and then we are the ones to tell them that, no, the child is not adoptable because the child is really not an orphan or the surviving parent has not agreed to allow the child to be taken abroad.

All of those kinds of considerations come into play, and that is what we don't want.

Mr. BALLENGER. Who would then be responsible to get that information?

Ms. RYAN. That would be done under The Hague Convention and part of the whole process as the agencies are accredited, as the American parents come to those agencies and want to adopt in a Hague country, then the whole process begins way in advance of their going to the country and finding a child on their own.

Mr. BALLENGER. But would we have to build a whole new system?

Ms. RYAN. No, sir. It would be all part of it. We can do it with what we have in place now.

Mr. BALLENGER. I sure hope—like I say, I had excellent working relations in Honduras as far as helping people get to the right people and get the adoptions done, but I have never had any problem as great as the one we had in Vietnam, and I think if we had not

had—the Ambassador finally came and he used to be a Congressman, so I knew him. If it hadn't been that situation, I don't think we would have ever been able to do it, namely, because somebody in our embassy there was against having this child adopted. I don't understand it.

Ms. RYAN. I don't understand that, and I will be happy to look into it.

Mr. BALLENGER. Just pose that problem to that embassy and say, the Congressman asked why did we have so much trouble.

Ms. RYAN. I will.

Mr. BALLENGER. Thank you, sir.

Mr. SMITH. Thank you, Mr. Ballenger.

Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman. I want to use this opportunity to ask the Ambassador about a situation in Costa Rica where both American and Costa Rican courts have awarded custody to the American father, and yet the law enforcement authorities in Costa Rica seem not to be following the dictates of either court. Have you had similar problems in Costa Rica? I realize this relates more to the custody issue, which you face, but it is not the exact purpose of these hearings here today, but I would like you to address that.

Ms. RYAN. Yes, sir, we have had difficulty with Costa Rica over the return of children. Even when the courts have determined that the custody should go to the American parent, we have not been able to get the legal mechanism to kick in that will deliver the child to the American parent. It is one of the problems that we are dealing with with The Hague Convention on International Child Abduction. It indicates to us that that convention is not working the way we believe that it should work, and we are going around to all these countries where this kind of thing happens to try to get them to understand what their obligations are under The Hague Convention on International Child Abduction and working particularly with Costa Rica because Costa Rica I think is on the verge of signing that Convention, if they have not already done so. But Costa Rica has been one of the more difficult countries.

There are any number of cases like that. I don't know the one particularly you are speaking of, but we have had very great difficulty. We are going to hold a conference in this country next year with countries like Costa Rica that are not, in our minds, fulfilling their obligations under the treaty, first for us to try to understand what the problems that that country confronts are, and also to get them to understand how we see and how we believe The Hague Convention actually is and to get them to fulfill their obligations under the law.

Mr. SHERMAN. Ambassador, my concern is that while you would be working very hard on these issues, and I admire your efforts, that this is somehow a stepchild literally in the State Department. We have had the Administration recommend that Costa Rica be eligible for special treatment under CBI, the Caribbean Basin Initiative. Before that decision was reached, was there any consultation with you as to whether Costa Rica or any of the other countries were adhering to international standards with regard to child ab-

duction or do we just not care about child abduction when we pass out tremendous economic benefits?

Ms. RYAN. Sir, child abduction, at least as far as my bureau is concerned, the Bureau of Consular Affairs and the Office of Children's Issues within that bureau, that issue is not a stepchild for us. That is center.

Mr. SHERMAN. I know it is very important for your Department, but is your whole Department a stepchild when it comes to things that are important to Costa Rica's economy, such as the Caribbean Basin Initiative? Were you consulted before the Administration proposed including Costa Rica in the Caribbean Basin Initiative?

Ms. RYAN. No, sir, I don't believe we were directly consulted.

Mr. SHERMAN. I don't think children are going to be protected until your Department is consulted before we award important benefits in the diplomatic and economic sphere, and I look forward to you being consulted on more of the big headline trade and international agreements.

Thank you, Mr. Chairman.

Mr. SMITH. Dr. Cooksey.

Mr. COOKSEY. Thank you, Mr. Chairman. We appreciate your being here to testify today, Ms. Ryan. Let me ask you, what are the major obstacles to implementing this Hague Convention as you see them today?

Ms. RYAN. I don't see any real obstacles. If the Congress ratifies the treaty, I don't see any problems with our ability to carry out the provisions of the Convention, sir.

Mr. COOKSEY. Do you feel comfortable with the way it is written? Do you feel that most of the potential problem areas are anticipated and solved with the Convention as it is written today?

Ms. RYAN. Yes, sir, I do.

Mr. COOKSEY. Let me ask you this, in this country I know Americans that have tried to adopt American children, and they end up putting a lot of money into the system and spending a lot of time and going through a lot of frustration, and quite frankly, it seems that a lot of it goes to lawyers and legal fees and so forth. How much of the problem with adopting children from other countries, international children, is related to problems with the, say, the legal profession, or people that are involved in the process on this end of the adoption process? Some of the obstacles that are involved in adopting American children by Americans, do they exist with Americans adopting international children?

Ms. RYAN. The process is a very, I think a very trying one for the parents who want to adopt a child, because they have gone through so much perhaps trying to have their own children and not being able to and perhaps trying other adoptions that might have failed, and so it is a very time consuming and very emotional process. I am quite sure that nobody is trying to make it more difficult for people who want to adopt children, but there are certain things that they must, the parents, that is, some certain standards that they must meet, the home study, finding a reputable adoption agency, working with perhaps a lawyer in the foreign country to ensure that the child is legally adoptable. In some cases, unfortunately, and in some countries, some of these lawyers are not reputable and are actually trading in children, which makes it that

much more difficult for the parents who go into this in all good faith.

I am not sure that I really understand your question, but I don't think that it is any more difficult for parents adopting abroad except getting and understanding the culture and some of the problems that the child may have faced in the early part of his or her life. We have seen all of these stories about children in Eastern Europe, some perhaps even in China, where they are institutionalized and where the staff is not sufficiently large enough to give them the attention that they need as small children, as babies, and so what difficulties they may have as a result of that as they are growing up, all of those kinds of considerations come into play I think more so overseas than in the United States.

Mr. COOKSEY. Good. Thank you. Another quick question, has the INS been able to work in a relatively efficient manner, expeditious manner in accomplishing these? Are they a problem and obstacle in this area?

Ms. RYAN. No, sir. We work very closely with the INS on adoption issues, and I think that they have been very responsive and very responsible.

Mr. COOKSEY. Good. Thank you.

Thank you, Mr. Chairman.

Mr. BRADY. [Presiding.] The Chair recognizes Mr. Burr.

Mr. BURR. I thank the Chairman. The great thing about this is that even with competing bills, we are all headed to the same end.

It is unfortunate that, in my particular case, I look at it one way, many on the Committee and in the House look at it a little bit differently, but I also try to take into consideration the scope of my involvement with HHS on the Commerce Committee and a better understanding of the scope in total of what is before HHS.

Let me ask you, Commissioner Montoya, you highlighted in your statement under the accreditation experience because HHS has extensive experience in adoption. Tell me what extensive—or experience HHS has in international adoption today.

Ms. MONTOYA. Congressman, that is not an area that HHS has been involved in per se because what happens is parents decide to adopt and will usually go either directly or through an a private agency to adopt a child internationally. So, at this point in time, we have not had involvement with international adoption.

Mr. BURR. International child smuggling?

Ms. MONTOYA. No, sir.

Mr. BURR. Any experience there? International child abduction?

Ms. MONTOYA. No, sir.

Mr. BURR. How about the State Department, Ambassador Ryan, experience?

Ms. RYAN. Yes, Congressman, we do have experience in international adoption, and we do unfortunately have experience with international child abduction.

Mr. BURR. If, take for a minute that the bill were passed and HHS were given the responsibility for accreditation, State Department would continue to facilitate their role on the ground of helping the adoption process work smoothly. Who would be responsible for oversight of the accredited companies?

Ms. MONTOYA. Congressman, that would fall to HHS.

Mr. BURR. So HHS would accredit these agencies, they would have oversight of the agencies, and the State would be the one that worked intensely on the movement of children from countries to families?

Ms. RYAN. Right.

Mr. BURR. So given that you would have the oversight responsibilities then, how would you know whether it is working? Would you be relying on what information State supplied for you?

Ms. MONTOYA. No, Congressman. What would happen under this accreditation process is that we would designate one or more accreditation entities that have the experience and have been working in this area of accreditation in the area of adoptions.

Mr. BURR. But wouldn't you have oversight responsibility over that agency that you accredit?

Ms. MONTOYA. Right.

Mr. BURR. How would you know if they are doing their job? How would you know if they are doing a good job?

Ms. MONTOYA. What we would do to support our oversight responsibility is to have things put into our contracts with them that indicate reporting mechanisms, so that they would let us know what they are doing. There might also be an on-site visit and frequent discussion with them, those types of things. It is not something we could contract out and then just forget about.

Mr. BURR. No, but I think it is real important to determine up front as we talk about what the appropriate agency is to look at who ultimately has oversight responsibilities on the function of adoption, and I would contend to you that we will be relying on the State Department to facilitate these intercountry adoptions, and in fact, there is no one better to know how the process is working than the State Department officials who are on the ground. Given that I believe both of you would go through the same process of choosing an agency for accreditation, when we look further down the line and look at oversight, clearly I think the State Department is in a better position to determine whether the functions are happening like they were designed to, whether we have a problem with accredited agencies. HHS is going to be relying on the reports that the accredited agencies are going to turn back in to HHS, the same reports that I question often whether anybody reads in other parts of HHS.

Ms. MONTOYA. Congressman, the other piece, though, is that, as was mentioned, that currently the State Department is involved with the international adoptions, but HHS has the experience and has the responsibility for child welfare and adoption. So from that perspective we have been working in this area and have the expertise already in place as we move ahead to start working on pooling together the information of the standards for accreditation and in moving ahead with the regulation that would have to be promulgated.

Mr. BURR. Mr. Chairman, I would ask unanimous consent for two additional minutes.

Chairman GILMAN. [Presiding.] Without objection.

Mr. BURR. So HHS has a wealth of knowledge about how to set up the criteria for accreditation, is that what you are saying?

Ms. MONTOYA. We have the experience having that responsibility in this country, yes, sir.

Mr. BURR. Is there any reason that that wealth of knowledge couldn't be shared with the State Department and let them still be the accrediting agency and department and be responsible for oversight?

Ms. MONTOYA. Sir, what would then have to happen is that there would have to be an additional step, actually, because then they would have to be coming to us for that experience and expertise.

Ms. RYAN. If I might, Congressman, that is the opportunity cost, because we would have to learn how to do it, and it would take us a while to learn how to do it, whereas HHS already knows how to do this, and they have the network in place already because they are already accrediting, and we have never had a domestic responsibility because we are a foreign affairs agency, and so, yes, certainly we can do it, we will be able to do it, but it will take us much longer to get started doing it and getting it up and running the way it would work in HHS from the start. So I think that we conceivably are disadvantaging American citizens who are anxious to adopt children internationally.

Mr. BURR. Let me suggest to you, Ambassador, that in fact we are not here talking about domestic adoption, that we are here talking about international adoption, and when you weigh it, the experience for international experiences lies in the State Department. Yes, I believe that HHS has some statistical information that might lead one to set up the guidelines for accreditation. I don't think that is too tough to share, too long to learn, too tough to work hand in hand with, but the question is who ultimately is responsible to make sure that the program runs correctly, the person closest to it, the agency closest to it, the one who actually has individuals around the world who face those real people who are trying to place children in homes or the individuals in Washington who have all the statistics but aren't there to see the real life.

This is clearly a fundamental difference. I shared it with the Chairman at the beginning, and I shared it with my good friend Mr. Delahunt, even though he and I are on totally different ends. If everything worked perfect at HHS, I might be one that looked at it and said, gosh, here is a great way to expand. My fear is that with the experience, we are 3 years away from HHS running the adoption process domestically. I think that is a very dangerous thing that I want to make sure stays in the hands of the States for the most part where they have that jurisdiction today.

I want to thank the Committee and the witnesses for their willingness, and I would yield back.

Chairman GILMAN. Thank you, Mr. Burr.

Mr. Delahunt.

Mr. DELAHUNT. Yes. Thank you, Mr. Chairman. I will just take a minute, and I am pleased to hear that my friend and colleague from North Carolina has implicitly endorsed the high quality of the Department of State. I hope you have taken note of that.

Ms. RYAN. I did take notice.

Mr. DELAHUNT. Please convey it to the Secretary. She will be very happy to hear that. But my question seriously is to the Commissioner. I think it is important for Members of the Committee to

hear how you currently go about the accreditation process. If you could just give us a minute overview in terms of what the process is that you currently execute of accreditation and how that would carry over into the international area.

Ms. MONTOYA. Yes, Congressman. What we look at when we are looking at the whole accreditation process is that we are setting the standards or the bar for good social work practice, and that there is good ethical practice in what is being done, and so what has happened is we have set up the guidelines for that and then contract with agencies out there that have actually had the experience of doing accreditation, and then they are the ones that are actually pursuing it.

Mr. DELAHUNT. In other words, you set the standards and then you contract out and the agencies that you contract with ensure that there is compliance with the standards that have been promulgated by HHS?

Ms. MONTOYA. Yes.

Mr. DELAHUNT. Presumably your oversight and your monitoring is in continuing consultation with the contractees.

Ms. MONTOYA. Congressman, excuse me, let me actually backtrack on that. Actually, we are not doing current actual accreditation in the adoption area right now. The Department has experience in other arenas with accreditation, but we are not actually accrediting adoption agencies. So, excuse me, I misspoke in that area.

Mr. BURR. Would the gentleman yield?

Mr. DELAHUNT. I would be happy to yield.

Mr. BURR. Let me go back to an area you and I just discussed then. What experience, as stated in your opening statement, do you then bring to the accreditation of adoptions?

Ms. MONTOYA. Congressman, what ACF and what HHS brings to this is that we have had the responsibility for child welfare and adoption and the experience in dealing with the child's well-being in this country. So, again, all the experience that we have had in working with issues of children and families, particularly those involving children in the child welfare system, is the experience that we bring. It is that understanding and then also then having had the experience of dealing with accreditation through other parts of our Department.

Mr. BURR. I think Ambassador Ryan was concerned with the State's curve up in education of learning this, and in fact, with the exception of accrediting other areas, HHS doesn't have experience with accreditation currently of adoption, do they? You start at the same point, am I correct?

Ms. RYAN. Sir, we have no experience whatsoever with accrediting anyone in any way. I don't think we are really starting at the same point. HHS does have accrediting responsibilities, if not in the adoption field, in the health field, and so they have the experience. They know how to do it. We don't. We would have to learn how to do this.

Mr. BURR. But you do know how to facilitate children being adopted and actually moving through the process, which I would tell you is a much greater experience that I would look for in the process. I want to go back, and then, Mr. Chairman, I will yield back the balance of my time.

Mr. Delahunt hit on a very important thing and that is the process, that you are going to rely on an agency to do the accreditation, to be responsible, to make sure that everything is done like it is supposed to meet the standards, the guidelines that HHS has set. Who is responsible to know whether adoptions are taking place? There is a big difference between does the system work and are we adhering to the rules and the regulations that we design. Who is responsible for that under the HHS model?

Ms. MONTOYA. Under the HHS model you are talking about for U.S. adoptions or international—you are talking about U.S.?

Mr. BURR. I am talking about intercountry. You are going to find a company that you are going to license with a credit, you are going to give them the standards, the rules, the regulations. You are going to say, it is your job to make this happen and to make sure that everybody is compliant, right? That is what you said to Mr. Delahunt.

Ms. MONTOYA. Yes, sir.

Mr. BURR. Whose concern is it as to whether adoptions are taking place?

Ms. MONTOYA. I would believe that the way the bill is currently written, HHS only has the role of the accreditation and not actually dealing with the individual adoption process.

Mr. BURR. The answer is nobody?

Ms. MONTOYA. I would defer to the State Department.

Ms. RYAN. We have an analogy I think, Congressman, on refugees and refugee programs, where we do the international part of that refugee work and HHS does the domestic services for refugees who come to this country. So I think that the sharing of responsibilities already exists, and we have over the past 2 years of working on The Hague Convention and the implementing legislation, developed a very effective working relationship with HHS, and I think that they are better equipped to do this work.

We would continue, obviously, to do the work that we do on actually issuing the visas to the adopted children and having the children come to the United States, but the accrediting of the agencies, I think, is better in the hands of a domestic agency than an international agency.

Chairman GILMAN. Gentleman's time has expired.

Mr. Brady.

Mr. BURR. Don't understate your experience and your good work. I thank the Chair.

Chairman GILMAN. Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman. I appreciate your leadership on this issue. I appreciate the hard work that has been done to try to meet our commitments and implement The Hague Convention on Intercountry Adoption, and I want to be a help in this process.

I have a couple of concerns that I hope can be addressed, and it comes from the standpoint that I want to encourage more of these intercountry adoptions. I want to make sure that parents get it done right, that the adoption is permanent, and that it is strengthened through the process. My own experience is very limited, serving on the state legislative committee dealing with adoptions, being an adoptive parent myself. My wife and I also chose to begin an

international adoption. So we have done the homework and met with about 50 couples that have adopted internationally.

So my concerns are these. Anytime we certify in the effort to illuminate abuses, it is tempting to create a process that tends to set a barrier to access, where only some agencies can meet certification. While small practitioners, faith-based organizations who do it as part of their missionary work, for example, are driven out of the process, and I know at the State level in almost every instance where we have really taken a hard look at adoption, we found that the number of the drivers of the cost have been ourselves. In our efforts to try to make sure every adoption is perfect, we find we also have driven a lot of very good families out of the adoption process.

So here are some thoughts. First, I think State Department has far too much on its plate as it is. We need more resources for you in other areas. I have not had as much experience with HHS, but it makes sense that you play the key role here. I am concerned that we don't have enough accrediting entities in this legislation. There were some 15,000 adoptions last year. I am sure it is rising. Five does not seem adequate, because the worst thing in the world would be to have a date certain for the implementation of this to have agencies who have good track records and parents who have been waiting 2 or 3 years who have children they are ready to adopt and because we don't have enough accrediting agencies out there and working, that that adoption might be held off for that family or an agency just may not be able to get through the funnel in time. I think we need to have as many accrediting agencies as needed to implement by the date certain the time this goes into effect.

I am concerned that the paperwork and the standards are either redundant or will drive up the costs in different ways, and again, choosing an international adoption process ourselves, we found a good agency after a long search. It cost about $20,000 to start the process, but since then we have also met couples who have had success through smaller, private practitioners or faith-based organizations where a local church, as part of their missionary work, once or twice a year have a child who needs adoption, and they arrange it and they are much more affordable because, obviously, it is ancillary to their work. But they have good relationships and make it work at a much smaller fee, and my concern is we will drive them out of doing good work because of the burdensome paperwork and accreditation process.

The registry to me does not seem to be necessary. I think while it is important to know—back to accreditation, as we know from licensing doctors, attorneys and other professionals, accreditation and licensing itself doesn't guarantee a quality practitioner. What is more needed I think for families looking to adopt is, in effect, a credit bureau for international adoption agencies where we can look at the experience of those agencies, where we can find out from real people who have been part of it, rather than a registry that, even though it starts out confidential, we know ultimately will be public. I think we would do better to focus on providing more information, more knowledge to potential parents rather than creating a higher bar or more costly bar that doesn't provide us

with the type of quality information the parents need when choosing that adoptive agency.

My other concern, is on those who were looking to adopt outside of America, it seems to me that the requirements of the 12-month waiting period are absolutely unnecessary. I think requiring a married couple to be the ones adopting on the other end misses a whole group of people. After my dad died, my mom raised five of us by herself. Now, if she moved to Ireland, agreed to adopt a child from here, a friend of somewhere, I can't imagine someone saying she is not a qualified parent, and I think there are a lot of very good families out there that don't happen, in this case, widowed or single or whatever the situation is, I think would be very good—I think best interest of the child ought to be the standard we use. I don't know what problem we are really trying to solve there from my standpoint.

So I will stop at this point to just say I am concerned that we are going to drive up costs, drive out opportunities and people, especially the small practitioners, and we are going to discourage rather than encourage adoptions, and because I know, knowing Chairman Gilman and the approach he takes, this is so important. We want to do it right. I would like to be part of the process to make sure whatever we do implement ultimately helps rather than harms.

Ms. RYAN. Yes, Congressman, that is exactly what we want, too. We share your concern on the 12-month waiting period, because if we instituted it here for American children to be adopted abroad, other countries will do that and that will disadvantage American parents who want to adopt a child, and on the other point that you made, which was——

Mr. BRADY. Accreditation.

Ms. RYAN. On the accreditation, I can't speak to. The Commissioner can speak to that, but there was one other point.

Mr. BRADY. Cost.

Ms. RYAN. The whole purpose of The Hague Convention is not to make it more difficult for people, single parents. That is what you were talking about. We also think that all the 50 States allow a single person to adopt children, and we would not want to see any change in that. We think that the States should be able to determine who adopts, and we also think that single parents should be able to adopt if they pass all the background investigations and all of that.

Mr. BRADY. Do we have anything in this legislation dealing with age, because I have found that some countries are real restrictive on age, and being an old father myself, we discovered that we weren't eligible for a number of countries in looking at adopting, and while at times I feel old, I think we provide a pretty good family for children. The concern is not to get into a reciprocity, but is there a way, and again, to encourage more adoptions here, is there a way to encourage more countries to lift what may be old fashioned or outdated age limits on adoption?

Ms. RYAN. We have tried, and we continue to try to do that by discussing with those countries our concerns about age limits, and many countries tell us that they are looking to see what we do with The Hague Convention, and so they will follow our lead, and that

will be one of the points that we will use with them to see if they really are sincere in following our lead because we don't have any restrictions like that in your legislation, or in the Administration's proposal. So if that passes as written, that is what we will be talking with them about, trying to get them to do exactly what we have done.

Chairman GILMAN. Gentleman's time has expired. Thank you, Mr. Brady.

Mr. Gejdenson.

Mr. GEJDENSON. Thank you very much. Just a few brief questions. I met some constituents yesterday, or the day before yesterday. One of the things they said was important was to have a mandatory disclosure of all fees involved in the adoption process so that those fees were made public. They worried obviously that we were creating additional layers of bureaucracy. They worried that the present process, oftentimes after you adopt there is a nightmare to get the visa for the child you just adopted into the country. Beyond that, they said that, in some States, they have had—obviously this is not your issue—trouble changing their child's name to the parent's name. They also said that it is a complicated system to make them citizens. What they were suggesting is that there ought to be a process by which, once you adopt a child, if you are an American citizen, they ought to become citizens automatically.

One of the things they said is that some people in the State Department were worried that parents could change their mind and then leave the child and then there would be an American child behind. I thought that the easy fix there would be that you could simply say that within 6 months of returning to the United States with an adopted child the process be automatic. So parents don't forget and Congress passes some crazy laws that say if you end up on welfare for a weekend we throw you out of the country, and 30 years later somebody is getting energy assistance and being deported because their parents forgot to make them citizens.

So do you have any problem with having some provision in the legislation—we may have to do this through another Committee—that would make citizenship automatic over, say, a short period of time?

Ms. RYAN. Congressman, no, but it is the Immigration and Naturalization Service that does citizenship. There is a gentleman here, Mr. Cuddihy, who is prepared to talk on that if you so wish. I think that State Department would like to see that, as long as it doesn't disadvantage American citizen parents with natural children, as long as it doesn't make a distinction between kind of an automatic naturalization for an adopted child, but that if you were an American citizen recently naturalized, have a child abroad and can transmit, that your child also—it would be those kinds of considerations that we would want to see in any bill that might be developed, but I think Mr. Cuddihy is here if you would like to hear from him.

Mr. GEJDENSON. Love to hear from him.

Chairman GILMAN. Mr. Cuddihy, would you please identify yourself and your title.

Mr. CUDDIHY. My name is Joseph Cuddihy. I am with the Immigration and Naturalization Service, and I am currently working in

Washington, D.C., on a temporary assignment in the Office of Immigration Services Division, which has responsibility for the processing of numerous immigration applications, including applications for adoption.

We, too, share the panelists' concerns and interests in this entire process. We are very willing to work with members of the staff, Members of the Committee, to look at the process of naturalization as it occurs now, and to see where some activities can occur that would make the process more transparent. We know some of the concerns that are inherent in this, and anything that we can do along the line to assist in the naturalization and the citizenship process, we are very willing to meet and try to discuss and work out.

Mr. GEJDENSON. Do you have any problem with saying if you have two American citizens, they adopt a child from whatever country you pick, they come back to the United States, the adoption has gone through, the child is living with them now for 6 months, that it should be automatic that the child becomes a citizen, and if the parents fail to register or whatever they are still citizens?

Mr. CUDDIHY. We want to be careful to make sure that we look at all sides of the issues, particularly with the rights of the children and the parents' desires. I would be a little concerned with something of that nature that a parent might want, for whatever reason in his or her own mind, that child to keep the citizenship of their adoptive country, whether it be for cultural reasons or natural reasons, and for that reason, I think we would want to take those kinds of considerations.

Mr. GEJDENSON. Fine. So you could easily provide an option so they could choose whether to be binational, but I think the fear here is that parents come back very excited, they are focused on this child, not on the bureaucracy. They are American citizens. This child has been adopted. You wouldn't have any problem if, within the options that are presented to make sure that there is no legal hassle later, there is an automatic process that makes them a citizen?

Mr. CUDDIHY. We would have no objection to a process——

Mr. GEJDENSON. Providing they were given guarantees that they could keep binational citizenship and everything else?

Mr. CUDDIHY. That is correct, and we recognize the issues and the concerns that you have, that through some lack of an administrative process that has taken place someone ends up in a position where, in fact, they are subject to deportation laws of the United States.

Mr. GEJDENSON. Great. I think one of the examples was that a kid gets caught with some drug or something in college, and next thing you know they are being deported because somebody didn't file the right papers. It is a terrible thing, they ought to pay the penalty, but they should pay the penalty as any other American citizen would.

Mr. DELAHUNT. Mr. Gejdenson, may I just make a comment that when I adopted my daughter I think it was a 3-year wait before she could become a citizen, and I found that personally offensive, and there ought to be an option. I can appreciate these cir-

cumstances that you describe where it might be a choice by the parent to delay, for whatever reason, I can't really imagine, but it is my belief that once an adoption is finalized in this country, that that child should be a citizen.

Chairman GILMAN. Thank you, Mr. Delahunt, Mr. Gejdenson, and I want to thank our panelists for their patience, and for providing valuable input on this issue. We will now proceed to the next panel.

We welcome the five panelists who are here today from all over our Nation. First, Dr. Jerri Ann Jenista is testifying on behalf of the American Academy of Pediatrics, where she is the adoption representative of the Academy's Committee on Early Childhood Adoption and Dependent Care. She is also the Chairperson of the same committee for the Michigan state chapter, the Academy of Pediatrics. A practicing pediatrician in Ann Arbor, Michigan, Dr. Jenista specializes in infectious diseases, emergency medicine and in the medical care of adopted and immigrant children. She is the Editor of Adoption Medical News, a monthly newsletter for adoption and health care professionals on the medical issues of adopted children. Dr. Jenista is also one of the organizers of the Adoptmed Group, a coalition of 200 health care practitioners who are involved in the medical care of adopted children. Her current research is in the pre-adoption evaluation of medical records and the education of parents on the issues of children adopted from institutional care. Dr. Jenista is a single parent of five adopted children, three of whom have special needs, and she still has time to come to Washington to give us the benefit of her thinking. We thank you for being here.

Ms. Susan Freivalds is the Coordinator of The Hague Convention policy for the Joint Council on International Children Services, the oldest and largest affiliation of state-licensed not-for-profit child welfare agencies servicing children through intercountry adoptions. As the Coordinator, Ms. Freivalds has led the effort to assure workable implementation of The Hague Convention on Intercountry Adoption, including defining standards and procedures to accredit agencies to work in intercountry adoption. She was a Member of the U.S. delegation to the treaty negotiations at The Hague that produced The Hague Convention of interest to us today. She holds degrees from the University of California—Davis, and Georgetown University. She is also an adoptive parent.

The Committee also welcomes David Liederman, the President and CEO of the Council on Accreditation of Services for Families and Children. Founded in March 1977, COA is an international, not-for-profit standard setting accrediting agency. Mr. Liederman has a long career in child welfare. He most recently was the Executive Director of the Child Welfare League of America. He has been recognized for his years of service by numerous awards, such as the 1999 Award for Excellence in National Executive Leadership for the National Assembly and the 1997 National Lifetime Achievement Award for the National Association of Social Workers. He holds degrees from the University of Massachusetts in Amherst and the University of Pittsburgh. He has also served on the faculty of the Yeshiva University in New York and in Boston. We welcome Mr. Liederman.

I am pleased to welcome from New York, Mr. Sam Pitkowsky, a Vice President of the Adoptive Parents Committee. The Adoptive Parents Committee is a parent support group that provides education information to prospective adoptive parents and adoptive parents and has over 2,500 member families in the tri-state area. Mr. Pitkowsky is an adoptive parent of two children, and has been involved in the Adoptive Parents Committee for many years. We welcome your comments, Mr. Pitkowsky, on behalf of your membership and your personal experience. We welcome you to the panel.

We also welcome Ms. Kathleen Sacco of Connecticut. Ms. Sacco is an adoptee from Korea and has been good enough to join us today to provide her views as an adoptee and also from her professional experience as an adoption social worker for the Family and Children'S Agency. Her work has involved assisting and educating families adopting both domestically and internationally.

So we thank all of our experts who are part of this panel for taking time out of your busy schedules to be able to provide us and share with us your experiences.

Please proceed, Ms. Freivalds, and if you would summarize your statements. We will make your full statement part of the record since we are running out of time. Please proceed.

STATEMENT OF SUSAN FREIVALDS, HAGUE COORDINATOR, JOINT COUNCIL ON INTERNATIONAL CHILDREN'S SERVICES

Ms. FREIVALDS. Thank you, Mr. Chairman and Members of the Committee. We want to thank you for holding these hearings to explore how the United States might best implement The Hague Convention, and for giving me the opportunity to address you. I have submitted a prepared statement for the record and will be summarizing it in this oral presentation.

As you mentioned, I am the Hague Convention Policy Coordinator for the Joint Council on International Children Services. That is the Nation's oldest and largest affiliation of state-licensed, not-for-profit child welfare agencies that provide services to children through intercountry adoption. The Joint Council has 130 member agencies and provides services in an estimated three-quarters of all intercountry adoptions to the United States.

I was a Member of the U.S. delegation to the meetings at The Hague that prepared the Convention in 1992 and 1993, and I am also the lucky mother of a daughter adopted from Korea as an infant 24 years ago.

The Joint Council calls for U.S. ratification of The Hague Convention. We believe that the Convention provides many benefits and that its goals of cooperation and safeguards are not only laudable but also necessary to the continuation of intercountry adoption as a means to provide homeless children overseas with new, permanent, loving families.

The Joint Council supports enactment of legislation that will enable the United States to implement the Convention in a manner that will allow intercountry adoptions to proceed ethically and expeditiously. We feel that H.R. 2909 is such legislation, and we endorse its passage. We salute the authors for their hard work and spirit of compromise that has produced this bipartisan bill that the adoption community can embrace.

H.R. 2909 has been written with a minimalist approach to implementation of The Hague Convention. It rightfully addresses only the implementation of the Convention and does not attempt to impose any conditions or corrections of adoption law or practice that are not required by the Convention.

While Joint Council endorses H.R. 2909, I would like to comment on several of its provisions. First, it is always in the best interest of children that there be a large pool of prospective parents from which to choose the most appropriate ones for any child. H.R. 2909 rightfully does not place restrictions on appropriate adoptive parents. Specifically, single persons are a very important resource for children without families and Joint Council would oppose any legislation that limits their participation in intercountry adoption.

Additionally, H.R. 2909 appropriately exempts from accreditation or approval agencies or persons providing home study services only. This exemption will allow continued convenient access by prospective adoptive parents to home study services throughout the country. Quality control will be assured in most cases by the fact that an accredited body or an approved person will provide the balance of the adoption services.

Countries of origin are counting on those of us in the receiving countries to appropriately screen and prepare intercountry adoptive families. If we allow adoptions with no input from accredited bodies or approved persons then the Convention will have failed in its goal to protect children.

The mandate becomes clear when we remember that intercountry adoptions should be about finding families for children, not children for families.

Regarding accreditation and approval, some may argue that State licensure of agencies or persons would be sufficient. H.R. 2909 has rightfully determined that State licensure is not sufficient to assure compliance with the Convention, and to secure its protections.

The thoroughness of State licensing varies from State to State too much for it to be a meaningful national standard. Although it would be convenient and easier for Joint Council agencies to rely only on State licensure, after 6 years of deliberation we have determined that State licensure does not rise to the level of quality standard that is needed for high quality intercountry adoption services.

As part of its minimalist construct, H.R. 2909 has deferred to State law determinations concerning access to identifying information. In light of the evolving child welfare practices, Joint Council supports, at a minimum, access to identifying information that takes into account the needs of all parties. Joint Council historically has supported access to adoption records and provision to parents of all available information at time of placement.

A caution regarding these provisions in H.R. 2909 is that they not have the unintended consequence of restricting the provision to prospective adoptive parents of information for which no guarantee of privacy has been either sought or intended.

In a number of countries identifying information is routinely provided to adoptive parents, either because it is required for comple-

tion of the adoption or because the adoption authorities prefer that families have this information.

Thank you very much.

[The prepared statement of Ms. Freivalds appears in the appendix.]

Chairman GILMAN. Thank you.

Dr. Jenista.

STATEMENT OF DR. JERRI ANN JENISTA, AMERICAN ACADEMY OF PEDIATRICS

Dr. JENISTA. Mr. Chairman and Members of the Committee, thank you for the opportunity to testify.

Today I am representing the American Academy of Pediatrics, an organization of 55,000 primary care pediatricians and specialists dedicated to the health and safety of children.

I have submitted separate testimony from the Adopted group which is a coalition of adoption practitioners in the United States.

[The referenced material may be found in the appendix]

I have been involved in intercountry adoption since 1982, performing research, providing education to parents and other persons involved in adoption, and providing direct care for patients. In the last 3 years alone, I have provided preadoption medical review on more than 6,000 cases, and ongoing consultative medical care for approximately 300 to 500 new patients each year.

The Academy is concerned about the numbers of children being adopted from overseas who have significant medical and behavioral problems that are poorly understood before arrival in this country.

Over the past 10 years there has been a dramatic shift in the demographics of international adoption. In 1989, there were 8,000 adoptions with over half of the children coming from excellent foster care in Korea and Latin America. In 1998, the number of adoptions doubled, but only 20 percent of children came from foster care, with the remainder coming from orphanages of variable quality.

Fifteen years ago, the typical adopted child was from Korea, adequate information was provided to the family, the child was kept in experienced foster care, and after arrival in the adoptive home, most Korean children have done remarkably well, with only a few problems specific to intercountry adoption.

Today, however, the typical child comes from one of two regions. The first child is one from China. She is invariably abandoned by her birth family because of the one-child policy. There is no available medical information about the family or the child's care. The child will wait for an adoption in an orphanage. The family will receive little or no useful information about her health, and much of the written documentation will be unreliable or inadequate. She will arrive in the United States as a toddler with a more difficult adjustment.

After arrival, that child and her adoptive family immediately face issues of malnutrition, growth retardation, nutritional deficiencies, inadequate immunizations, and a markedly increased risk of many infectious diseases. For some children there are long-term challenges, including undiagnosed congenital defects and medical conditions, global developmental delays, and behavioral problems.

The second child is one from one of the nations formerly under Soviet control such as Russia, Ukraine, Kazakhstan, or Romania. An orphan from one of these countries may be relinquished by the birth family because of economic hardship, but more than 25 percent of the children offered for adoption are available because of an involuntary termination of parental rights because of significant abuse or neglect in the birth family.

The rates of prematurity, low birth weight, prenatal exposure to drugs, alcohol, and tobacco, to sexually transmitted diseases, such as HIV, hepatitis B and C, and syphilis, are at unprecedented high levels. The incidence of previous physical or sexual abuse, physical or mental disabilities, chronic medical conditions, are exactly the same in Russia as in children entering into foster care in California.

These children will live in regimented orphanage settings with inadequate stimulation. Medical care is practiced on a model unintelligible to Western practitioners, with unusual medical diagnoses and widespread use of potentially dangerous drugs. Scanty medical information provides bizarre terminology and may be falsified.

The child will not arrive into a home until he is a toddler or an older child. About 10 percent of these children will arrive to new adoptive families with a biologic or other unrelated sibling. The high-risk medical and social background, prolonged institutional living, and added stress of competing with another adopted child set up a situation fraught with difficult transitions.

After adoption, this child faces all the problems of the Chinese child and more. All studies of these previously institutionalized children have shown long-term developmental, cognitive, and behavioral issues that persist well into the school years and perhaps beyond. The degree of impairment is clearly related to the length of institutionalization. The longer the time the child is in an orphanage, the worse off he is.

In my own research, approximately 50 percent of children coming from orphanages referred to families today are considered at high or moderate risk of an irreparable medical, developmental, or emotional condition.

In summary, all children coming from institutional settings to the United States today should be considered to have special needs. Because of that, the American Academy of Pediatrics has four concerns about adoption practice today.

Our first concern is about the adequacy and availability of information released to prospective adoptive families. Currently, approximately 40 percent of records submitted to my office fall in the category of "unable to assess" because of inadequate information. Family expectations based on inadequate information and an unrealistic idea of who their child might become are reflected in a significant increase in the number of wrongful adoption suits against agencies and facilitators. The basis of these suits has been undiagnosed or should-have-been-foreseen medical and behavioral problems that were not disclosed to the family.

Second, we have concerns about the education and preparation of families about potential or medical or behavioral issues. Currently there is no requirement that families receive any information or education, or when no information is available, at least

about the circumstances of the child that they would be adopting. The extraordinarily high cost of intercountry adoption instills in families a high expectation for the health of the child.

The current new "entreperurial" types of agencies, some of whom are not the philanthropic or missionary institutions referred to by Mr. Brady, may not practice using accepted child welfare standards.

Third, we have concerns that agencies and adoption facilitators are not providing adequate services after the child arrives in the United States. An extreme example of an unprepared family would be the death of the Russian child in the hands of an adoptive mother in Colorado. If that family had received appropriate services, perhaps that situation would not have occurred.

Finally, we have concern about inadequate data on the outcomes of intercountry adoptions, since there is no mandated followup.

Our summary recommendations are in our written testimony, but in essence, we are most concerned that Health and Human Services should require accreditation standards for agencies and adoption facilitators that would require that appropriate information is obtained from orphanages about individual children and their conditions, that facilitators and agencies are not allowed to have families sign waivers absolving the agency of responsibility, that agencies should provide education for families, and that they should provide adequate time after referred information for families to consider those children; that agencies should be required to give families sufficient time after that information is received to process "who" this child is, that they should provide post-adoption services to families and make efforts to determine the well-being of the child after adoption.

A method of collection about the numbers and progress of international adoptees also should be founded.

In conclusion, it is important to reemphasize that we strongly believe that such adoptions are positive and desirable solutions for the placement of orphaned or abandoned children. The vast majority of intercountry adoptions are successful. However, our goal is to advocate for these children by trying to ensure that the adoption process is medically ethical and reasonable.

[The prepared statement of Dr. Jenista appears in the appendix.]

Chairman GILMAN. Thank you very much, Doctor. Thank you for your recommendations.

Mr. Liederman.

STATEMENT OF DAVID LIEDERMAN, PRESIDENT AND CEO, COUNCIL ON ACCREDITATION OF SERVICES FOR FAMILIES AND CHILDREN

Mr. LIEDERMAN. Thank you, Mr. Chairman. Thank you for all of your leadership over the years. We are appreciative of both your sponsorship and Mr. Gejdenson's sponsorship of this important legislation. Thank you.

To my friend from Massachusetts, Bill Delahunt, thank you for all your great work on this. We appreciate it. Bill and I were in the legislature together in Massachusetts. We thought that was the highest political calling, but then he decided Congress was a higher political calling.

Mr. DELAHUNT. It was, believe me, the highest political calling.

Mr. LIEDERMAN. I wanted to use my few minutes to talk about the accreditation provisions of the legislation and speak to that issue.

Let me first say a word about the Council on Accreditation, which I head. COA has been in business for 22 years. We accredit, or are in the process of accrediting 1,200 organizations in the United States that serve children and families. It is a well-developed system. It is a terrific system that accredits both public and private agencies.

For example, we are in the final stages of accrediting the Department of Children and Families in Illinois, the largest department serving children and families in our country. Illinois is also requiring that all of the private agencies that they contract with have to be accredited by the Council on Accreditation.

We are accrediting all of the 37 community mental health agencies in North Carolina. The entire mental health system in North Carolina is being accredited by the Council on Accreditation. The State of Kentucky is in the final stages of accrediting their system. Missouri has just applied to accredit their entire child welfare system. Ohio is accrediting their counties. Maryland is accrediting their counties.

So we believe accreditation is the way to go, and I think in the future every agency serving children and families in the United States, public and private, will have to be accredited. It will be the minimum requirement for serving vulnerable kids and families in the United States, as it should be. It is the bar that needs to be set if agencies are going to provide quality services to kids and families.

The question that I always ask people is, would anyone go to a hospital that was not accredited? No, of course not. Would anyone send their child to a university that was not accredited? No, of course not. Those are minimum standards.

As Mr. Brady pointed out, and I agree with him, there is no foolproof system in the United States. We have not come up with one yet. But the fact is that accreditation is the single best system that I know, having spent 35 years in this business. To ensure that there will be quality services for children and families who need our help.

The Council is sponsored and supported by 23 national organizations, including the Alliance for Children and Families, the Association of Jewish Family and Children's Agencies, Catholic Charities of the United States, the Child Welfare League of America, Lutheran Services of America, the Joint Council for International Children's Services, and the National Council for Adoption.

They are all national sponsors or supporters of the Council on Accreditation, which is an independent not-for-profit accrediting body with an independent board of directors. So the accreditation process has integrity to it.

It is a well-thought-through process which includes a self-study that is conducted by the agency themselves. Following the self-study, there is a site visit where we have trained 1,000 peer reviewers across the country who visit agencies to review their materials, to look at some of the issues that they have identified in their

self-study, and to score the agency according to the standards that we have developed.

The Council developed standards for international adoption in 1992. We revised those standards in 1997. Of the 1,200 agencies that we accredit, 226 are adoption agencies and 11 provide international adoption services. So we already have standards in place that speak to the issue of international adoption, and these standards are supported by the 20 organizations who make up The Hague Alliance, who participated in their development.

The standards speak to issues like legal regulatory compliance and service delivery. They also speak to human resource requirements and outcomes as well as quality assurance, all of the things that we would expect that an agency providing the highest quality services to kids and families.

We always have to ask ourselves the bottom line question: Are the services being provided by the agency services that we would want for ourselves, our own kids, our own families? I believe the way you get a yes to that question is through accreditation. I am very pleased that you have included the accreditation provision in this bill, and we look forward to working with you to implement it. We look forward to working with HHS and the Department of State to make sure that we have a terrific program that does well for our kids and families.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Liederman appears in the appendix.]

Chairman GILMAN. Thank you, Mr. Liederman.

I see we have a series of votes. That would mean a lengthy delay. What I am going to suggest, if Mr. Pitkowsky and Ms. Sacco would be very brief in their testimony, and we will submit written questions to the panelists, rather than have them have to stay around waiting for the votes to be concluded.

Mr. Pitkowsky.

STATEMENT OF SAM PITKOWSKY, ADOPTIVE PARENTS COMMITTEE OF NEW YORK

Mr. PITKOWSKY. Thank you, Mr. Chairman. My name is Sam Pitkowsky. I am the adoptive father of two internationally born daughters, Helen and Irene. I am Vice President of the Adoptive Parents Committee.

The Adoptive Parents Committee is a volunteer organization dedicated to promoting and improving all areas of adoption. APC is a non-profit, non-sectarian parents support group run solely by unpaid volunteers. APC is dedicated to a belief that every child deserves a secure, permanent, loving home.

APC was organized in 1955 by a group of people united by their adoption experience. APC currently has over 2,500 member families of married and single persuasion who are involved in intercountry adoption as well as independent adoption.

The Adoptive Parents Committee views The Hague Convention on Intercountry Adoption as a progressive step toward promoting adoption and protecting children, birth parents, and adoptive parents from unscrupulous adoption practices. The Convention ac-

knowledges adoption as a positive alternative for children whose biological parents are unable to care for them.

Fortunately, the Convention gives adoptees the same legal status as those who are born into families, confirming adoption as a legal process of merit.

APC supports these underlying principles that led to the drafting of the Convention. We support the ratification of the treaty, providing appropriate implementing language is enacted. Such implementing legislation should fully support the Convention in both spirit and practice, without placing undue burdens or obstructions on the adoption process.

Provisions that may result in delays to the adoption process or may prohibit qualified individuals from adopting would be contrary to the spirit and purpose of the Convention, and have no place in U.S.-implementing legislation.

We appreciate the efforts of this Committee and other Members of Congress to ensure that the legislation will benefit children and families.

In reviewing H.R. 2909, we saw several items that were in implementation that continues to support all avenues of adoption. S. 682 imposes an additional 12-month wait for U.S. citizens to be eligible for international adoptions, and limits adoption of U.S. children to married men and women. Not only would this be an obstruction to placement for U.S. children, but also may force reciprocal regulation by other countries which would inhibit certain U.S. citizens from adopting.

In contrast, H.R. 2909 promotes adoption by allowing children who are available for adoption to be eligible for international adoption. It also provides for both single and married persons to adopt, thus providing a larger pool of prospective adoptive parents for children who are waiting to be adopted.

We also applaud section 202 of H.R. 2909, which allows for the role of approved persons in providing adoption services. By making provisions for approval of persons as well as accreditation of agencies we would provide a broad base of adoption services for use by U.S. citizens to adopt.

Chairman GILMAN. If you would summarize your statement, we will put your full statement into the record.

Mr. PITKOWSKY. Yes, I will.

The main issues we would like to comment on are about consumer protections, that we would like to make sure that consumer protections are an issue that is here, and that the issues of wrongful adoptions are addressed; also, that the accreditation process allows small agencies to participate. We feel that this is a progressive step, and hope that these changes will allow for it.

[The prepared statement of Mr. Pitkowsky appears in the appendix.]

Chairman GILMAN. Thank you very much.

Ms. Sacco. Please summarize your statement. We may want to ask you a couple of questions before we leave.

STATEMENT OF KATHLEEN SACCO, ADOPTEE

Ms. SACCO. SURE.

I am an adoption social worker for Family and Children's Agency in Connecticut. My work includes assisting and educating families adopting internationally. However, my first experience in adoption occurred on Christmas Eve, 1976, when my sister Kristy and I arrived in this country from Korea to meet my awaiting parents. So I come before you today not only as a professional, but also as an international adoptee.

In my personal experience and as a professional social worker, I have come to know adoption as a process rife with paradoxes. Birth parents must grieve the loss of a child which, for a variety of reasons, they choose to relinquish. Adoptive parents choose to experience the abundant joy and uncertainty of building their families through adoption. The adopted child goes through life often experiencing bittersweet feelings of loss and abandonment, mixed with the security and comfort within their "forever families." As birth parents, adoptive parents, adoption agencies, and governments make life-transforming choices, the child is at the fate of these monumental decisions.

My career is based on a two-tiered set of values. The first value focuses on the needs of the adopted child and their need to have a voice in the adoption. Adoption agencies can often vary in their commitment to education and child advocacy. Mechanisms of accreditation will help ensure high uniform adoption standards to prevent abuse and exploitation of children.

The second value focuses on birth parents and adoptive parents who make difficult life decisions about adoption. Both birth families and adoptive families require more preparation and support. Education needs to begin as soon as families consider adopting. While adoptees must accept their lack of choices in their early life, there is no reason why families should enter adoption blindly. Areas of education should include loss issues, a child's identity questions, and medical concerns.

Post-placement support is also integral to a smooth adoption process. The story of my adoption did not end when my plane landed. Adoption is a life-long process that impacts both the adoptee and the adoptive parents. Agencies can serve as lifelong resources for families, offering such services as cultural information, counseling, and reunion support.

I sit before you as one example of both the successes and the lessons to be learned about intercountry adoption. The adult adoptee community can be a new voice for both adoptees and for ethical adoption practice. International adoptees can provide a unique perspective on what is truly a transcultural experience. We can learn immensely from listening to these pioneers in adoption.

An area of great importance to the adoptee community is the necessity to preserve our records and other information related to our adoptions. Adoptees have a need to better understand their beginnings. The choice to search and to have access to records is a powerful one for the community. In the paradox of adoption, the destiny of the child is changed irrevocably by the choices of others. Including a provision to access records in H.R. 2909 would respect the rights of adult adoptees to make decisions in regard to their birth histories. By having access to records, we as adoptees can provide a connection to our families past, as well as our own.

My husband Paul and I are expecting our first child this December. Once again, I see my life through the lens of adoption. I wonder about my medical history and how my adoption will affect my child. In our society, with its knowledge of the role of genetic history, adoptees and their families live in ignorance of their genetic legacies. I also know that my child will ask, as I have, about his or her own ethnic connection to Korea.

On our return trip from Korea, Paul and I escorted two babies to join their new families. Twenty-three years ago my sister and I were also carried off a plane into the waiting arms of my parents. As I was entrusted into the care of others, I was now helping to guide these two children through their journey of adoption. My life had truly come full circle. As an adoptee and an adoption professional, I have come to know the profound impact of the choices made by agencies and individuals. Ratification of The Hague Convention can serve as a vital framework in ensuring that these decisions are made prudently and that the needs of adoptees, birth parents, and adoptive parents can remain paramount.

[The prepared statement of Ms. Sacco appears in the appendix.]

Chairman GILMAN. Thank you very much. I regret that we are being cut short by the voting time.

Just one question, and then I am sure Mr. Delahunt has a question. How can we improve the medical information for adoptive parents? Who would like to speak?

Mr. PITKOWSKY. I would like to just say that we believe that it is the process that the agency should be responsible for providing medical information, because they are the ones that are more experienced and have the translators right there, rather than the adoptive parents going to try and find it.

Chairman GILMAN. Anyone else have a comment?

Mr. LIEDERMAN. One of the requirements in our standards requires that full disclosure of appropriate medical information be made, and that is a standard that has to be met by the agency.

Chairman GILMAN. Dr. Jenista.

Dr. JENISTA. It is not just disclosure of the information you already have, it is also an active effort to obtain information which exists, which is what is not being done currently.

Chairman GILMAN. Thank you very much.

Did you have a comment?

Ms. FREIVALDS. We agree with Dr. Jenista that there needs to be an active effort to get information, not just what is provided.

Chairman GILMAN. Thank you.

Mr. Delahunt.

Mr. DELAHUNT. The Chairman posed a question which I had intended to ask. I also want to apologize, we have less than 5 minutes for a vote. But your testimony was very important. We look forward to submitting questions.

In response to the testimony by Ms. Sacco, I have those same concerns that you articulated for my daughter in terms of her medical history and her desire at some point in her life to connect with her birth parents.

Chairman GILMAN. I regret that we only have 3 minutes to get to the Floor to vote. I want to thank our panelists for their time

and input. We may have some written questions that we will forward to you following this hearing.

[The prepared statement of American Academy of Adoption Attorneys appears in the appendix.]

[The prepared statement of the National Council of Birthmothers appears in the appendix.]

[The prepared statement of the Child Welfare League of America, Inc., appears in the appendix.]

Chairman GILMAN. The Committee stands adjourned.

[Whereupon, at 12:24 p.m., the Committee was adjourned.]

A P P E N D I X

October 20, 1999

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

FULL TEXT OF CONVENTION # 33

SCOPE OF THE CONVENTION | REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS | CENTRAL AUTHORITIES AND ACCREDITED BODIES | PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION | RECOGNITION AND EFFECTS OF THE ADOPTION | GENERAL PROVISIONS | FINAL CLAUSES

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

(Concluded 29 May 1993)

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that 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,

Recognizing 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 of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the

child and with respect for his or her fundamental rights as recognized in international law;

b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

(1) The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

(2) The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph *c*, have not been given before the child attains the age of eighteen years.

CHAPTER II – REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin –

a) have established that the child is adoptable;

b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;

c) have ensured that

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

(4) the consent of the mother, where required, has been given only after the birth of the child; and

d) have ensured, having regard to the age and degree of maturity of the child, that

(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,

(2) consideration has been given to the child's wishes and opinions,

(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and

(4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State –

a) have determined that the prospective adoptive parents are eligible and suited to adopt;

b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and

c) have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III – CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

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

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

(2) They shall take directly all appropriate measures to –

a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;

b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to –

a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

c) promote the development of adoption counselling and post-adoption services in their States;

d) provide each other with general evaluation reports about experience with intercountry adoption;

e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall –

a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV – PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

(2) It shall transmit the report to the Central Authority of the State of origin.

Article 16

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall –

a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

c) ensure that consents have been obtained in accordance with Article 4; and

d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if –

a) the Central Authority of that State has ensured that the prospective adoptive parents agree;

b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;

c) the Central Authorities of both States have agreed that the adoption may proceed; and

d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

(1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

(2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

(3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular –

a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

c) as a last resort, to arrange the return of the child, if his or her interests so require.

(2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

(1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who –

a) meet the requirements of integrity, professional competence, experience and accountability of that State; and

b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

(3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

(5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V – RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

(1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph *c)*, were given.

(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

(1) The recognition of an adoption includes recognition of

a) the legal parent-child relationship between the child and his or her adoptive parents;

b) parental responsibility of the adoptive parents for the child;

c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

(2) 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.

(3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27

(1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect –

a) if the law of the receiving State so permits; and

b) if the consents referred to in Article 4, sub-paragraphs *c* and *d*, have been or are given for the purpose of such an adoption.

(2) Article 23 applies to the decision converting the adoption.

CHAPTER VI – GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *a)* to *c)*, and Article 5, sub-paragraph *a)*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption 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 that State shall be construed as referring to the law in force in the relevant territorial unit;

c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;

d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption 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 38

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

Article 39

(1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII – FINAL CLAUSES

Article 43

(1) 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 Seventeenth Session and by the other States which participated in that Session.

(2) 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, depositary of the Convention.

Article 44

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b)* of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the 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.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

(2) Thereafter the Convention shall enter into force –

a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following –

a) the signatures, ratifications, acceptances and approvals referred to in Article 43;

b) the accessions and objections raised to accessions referred to in Article 44;

c) the date on which the Convention enters into force in accordance with Article 46;

d) the declarations and designations referred to in Articles 22, 23, 25 and 45;

e) the agreements referred to in Article 39;

f) the denunciations referred to in Article 47.

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

Done at The Hague, on the 29th day of May 1993, 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 Seventeenth Session and to each of the other States which participated in that Session.

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106TH CONGRESS
1ST SESSION

H. R. 2909

To provide for implementation by the United States of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 1999

Mr. GILMAN (for himself, Mr. CAMP, Mr. DELAHUNT, Mr. GEJDENSON, Mr. BLILEY, Mr. OBERSTAR, Mr. SMITH of New Jersey, Mr. POMEROY, Mr. MCGOVERN, Mr. BARRETT of Wisconsin, Mr. ENGLISH, Mr. FARR of California, Mr. HORN, Mr. FORBES, Mr. RAMSTAD, Mrs. MINK of Hawaii, Mrs. JOHNSON of Connecticut, Mr. CAPUANO, Mr. FROST, Mr. PORTER, Mr. BARCIA, Mr. BURTON of Indiana, Mr. UNDERWOOD, Mr. COOKSEY, Mr. HASTINGS of Florida, Mr. BARRETT of Nebraska, Mr. SMITH of Texas, Ms. ROS-LEHTINEN, Mr. GREENWOOD, Mr. ACKERMAN, Mr. BERMAN, Mr. DAVIS of Florida, Mr. STUPAK, Mr. CARDIN, Ms. ESHOO, Mr. LANTOS, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committees on the Judiciary, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for implementation by the United States of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Intercountry Adoption Act of 1999".

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—UNITED STATES CENTRAL AUTHORITY

Sec. 101. Designation of central authority.
Sec. 102. Responsibilities of the Secretary of State.
Sec. 103. Responsibilities of the Attorney General.
Sec. 104. Annual report on intercountry adoptions.

TITLE II—PROVISIONS RELATING TO ACCREDITATION AND APPROVAL

Sec. 201. Role of Secretary of Health and Human Services.
Sec. 202. Accreditation or approval required in order to provide adoption services in cases subject to the Convention.
Sec. 203. Process for accreditation and approval; role of accrediting entities.
Sec. 204. Standards and procedures for providing accreditation or approval.
Sec. 205. Secretarial oversight of accreditation and approval.
Sec. 206. Limitations on authorization of appropriations.

TITLE III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

Sec. 301. Adoptions of children immigrating to the United States.
Sec. 302. Immigration and Nationality Act amendments relating to children adopted from Convention countries.
Sec. 303. Adoptions of children emigrating from the United States.
Sec. 304. Voiding of adoptions for cause.

TITLE IV—ADMINISTRATION AND ENFORCEMENT

Sec. 401. Records; privacy provisions.
Sec. 402. Documents of other Convention countries.
Sec. 403. Authorization of appropriations; collection of fees.
Sec. 404. Enforcement.

TITLE V—GENERAL PROVISIONS

Sec. 501. Recognition of Convention adoptions.
Sec. 502. Special rules for certain cases.
Sec. 503. Relationship to other laws.
Sec. 504. No private right of action.
Sec. 505. Effective dates; transition rule.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress recognizes—

3 (1) the international character of the Conven-
4 tion on Protection of Children and Co-operation in
5 Respect of Intercountry Adoption (done at The
6 Hague on May 29, 1993),

7 (2) the need for uniform interpretation and im-
8 plementation of the Convention in the United States
9 and abroad,

10 and therefore finds that enactment of a Federal law gov-
11 erning adoptions and prospective adoptions subject to the
12 Convention involving United States residents is essential.

13 (b) PURPOSES.—The purposes of this Act are—

14 (1) to provide for implementation by the United
15 States of the Convention;

16 (2) to protect the rights of, and prevent abuses
17 against, children, birth families, and adoptive par-
18 ents involved in adoptions (or prospective adoptions)
19 subject to the Convention, and to ensure that such
20 adoptions are in the children's best interests; and

21 (3) to improve the ability of the Federal Gov-
22 ernment to assist United States citizens seeking to
23 adopt children from abroad and residents of other
24 countries party to the Convention seeking to adopt
25 children from the United States.

1 **SEC. 3. DEFINITIONS.**

2 As used in this Act:

3 (1) ACCREDITED AGENCY.—The term "accred-
4 ited agency" means an agency accredited under title
5 II to provide adoption services in the United States
6 in cases subject to the Convention.

7 (2) ACCREDITING ENTITY.—The term "accred-
8 iting entity" means an entity designated under sec-
9 tion 203(a) to accredit agencies and approve persons
10 under title II.

11 (3) ADOPTION SERVICE.—The term "adoption
12 service" means—

13 (A) identifying a child for adoption and ar-
14 ranging an adoption;

15 (B) securing necessary consent to termi-
16 nation of parental rights and to adoption;

17 (C) performing a background study on a
18 child or a home study on a prospective adoptive
19 parent, and reporting on such a study;

20 (D) making determinations of the best in-
21 terests of a child and the appropriateness of
22 adoptive placement for the child;

23 (E) providing professional counseling serv-
24 ices for a child, a birth parent, or a prospective
25 adoptive parent with respect to adoption;

1 (F) post-placement monitoring of a case
2 until final adoption;
3 (G) where made necessary by disruption
4 before final adoption, assuming custody and
5 providing child care or any other social service
6 pending an alternative placement; and
7 (H) post-adoption services, other than ac-
8 tivities relating to identifying or locating birth
9 parents or siblings.
10 The term "providing", with respect to an adoption
11 service, includes facilitating the provision of the
12 service.
13 (4) AGENCY.—The term "agency" means any
14 person other than an individual.
15 (5) APPROVED PERSON.—The term "approved
16 person" means a person approved under title II to
17 provide adoption services in the United States in
18 cases subject to the Convention.
19 (6) ATTORNEY GENERAL.—The term "Attorney
20 General" means the Attorney General, acting
21 through the Commissioner of Immigration and Nat-
22 uralization.
23 (7) CENTRAL AUTHORITY.—The term "central
24 authority" means the entity designated as such by
25 any Convention country under Article 6.1 of the

1 Convention, or if no such designation has been
2 made, the entity having responsibility for the dis-
3 charge of the obligations of that country under the
4 Convention.

5 (8) CENTRAL AUTHORITY FUNCTION.—The
6 term "central authority function" means any duty
7 required to be carried out by a central authority
8 under the Convention.

9 (9) CONVENTION.—The term "Convention"
10 means the Convention on Protection of Children and
11 Co-operation in Respect of Intercountry Adoption,
12 done at The Hague on May 29, 1993.

13 (10) CONVENTION ADOPTION.—The term "Con-
14 vention adoption" means an adoption of a child resi-
15 dent in a foreign country party to the Convention by
16 a United States citizen, or an adoption of a child
17 resident in the United States by an individual resid-
18 ing in another Convention country.

19 (11) CONVENTION ADOPTION RECORD.—The
20 term "Convention adoption record" means any item,
21 collection, or grouping of information contained in
22 an electronic or physical document, an electronic col-
23 lection of data, a photograph, an audio or video
24 tape, or any other information storage medium of
25 any type whatever that contains information about a

1 specific past, current, or prospective Convention
2 adoption (regardless of whether the adoption was
3 made final).
4 (12) CONVENTION COUNTRY.—The term "Con-
5 vention country" means a country party to the Con-
6 vention.
7 (13) OTHER CONVENTION COUNTRY.—The
8 term "other Convention country" means a Conven-
9 tion country other than the United States.
10 (14) PERSON.—The term "person" shall have
11 the meaning provided in section 1 of title 1, United
12 States Code, and shall include any agency of govern-
13 ment.
14 (15) STATE.—The term "State" means the 50
15 States, the District of Columbia, the Commonwealth
16 of Puerto Rico, the Commonwealth of the Northern
17 Mariana Islands, Guam, and the Virgin Islands.

18 TITLE I—UNITED STATES
19 CENTRAL AUTHORITY

20 **SEC. 101. DESIGNATION OF CENTRAL AUTHORITY.**
21 (a) IN GENERAL.—For purposes of the Convention
22 and this Act—
23 (1) the Department of State shall serve as the
24 central authority of the United States; and

1 (2) the Secretary of State shall serve as the
2 head of the central authority of the United States.
3 (b) PERFORMANCE OF CENTRAL AUTHORITY FUNC-
4 TIONS.—Except as otherwise provided in this Act, the Sec-
5 retary of State shall be responsible for the performance
6 of all central authority functions for the United States
7 under the Convention and this Act.
8 (c) AUTHORITY TO ISSUE REGULATIONS.—Except as
9 otherwise provided in this Act, the Secretary of State may
10 prescribe such regulations as may be necessary to carry
11 out central authority functions on behalf of the United
12 States.

13 **SEC. 102. RESPONSIBILITIES OF THE SECRETARY OF**
14 **STATE.**

15 (a) LIAISON RESPONSIBILITIES.—The Secretary of
16 State shall have responsibility for—
17 (1) liaison with the central authorities of other
18 Convention countries; and
19 (2) the coordination of activities under the Con-
20 vention by persons subject to the jurisdiction of the
21 United States.
22 (b) INFORMATION EXCHANGE.—The Secretary of
23 State shall be responsible for—
24 (1) providing the central authorities of other
25 Convention countries with information concerning—

1 (A) agencies accredited and persons ap-
2 proved under title II, accredited agencies and
3 approved persons whose accreditation or ap-
4 proval has been suspended or canceled, and ac-
5 credited agencies and approved persons who
6 have been temporarily or permanently debarred
7 from accreditation or approval;
8 (B) Federal and State laws relevant to im-
9 plementing the Convention; and
10 (C) any other matters necessary and ap-
11 propriate for implementation of the Convention;
12 (2) providing Federal agencies, State courts,
13 and accredited agencies and approved persons with
14 an identification of Convention countries and per-
15 sons authorized to perform functions under the Con-
16 vention in each such country; and
17 (3) facilitating the transmittal of other appro-
18 priate information to, and among, central authori-
19 ties, Federal and State agencies (including State
20 courts), and accredited agencies and approved per-
21 sons.
22 (c) ADDITIONAL RESPONSIBILITIES.—The Secretary
23 of State—
24 (1) shall monitor individual Convention adop-
25 tion cases involving United States citizens;

1 (2) may facilitate interactions between such
2 citizens and officials of other Convention countries
3 on matters relating to the Convention in any case in
4 which an accredited agency or approved person is
5 unwilling or unable to provide such facilitation; and
6 (3) may provide any other appropriate assist-
7 ance in other cases, or take other appropriate ac-
8 tions necessary to implement the Convention.
9 (d) ESTABLISHMENT OF REGISTRY.—The Secretary
10 of State and the Attorney General shall jointly establish
11 a case registry of—
12 (1) all adoptions involving immigration into the
13 United States, regardless of whether the adoption
14 occurs under the Convention; and
15 (2) all adoptions involving emigration of the
16 child from the United States to any other Conven-
17 tion country.
18 Such registry shall permit tracking of pending cases and
19 retrieval of information on both pending and closed cases.
20 (e) METHODS OF PERFORMING RESPONSIBIL-
21 ITIES.—The Secretary of State may—
22 (1) authorize public or private entities to per-
23 form appropriate central authority functions for
24 which the Secretary is responsible, pursuant to regu-

1 lations or under agreements published in the Federal
2 Register; and
3 (2) carry out central authority functions
4 through grants to, or contracts with, any individual
5 or public or private entity, except as may be other-
6 wise specifically provided for in this Act.

7 **SEC. 103. RESPONSIBILITIES OF THE ATTORNEY GENERAL.**

8 In addition to such other responsibilities as are spe-
9 cifically conferred upon the Attorney General by this Act,
10 the central authority functions specified in Article 14 of
11 the Convention (relating to the filing of applications by
12 prospective adoptive parents to the central authority of
13 their country of residence) shall be performed by the At-
14 torney General.

15 **SEC. 104. ANNUAL REPORT ON INTERCOUNTRY ADOP-**
16 **TIONS.**

17 (a) REPORTS REQUIRED.—Beginning one year after
18 the date of enactment of this Act, and each year there-
19 after, the Secretary of State, in consultation with the Sec-
20 retary of Health and Human Services, the Attorney Gen-
21 eral, and other appropriate agencies, shall submit a report
22 to the Congress describing the activities of the central au-
23 thority of the United States under this Act during the pre-
24 ceding year.

1 (b) REPORT ELEMENTS.—Each report under sub-
2 section (a) shall set forth with respect to the year con-
3 cerned, the following:
4 (1) The number of intercountry adoptions in-
5 volving immigration to the United States, regardless
6 of whether the adoption occurred under the Conven-
7 tion, including the country from which each child
8 emigrated, the State to which each child immigrated,
9 and the country in which the adoption was finalized.
10 (2) The number of intercountry adoptions in-
11 volving emigration from the United States, regard-
12 less of whether the adoption occurred under the
13 Convention, including the country to which each
14 child immigrated and the State from which each
15 child emigrated.
16 (3) The number of Convention adoptions that
17 were disrupted, including the country from which
18 the child emigrated, the age of the child, the date of
19 the adoption, the reasons for the disruption, and the
20 resolution of the disruption.
21 (4) The current list of agencies accredited and
22 persons approved under this Act to provide adop-
23 tion-related services.
24 (5) The names of the accredited agencies and
25 approved persons temporarily or permanently

1 debarred from accreditation or approval under this
2 Act, and the reasons for the debarment.
3 (6) The range of adoption fees charged in con-
4 nection with Convention adoptions involving immi-
5 gration to or emigration from the United States by
6 all entities, including accredited agencies and ap-
7 proved persons, set forth by country.
8 (7) The number of Convention adoptions involv-
9 ing immigration to the United States that were va-
10 cated for cause or in which proceedings to vacate for
11 cause are pending.

12 TITLE II—PROVISIONS RELAT-
13 ING TO ACCREDITATION AND
14 APPROVAL

15 SEC. 201. ROLE OF SECRETARY OF HEALTH AND HUMAN
16 SERVICES.

17 The Secretary of Health and Human Services (in this
18 title referred to as the "Secretary"), in coordination with
19 the Secretary of State, shall carry out the functions pre-
20 scribed by the Convention with respect to the accreditation
21 of agencies and the approval of persons to provide adop-
22 tion services in the United States in cases subject to the
23 Convention.

1 **SEC. 202. ACCREDITATION OR APPROVAL REQUIRED IN**
2 **ORDER TO PROVIDE ADOPTION SERVICES IN**
3 **CASES SUBJECT TO THE CONVENTION.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (b), a person shall not offer or provide an adoption service
6 in the United States in a case subject to the Convention
7 unless the person is accredited or approved under this
8 title, or is providing the service through or under the su-
9 pervision and responsibility of a person so accredited or
10 approved.

11 (b) EXCEPTIONS.—Subsection (a) shall not apply to
12 the following:

13 (1) BACKGROUND STUDIES AND HOME STUD-
14 IES.—The performance of a background study on a
15 child or a home study on a prospective adoptive par-
16 ent, or any report on any such study, by a social
17 work professional or organization who is not pro-
18 viding any other adoption service in any case subject
19 to the Convention.

20 (2) CHILD WELFARE SERVICES.—The provision
21 of a child welfare service by a person who is not pro-
22 viding any other kind of adoption service in the case.

23 (3) LEGAL SERVICES.—The provision of legal
24 services by a person who is not providing any other
25 adoption service in the case.

1 (4) PROSPECTIVE ADOPTIVE PARENTS ACTING
2 ON OWN BEHALF.—The conduct of a prospective
3 adoptive parent on his or her own behalf in the case,
4 to the extent not prohibited by the law of the State
5 in which the prospective adoptive parent resides.

6 **SEC. 203. PROCESS FOR ACCREDITATION AND APPROVAL;**
7 **ROLE OF ACCREDITING ENTITIES.**

8 (a) DESIGNATION OF ACCREDITING ENTITIES.—
9 (1) IN GENERAL.—The Secretary, with the con-
10 currence of the Secretary of State, shall enter into
11 agreements with one or more qualified entities under
12 which such entities will perform the duties described
13 in subsection (b) in accordance with the Convention,
14 this title, and the regulations prescribed under sec-
15 tion 204, and upon entry into each such agreement
16 shall designate the qualified entity as an accrediting
17 entity.
18 (2) QUALIFIED ENTITY.—In paragraph (1), the
19 term "qualified entity" means a nonprofit private
20 entity that has experience and expertise in devel-
21 oping and administering standards for entities pro-
22 viding child welfare services and that meets such
23 other criteria as the Secretary may by regulation es-
24 tablish.

1 (b) DUTIES OF ACCREDITING ENTITIES.—The duties
2 described in this subsection are the following:
3 (1) ACCREDITATION AND APPROVAL.—Accredi-
4 tation of agencies, and approval of persons, to pro-
5 vide adoption services in the United States in cases
6 subject to the Convention.
7 (2) OVERSIGHT.—Ongoing monitoring of the
8 compliance of accredited agencies and approved per-
9 sons with applicable requirements, including review
10 of complaints against such agencies and persons in
11 accordance with procedures established by the ac-
12 crediting entity and approved by the Secretary.
13 (3) ENFORCEMENT.—Taking of adverse actions
14 (including requiring corrective action, imposing sanc-
15 tions, and refusing to renew, suspending, or can-
16 celing accreditation or approval) for noncompliance
17 with applicable requirements, and notifying the
18 agency or person against whom adverse actions are
19 taken of the deficiencies necessitating the adverse
20 action.
21 (4) DATA, RECORDS, AND REPORTS.—Collection
22 of data, maintenance of records, and reporting to
23 the Secretary, the United States central authority,
24 State courts, and other entities (including on per-
25 sons and agencies granted or denied approval or ac-

1 creditation), to the extent and in the manner that
2 the Secretary requires.
3 (c) REMEDIES FOR ADVERSE ACTION BY ACCRED-
4 ITING ENTITY.—
5 (1) CORRECTION OF DEFICIENCY.—An agency
6 or person who is the subject of an adverse action by
7 an accrediting entity may re-apply for accreditation
8 or approval (or petition for termination of the ad-
9 verse action) on demonstrating to the satisfaction of
10 the accrediting entity that the deficiencies necessi-
11 tating the adverse action have been corrected.
12 (2) NO OTHER ADMINISTRATIVE REVIEW.—An
13 adverse action by an accrediting agency shall not be
14 subject to administrative review sought by the agen-
15 cy or person against whom the adverse action has
16 been taken.
17 (3) JUDICIAL REVIEW.—An agency or person
18 who is the subject of an adverse action by an accred-
19 iting agency may petition the United States district
20 court in the judicial district in which the agency is
21 located or the person resides to set aside the adverse
22 action. The court may set aside the adverse action
23 only upon clear and convincing proof that the deci-
24 sion to take the adverse action was not based on
25 substantial evidence of deficiencies or that the ac-

1 crediting entity abused its discretion in taking the
2 adverse action.
3 (d) FEES.—
4 (1) AUTHORITY TO ASSESS.—An accrediting en-
5 tity may assess fees against agencies and persons
6 seeking or maintaining accreditation or approval
7 under this title, in amounts approved by the Sec-
8 retary.
9 (2) FEE AMOUNTS.—The Secretary may ap-
10 prove fees to be assessed under paragraph (1) by an
11 accrediting entity if the Secretary estimates that the
12 aggregate of the amounts to be collected from the
13 fees will not exceed the sum of—
14 (A) the total amount of all direct or indi-
15 rect costs of the accrediting entity for accredita-
16 tion or approval and ongoing oversight (which
17 shall be estimated on the basis of the number
18 of cases subject to the Convention handled by
19 the agencies and persons accredited or approved
20 by the accrediting entity and other relevant fac-
21 tors); and
22 (B) an amount determined by the Sec-
23 retary to be the amount necessary to cover all
24 direct and indirect costs of Federal oversight of
25 the accrediting entity under section 205.

1 (3) COLLECTION; PAYMENT TO THE TREAS-
2 URY.—The accrediting entity shall collect the fees
3 assessed under paragraph (1), and from the
4 amounts collected remit to the Secretary the amount
5 determined under paragraph (2)(B). The Secretary
6 shall deposit in the Treasury of the United States
7 all amounts remitted under the preceding sentence.

8 **SEC. 204. STANDARDS AND PROCEDURES FOR PROVIDING**
9 **ACCREDITATION OR APPROVAL.**

10 (a) IN GENERAL.—
11 (1) PROMULGATION OF REGULATIONS.—The
12 Secretary, with the concurrence of the Secretary of
13 State, shall, by regulation, prescribe the standards
14 and procedures to be used by accrediting entities for
15 the accreditation of agencies and the approval of
16 persons to provide adoption services in the United
17 States in cases subject to the Convention.
18 (2) CONSIDERATION OF VIEWS.—In developing
19 such regulations, the Secretary shall consider the
20 views of individuals and entities with interest and
21 expertise in international adoptions and family social
22 services, including public and private entities with
23 experience in licensing and accrediting adoption
24 agencies.

1 (3) APPLICABILITY OF NOTICE AND COMMENT
2 RULES.—Subsections (b), (c), and (d) of section 553
3 of title 5, United States Code, shall apply in the de-
4 velopment and issuance of regulations under this
5 section.
6 (b) MINIMUM REQUIREMENTS.—
7 (1) ACCREDITATION.—The standards pre-
8 scribed under subsection (a) shall include the re-
9 quirement that accreditation of an agency may not
10 be provided or continued under this title unless the
11 agency meets the following requirements:
12 (A) CAPACITY TO PROVIDE ADOPTION
13 SERVICES.—The agency has, directly or through
14 arrangements with other persons, a sufficient
15 number of appropriately trained and qualified
16 personnel, sufficient financial resources, appro-
17 priate organizational structure, and appropriate
18 procedures to enable the agency to provide, in
19 accordance with this Act, all adoption services
20 in cases subject to the Convention.
21 (B) USE OF SOCIAL SERVICE PROFES-
22 SIONALS.—The agency has established proce-
23 dures designed to ensure that social service
24 functions requiring the application of clinical
25 skills and judgment are performed only by pro-

1 fessionals with appropriate qualifications and
2 credentials.
3 (C) RECORDS, REPORTS, AND INFORMA-
4 TION MATTERS.—The agency is capable of—
5 (i) maintaining such records and mak-
6 ing such reports as may be required by the
7 Secretary, the United States central au-
8 thority, and the accrediting entity that ac-
9 credits the agency;
10 (ii) cooperating with reviews, inspec-
11 tions, and audits;
12 (iii) safeguarding sensitive individual
13 information; and
14 (iv) complying with other require-
15 ments concerning information management
16 necessary to ensure compliance with the
17 Convention, this Act, and any other appli-
18 cable law.
19 (D) LIABILITY INSURANCE.—The agency
20 agrees to have in force adequate liability insur-
21 ance for professional negligence and any other
22 insurance that the Secretary considers appro-
23 priate, unless the agency is a State, local, or
24 tribal government entity.

1 (E) COMPLIANCE WITH APPLICABLE
2 RULES.—The agency has established adequate
3 measures to comply (and to ensure compliance
4 of their agents and clients) with the Conven-
5 tion, this Act, and any other applicable law.
6 (F) NONPROFIT ORGANIZATION WITH
7 STATE LICENSE TO PROVIDE ADOPTION SERV-
8 ICES.—The agency is a private nonprofit orga-
9 nization licensed to provide adoption services in
10 at least one State, unless the agency is a State,
11 local, or tribal government entity.
12 (2) APPROVAL.—The standards prescribed
13 under subsection (a) shall include the requirement
14 that a person shall not be approved under this title
15 unless the person is a private for-profit entity that
16 meets the requirements of subparagraphs (A)
17 through (E) of paragraph (1) of this subsection.
18 (3) RENEWAL OF ACCREDITATION OR AP-
19 PROVAL.—The standards prescribed under sub-
20 section (a) shall provide that the accreditation of an
21 agency or approval of a person under this title shall
22 be for a period of not less than 3 years and not
23 more than 5 years, and may be renewed on a show-
24 ing that the agency or person meets the require-

1 ments applicable to original accreditation or ap-
2 proval under this title.

3 **SEC. 205. SECRETARIAL OVERSIGHT OF ACCREDITATION**
4 **AND APPROVAL.**

5 (a) OVERSIGHT OF ACCREDITING ENTITIES.—The
6 Secretary shall monitor the performance by each accred-
7 iting entity of its duties under section 203 and its compli-
8 ance with requirements of the Convention, this Act, other
9 applicable laws, and applicable regulations prescribed
10 under this Act, and shall suspend or cancel the designation
11 of the entity as an accrediting entity if the Secretary finds
12 the entity to be substantially out of compliance with the
13 Convention, this Act, other applicable laws, or such regula-
14 tions.

15 (b) SUSPENSION OR CANCELLATION OF ACCREDITA-
16 TION OR APPROVAL.—

17 (1) SECRETARY'S AUTHORITY.—The Secretary
18 shall suspend or cancel the accreditation or approval
19 granted by an accrediting entity to an agency or per-
20 son pursuant to section 203 when the Secretary
21 finds that—

22 (A) the agency or person is substantially
23 out of compliance with applicable requirements;
24 and

1 (B) the accrediting entity has failed or re-
2 fused, after consultation with the Secretary, to
3 take appropriate corrective action.
4 (2) CORRECTION OF DEFICIENCY.—At any time
5 when the Secretary is satisfied that the deficiencies
6 on the basis of which an adverse action is taken
7 under paragraph (1) have been corrected, the Sec-
8 retary shall—
9 (A) notify the accrediting entity that the
10 decifiencies have been corrected; and
11 (B)(i) in the case of a suspension, termi-
12 nate the suspension; or
13 (ii) in the case of a cancellation, notify the
14 agency or person that the agency or person may
15 re-apply to the accrediting entity for accredita-
16 tion or approval.
17 (c) DEBARMENT.—
18 (1) SECRETARY'S AUTHORITY.—On the initia-
19 tive of the Secretary, or on request of an accrediting
20 entity, the Secretary may temporarily or perma-
21 nently debar an agency from accreditation or a per-
22 son from approval under this title, but only if—
23 (A) there is substantial evidence that the
24 agency or person is out of compliance with ap-
25 plicable requirements; and

1 (B) there has been a pattern of serious,
2 willful, or grossly negligent failures to comply
3 or other aggravating circumstances indicating
4 that continued accreditation or approval would
5 not be in the best interests of the children and
6 families concerned.

7 (2) PERIOD OF DEBARMENT.—The Secretary's
8 debarment order shall state whether the debarment
9 is temporary or permanent. If the debarment is tem-
10 porary, the Secretary shall specify a date, not earlier
11 than 3 years after the date of the order, on or after
12 which the agency or person may apply to the Sec-
13 retary for withdrawal of the debarment.

14 (3) EFFECT OF DEBARMENT.—An accrediting
15 entity may take into account the circumstances of
16 the debarment of an agency or person that has been
17 debarred pursuant to this paragraph in considering
18 any subsequent application of the agency or person,
19 or of any other entity in which the agency or person
20 has an ownership or control interest, for accredita-
21 tion or approval under this title.

22 (d) JUDICIAL REVIEW.—

23 (1) IN GENERAL.—A person (other than a pro-
24 spective adoptive parent), an agency, or an accred-
25 iting entity adversely affected by a final determina-

1 tion of the Secretary under this title with respect to
2 the designation of an accrediting entity, or the ac-
3 creditation of an agency or approval of a person,
4 may bring an action for review of the determination
5 in the United States District Court for the District
6 of Columbia, or in the United States district court
7 in the judicial district in which the person resides or
8 the agency or accrediting entity is located.

9 (2) STANDARD OF REVIEW.—The court may set
10 aside a determination referred to in paragraph (1)
11 only if there is clear and convincing evidence that
12 the determination was an abuse of discretion.

13 **SEC. 206. LIMITATIONS ON AUTHORIZATION OF APPRO-**
14 **PRIATIONS.**

15 For activities of the Secretary under this title, there
16 are authorized to be appropriated to the Secretary, for the
17 third fiscal year beginning after the date of the enactment
18 of this Act and for each succeeding fiscal year, an amount
19 not to exceed the aggregate of the amounts remitted to
20 the Treasury under section 203(d)(3).

TITLE III—RECOGNITION OF CONVENTION ADOPTIONS IN THE UNITED STATES

SEC. 301. ADOPTIONS OF CHILDREN IMMIGRATING TO THE UNITED STATES.

(a) LEGAL EFFECT OF ADOPTIONS FINALIZED IN THE UNITED STATES.—

(1) ISSUANCE OF CERTIFICATES BY THE SECRETARY OF STATE.—Pursuant to Article 23 of the Convention, the Secretary of State shall, with respect to each Convention adoption, issue a certificate to the adoptive citizen parent domiciled in the United States that the adoption has been granted or, in the case of a prospective adoptive citizen parent, that legal custody of the child has been granted to the citizen parent for purposes of emigration and adoption, pursuant to the Convention and this Act, if the Secretary—

(A) receives appropriate notification from the central authority of such child's country of origin; and

(B) has verified that the requirements of this Act have been met with respect to the adoption.

1 (2) LEGAL EFFECT OF CERTIFICATES.—If ap-
2 pended to an original adoption decree, the certificate
3 described in paragraph (1) shall be treated by Fed-
4 eral and State agencies, courts, and other public and
5 private persons and entities as conclusive evidence of
6 the facts certified therein, except as provided in sec-
7 tion 304, and shall constitute the certification re-
8 quired by section 204(d)(2) of the Immigration and
9 Nationality Act, as amended by this Act.
10 (b) LEGAL EFFECT OF CONVENTION ADOPTION FI-
11 NALIZED IN ANOTHER CONVENTION COUNTRY.—A final
12 adoption in another Convention country, certified by the
13 Secretary of State pursuant to subsection (a) of this sec-
14 tion or section 303(c), shall be recognized as a final valid
15 adoption for purposes of all Federal, State, and local laws
16 of the United States.
17 (c) CONDITION ON FINALIZATION OF CONVENTION
18 ADOPTION BY STATE COURT.—In the case of a child who
19 has entered the United States from another Convention
20 country for the purpose of adoption, a State court may
21 not issue an order declaring the adoption final unless the
22 Secretary of State has issued the certificate provided for
23 in subsection (a) with respect to the adoption.

1 **SEC. 302. IMMIGRATION AND NATIONALITY ACT AMEND-**
2 **MENTS RELATING TO CHILDREN ADOPTED**
3 **FROM CONVENTION COUNTRIES.**

4 (a) DEFINITION OF CHILD.—Section 101(b)(1) of
5 the Immigration and Nationality Act (8 U.S.C.
6 1101(b)(1)) is amended—

7 (1) by striking "or" at the end of subparagraph
8 (E);

9 (2) by striking the period at the end of sub-
10 paragraph (F) and inserting "; or"; and

11 (3) by adding after subparagraph (F) the fol-
12 lowing new subparagraph:

13 "(G) a child, under the age of sixteen at the
14 time a petition is filed on the child's behalf to accord
15 a classification as an immediate relative under sec-
16 tion 201(b), who has been adopted in a foreign state
17 that is a party to the Convention on Protection of
18 Children and Co-operation in Respect of Inter-
19 country Adoption done at The Hague on May 29,
20 1993, or who is emigrating from such a foreign state
21 to be adopted in the United States, by a United
22 States citizen and spouse jointly, or by an unmarried
23 United States citizen at least twenty-five years of
24 age—

25 "(i) if—

1 "(I) the Attorney General is satisfied
2 that proper care will be furnished the child
3 if admitted to the United States;
4 "(II) the child's natural parents (or
5 parent, in the case of a child who has one
6 sole or surviving parent because of the
7 death or disappearance of, abandonment or
8 desertion by, the other parent), or other
9 persons or institutions that retain legal
10 custody of the child, have freely given their
11 written irrevocable consent to the termi-
12 nation of their legal relationship with the
13 child, and to the child's emigration and
14 adoption;
15 "(III) the child is not the grandchild,
16 niece, nephew, brother, sister, aunt, uncle,
17 or first cousin of one or both of the adopt-
18 ing parents, unless—
19 "(aa) the child has no living par-
20 ents because of the death or dis-
21 appearance of, abandonment or deser-
22 tion by, separation from, or loss of,
23 both parents; or
24 "(bb) the sole or surviving parent
25 is incapable of providing the proper

1 care for the child and has in writing
2 irrevocably released the child for emi-
3 gration and adoption; and
4 "(IV) in the case of a child who has
5 not been adopted—
6 "(aa) the competent authority of
7 the foreign state has approved the
8 child's emigration to the United
9 States for the purpose of adoption by
10 the prospective adoptive parent or
11 parents; and
12 "(bb) the prospective adoptive
13 parent or parents has or have com-
14 plied with any pre-adoption require-
15 ments of the child's proposed resi-
16 dence; and
17 "(ii) except that no natural parent or prior
18 adoptive parent of any such child shall there-
19 after, by virtue of such parentage, be accorded
20 any right, privilege, or status under this Act.".
21 (b) APPROVAL OF PETITIONS.—Section 204(d) of the
22 Immigration and Nationality Act (8 U.S.C. 1154(d)) is
23 amended—
24 (1) by striking "(d)" and inserting "(d)(1)";

1 (2) by striking "section 101(b)(1)(F)" and in-
2 serting "subparagraph (F) or (G) of section
3 101(b)(1)"; and
4 (3) by adding at the end the following new
5 paragraph:
6 "(2) Notwithstanding the provisions of subsections
7 (a) and (b) no petition may be approved on behalf of a
8 child defined in section 101(b)(1)(G) unless the Secretary
9 of State has certified that the central authority of the
10 child's country of origin has notified the United States
11 central authority under the convention referred to in such
12 section 101(b)(1)(G) that a United States citizen habit-
13 ually resident in the United States has effected final adop-
14 tion of the child, or has been granted custody of the child
15 for the purpose of emigration and adoption, in accordance
16 with such convention and the Intercountry Adoption Act
17 of 1999.".
18 (c) DEFINITION OF PARENT.—Section 101(b)(2) of
19 the Immigration and Nationality Act (8 U.S.C.
20 1101(b)(2)) is amended by inserting "and paragraph
21 (1)(G)(i)" after "second proviso therein)".
22 **SEC. 303. ADOPTIONS OF CHILDREN EMIGRATING FROM**
23 **THE UNITED STATES.**
24 (a) DUTIES OF ACCREDITED AGENCY OR APPROVED
25 PERSON.—In the case of a Convention adoption involving

1 the emigration of a child residing in the United States
2 to a foreign country, the accredited agency or approved
3 person providing adoption services, or the prospective
4 adoptive parent or parents acting on their own behalf (if
5 permitted by the laws of such other Convention country
6 in which they reside and the laws of the State in which
7 the child resides), shall do the following:
8 (1) Ensure that, in accordance with the
9 Convention—
10 (A) a background study on the child is
11 completed;
12 (B) a determination is made that the child
13 cannot expeditiously be placed for adoption in
14 the United States; and
15 (C) a determination is made that place-
16 ment with the prospective adoptive parent or
17 parents is in the best interests of the child.
18 (2) Furnish to the State court with jurisdiction
19 over the case—
20 (A) documentation of the matters de-
21 scribed in paragraph (1);
22 (B) the background report (home study)
23 on the prospective adoptive parent or parents
24 prepared in accordance with the laws of the re-
25 ceiving country; and

1 (C) a declaration by the Central Authority
2 (or other competent authority) of such other
3 Convention country—
4 (i) that the child will be permitted to
5 enter and reside permanently, or on the
6 same basis as the adopting parent, in the
7 receiving country; and
8 (ii) that the Central Authority (or
9 other competent authority) of such other
10 Convention country consents to the adop-
11 tion, if such consent is necessary under the
12 laws of such country for the adoption to
13 become final.
14 (3) Furnish to the United States central
15 authority—
16 (A) official copies of State court orders
17 certifying the final adoption or grant of custody
18 for the purpose of adoption;
19 (B) the information and documents de-
20 scribed in paragraph (2), to the extent required
21 by the United States central authority; and
22 (C) any other information concerning the
23 case required by the United States central au-
24 thority to perform the functions specified in
25 subsection (c) or otherwise to carry out the du-

1 ties of the United States central authority
2 under the Convention.
3 (b) CONDITIONS ON STATE COURT ORDERS.—A
4 State court shall not enter an order declaring an adoption
5 to be final or granting custody for the purpose of adoption
6 in a case described in subsection (a) unless the court—
7 (1) has received and verified to the extent the
8 court may find necessary—
9 (A) the material described in subsection
10 (a)(2); and
11 (B) satisfactory evidence that the require-
12 ments of articles 4 and 15 through 21 of the
13 Convention have been met; and
14 (2) has determined that the adoptive placement
15 is in the child's best interests.
16 (c) DUTIES OF THE SECRETARY OF STATE.—In a
17 case described in subsection (a), the Secretary of State,
18 on receipt and verification as necessary of the material
19 and information described in subsection (a)(3), shall issue,
20 as applicable, an official certification that the child has
21 been adopted or a declaration that custody for purposes
22 of adoption has been granted, in accordance with the Con-
23 vention and this Act.

1 **SEC. 304. VOIDING OF ADOPTIONS FOR CAUSE.**

2 (a) VOIDING OF ADOPTION BY STATE COURT.—A
3 State court may not vacate a final adoption decree entered
4 pursuant to the Convention unless—

5 (1) the decree was granted by a State court;

6 (2) the court finds clear and convincing evi-
7 dence that—

8 (A) the consent of a birth parent or, in the
9 absence of such consent, the consent of a bio-
10 logical relative if required by the law of the
11 State in which the decree was granted, to ter-
12 mination of parental rights or to the adoption
13 was not obtained, or was obtained as a result
14 of fraud, duress, or inducement by compensa-
15 tion; or

16 (B) consent of an adoptive parent to the
17 adoption was obtained by fraud which the adop-
18 tive parent did not and could not reasonably
19 have been expected to discover;

20 (3) voiding the adoption is in the best interests
21 of the child, taking into consideration the wishes of
22 the child as appropriate given the age of the child;
23 and

24 (4) the adoptive parents are afforded an oppor-
25 tunity to be heard in the proceeding.

1 (b) RECOGNITION OF PROCEEDING OF ANOTHER
2 CONVENTION COUNTRY TO VACATE CONVENTION ADOP-
3 TION.—A decision by the competent authorities of another
4 Convention country to vacate an adoption decree originally
5 issued in the country pursuant to the Convention shall be
6 recognized as valid and given full effect in the United
7 States upon receipt by the Secretary of State of notifica-
8 tion from such authorities that the conditions provided in
9 paragraphs (2) through (4) of subsection (a) were satis-
10 fied by the proceeding to vacate the decree.

11 (c) VOIDING OF ADOPTION NOT VOIDING CHILD'S
12 NATURALIZATION.—The vacating of an adoption decree in
13 a case subject to the Convention shall not be construed
14 to void or prohibit the naturalization of the child as a cit-
15 izen of the United States. Nothing in this provision shall
16 be construed to limit the Attorney General's authority
17 under title III of the Immigration and Nationality Act to
18 revoke the naturalization of such a child, or to limit the
19 Attorney General's discretion to consider a finding of fact
20 by a State court that is relevant to such a determination.

21 TITLE IV—ADMINISTRATION
22 AND ENFORCEMENT

23 **SEC. 401. RECORDS PRIVACY PROVISIONS.**

24 (a) REGULATIONS REGARDING CONVENTION ADOP-
25 TION RECORDS PRESERVATION.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of the enactment of this Act, the Sec-
3 retary of State, in consultation with the Attorney
4 General, shall issue regulations that establish proce-
5 dures and requirements in accordance with the Con-
6 vention and this section for the preservation of Con-
7 vention adoption records.
8 (2) NOTICE AND COMMENT REQUIREMENT.—
9 Section 553 of title 5, United States Code, shall
10 apply to regulations issued under this section with-
11 out regard to subsection (a) of that section.
12 (b) PROHIBITION ON DISCLOSURE OF AND PROVI-
13 SION OF ACCESS TO IDENTIFYING INFORMATION.—
14 (1) PROHIBITION.—Identifying information in
15 any Convention adoption record shall not be dis-
16 closed by any person, and access to such information
17 shall not be provided by any person, except as other-
18 wise authorized by this subsection or the law of the
19 State in which the adoptive parents resided at the
20 time of the adoption.
21 (2) EXCEPTION FOR ADMINISTRATION OF THE
22 CONVENTION.—Identifying information in a Conven-
23 tion adoption record may be disclosed, and access to
24 such information may be provided, among the Attor-
25 ney General, central authorities, accredited agencies,

1 and approved persons, to the extent necessary to ad-
2 minister the Convention or this Act.
3 (c) RELATIONSHIP TO OTHER LAWS.—Sections 552
4 and 552a of title 5, United States Code, popularly known,
5 respectively, as the Freedom of Information Act and the
6 Privacy Act, shall not apply to the disclosure of, or the
7 provision of access to, identifying information in Conven-
8 tion adoption records.
9 (d) IDENTIFYING INFORMATION DEFINED.—
10 (1) DEFINITION.—In this section, the term
11 "identifying information"—
12 (A) except as provided in subparagraph
13 (B), means any information contained in a Con-
14 vention adoption record; and
15 (B) does not include information relating
16 to the health, social, or genetic background of
17 any individual if there is no reasonable basis to
18 believe that such information could be used to
19 identify the adopted child or any birth parent
20 or other birth relative of an adopted child.
21 (2) REGULATIONS.—Not later than 180 days
22 after the date of the enactment of this Act, the Sec-
23 retary of Health and Human Services, in consulta-
24 tion with the Secretary of State and the Attorney

1 General, shall issue regulations prescribing the infor-
2 mation referred to in paragraph (1)(B).

3 **SEC. 402. DOCUMENTS OF OTHER CONVENTION COUN-**
4 **TRIES.**

5 Documents originating in any other Convention coun-
6 try and related to a Convention adoption case shall require
7 no authentication in order to be admissible in any Federal,
8 State, or local court in the United States, unless a specific
9 and supported claim is made that the documents are false,
10 have been altered, or are otherwise unreliable.

11 **SEC. 403. AUTHORIZATION OF APPROPRIATIONS; COLLEC-**
12 **TION OF FEES.**

13 (a) AUTHORIZATION OF APPROPRIATIONS.—
14 (1) IN GENERAL.—There are authorized to be
15 appropriated such sums as may be necessary to
16 agencies of the Federal Government implementing
17 the Convention and the provisions of this Act.
18 (2) AVAILABILITY OF FUNDS.—Amounts appro-
19 priated pursuant to paragraph (1) are authorized to
20 remain available until expended.
21 (b) ASSESSMENT OF FEES.—
22 (1) The Secretary of State may charge a fee
23 prescribed by regulation to cover the costs of new or
24 enhanced services that will be undertaken by the De-

1 partment of State to meet the requirements of this
2 Act.
3 (2) Fees collected under paragraph (1) shall be
4 retained and deposited as an offsetting collection to
5 any Department of State appropriation to recover
6 the costs of providing such services.
7 (3) Fees authorized under this section shall be
8 available for obligation only to the extent and in the
9 amount provided in advance in appropriations Acts.
10 **SEC. 404. ENFORCEMENT.**
11 (a) CIVIL PENALTIES.—Any person who—
12 (1) violates section 202;
13 (2) violates section 401 or any regulation issued
14 under section 401; or
15 (3) makes a false or fraudulent statement or
16 misrepresentation of material fact, or offers, gives,
17 solicits, or accepts inducement by way of compensa-
18 tion intended to influence or affect—
19 (A) a decision by an accrediting entity with
20 respect to the accreditation of an agency or ap-
21 proval of a person under title II;
22 (B) the relinquishment of parental rights
23 or parental consent relating to the adoption of
24 a child in a case subject to the Convention; or

1 (C) a decision or action of any entity per-
2 forming a central authority function,
3 shall be subject, in addition to any other penalty that may
4 be prescribed by law, to a civil money penalty of not more
5 than $25,000 for a first violation, and not more than
6 $50,000 for each succeeding violation.
7 (b) ENFORCEMENT.—
8 (1) COORDINATION WITH ATTORNEY GEN-
9 ERAL.—The Secretary of Health and Human Serv-
10 ices, with respect to violations of subsection (a) in-
11 volving the Department of Health and Human Serv-
12 ices, an accrediting entity, an agency that has ap-
13 plied for or received accreditation under title II, or
14 a person who has applied for or received approval
15 under title II, and the Secretary of State, with re-
16 spect to violations of paragraphs (2) and (3) of sub-
17 section (a) involving the Department of State, may
18 impose a civil money penalty under subsection (a)
19 pursuant to this subsection and such procedures as
20 may be agreed upon by such Secretaries and the At-
21 torney General.
22 (2) NOTICE AND HEARING.—A penalty shall not
23 be imposed under subsection (a) until the person
24 charged has been given written notice of, and an op-
25 portunity to respond to the charge.

1 (3) FACTORS CONSIDERED IN IMPOSING PEN-
2 ALTY.—In determining the amount of a penalty to
3 be imposed under subsection (a), the gravity of the
4 violation, the degree of culpability of the violator,
5 and any history of prior violations by the violator
6 shall be considered.
7 (c) CRIMINAL PENALTIES.—Whoever knowingly and
8 willfully violates paragraph (2) or (3) of subsection (a)
9 shall be subject to a fine of not more than $50,000, im-
10 prisonment for not more than 1 year, or both.

11 TITLE V—GENERAL PROVISIONS

12 SEC. 501. RECOGNITION OF CONVENTION ADOPTIONS.

13 Subject to Article 24 of the Convention, adoptions
14 concluded between two other Convention countries that
15 meet the requirements of Article 23 of the Convention and
16 that became final before the date of entry into force of
17 the Convention for the United States shall be recognized
18 thereafter in the United States and given full effect. Such
19 recognition shall include the specific effects described in
20 Article 26 of the Convention.

21 SEC. 502. SPECIAL RULES FOR CERTAIN CASES.

22 (a) AUTHORITY TO ESTABLISH ALTERNATIVE PRO-
23 CEDURES FOR ADOPTION OF CHILDREN BY RELATIVES.—
24 To the extent consistent with the Convention, the Sec-
25 retary of State may establish by regulation alternative

1 procedures for the adoption of children by individuals re-
2 lated to them by blood or marriage, in cases subject to
3 the Convention.

4 (b) WAIVER AUTHORITY.—

5 (1) IN GENERAL.—Notwithstanding any other
6 provision of this Act, to the extent consistent with
7 the Convention, the Secretary of State may, on a
8 case-by-case basis, waive applicable requirements of,
9 and penalties for noncompliance with, the provisions
10 of this Act or regulations issued under this Act, in
11 the interests of justice or to prevent grave physical
12 harm to the child.

13 (2) NONDELEGATION.—The authority provided
14 by paragraph (1) may not be delegated.

15 **SEC. 503. RELATIONSHIP TO OTHER LAWS.**

16 (a) PREEMPTION OF INCONSISTENT STATE LAW.—
17 The Convention and this Act shall not be construed to pre-
18 empt any provision of the law of any State or political
19 subdivision thereof, or prevent a State or political subdivi-
20 sion thereof from enacting any provision of law with re-
21 spect to the subject matter of the Convention or this Act,
22 except to the extent that such provision of State law is
23 inconsistent with the Convention or this Act, and then
24 only to the extent of the inconsistency.

1 (b) APPLICABILITY OF THE INDIAN CHILD WELFARE
2 ACT.—The Convention and this Act shall not be construed
3 to affect the application of the Indian Child Welfare Act
4 of 1978 (25 U.S.C. 1901 et seq.).

5 **SEC. 504. NO PRIVATE RIGHT OF ACTION.**

6 The Convention and this Act shall not be construed
7 to create a private right of action to seek administrative
8 or judicial relief, except to the extent expressly provided
9 in this Act.

10 **SEC. 505. EFFECTIVE DATES; TRANSITION RULE.**

11 (a) EFFECTIVE DATES.—
12 (1) PROVISIONS EFFECTIVE UPON ENACT-
13 MENT.—Sections 2, 101 through 104, 201, 203
14 through 206, and 403 shall take effect on the date
15 of the enactment of this Act.
16 (2) PROVISIONS EFFECTIVE UPON THE ENTRY
17 INTO FORCE OF THE CONVENTION.—Subject to sub-
18 section (b), the Convention and the provisions of this
19 Act not specified in paragraph (1) of this subsection
20 shall take effect upon the entry into force of the
21 Convention for the United States pursuant to Article
22 46(2)(a) of the Convention, and shall govern Con-
23 vention adoptions made final thereafter.
24 (b) TRANSITION RULE.—The Convention and this
25 Act shall not apply—

1 (1) in the case of a child immigrating to the
2 United States, if the application for advance proc-
3 essing of an orphan petition or petition to classify an
4 orphan as an immediate relative for the child is filed
5 before the effective date described in subsection
6 (a)(2); or
7 (2) in the case of a child emigrating from the
8 United States, if the prospective adoptive parents of
9 the child initiated the adoption process in their
10 country of residence with the filing of an appropriate
11 application before the effective date described in
12 subsection (a)(2).

○

TOM BLILEY
7TH DISTRICT, VIRGINIA

CHAIRMAN, COMMITTEE ON COMMERCE

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Statement
of
U.S. Rep. Tom Bliley (R-VA)
House International Relations Committee Hearing
on
The Intercountry Adoption Act of 1999 (H.R. 2909)
October 20, 1999

Mr. Chairman:

Thank you for allowing me to testify today in favor of the Hague Intercountry Adoption Act. I am proud to support the bill which you introduced last month. I might add that it had the most co-sponsors upon introduction of any adoption bill this Congress. It is a testament to the willingness of you and other members to adhere to fulfilling only the obligations of the Hague Convention that led to the overwhelming number of co-sponsors upon introduction. In the days ahead, we will all be wise to address only the obligations of the Hague Convention and leave all other issues for another bill at another time.

As an adoptive father, I have taken a great interest in the subject of intercountry adoption. Over the last couple of years, I have personally met with Russian Duma Deputies, Russian judges and prosecutors, and the Director General of China Center on Adoption Affairs. All of these officials raised concerns about the lack of a federal government authority they can turn to in case there is a problem with an international adoption. I gave them my commitment the U.S. government ensures the safety of their children adopted by Americans through a patchwork of laws of the 50 States because adoption is primarily State law. They informed me of their preference to deal with someone on the federal government level about international adoption. Accordingly, I co-sponsored the Hague Intercountry Adoption Act because it establishes a Central Authority in the State Department to monitor intercountry adoptions.

I will now take some time to explain some of my interest in intercountry adoption. The terrible conditions of Russian orphanages alarmed me in 1997-1998. Russia has at least 625,000 abandoned children – many of them deserted by impoverished or alcoholic parents. Most orphanages lack sufficient funds to pay for food, clothing, training, health care, and fuel. Unfortunately, due to the economic slowdown, the Russian government can no longer afford to take care of these children as they once did. As a result of this dire news and the fact that Americans have adopted more children from Russia in the previous year (then 1997), Rep. James

Oberstar and I were able to secure three million dollars in foreign aid for orphans and displaced children in Russia in the Fiscal Year 1999 Omnibus Appropriations Act last October.

I believe helping disadvantaged children overseas is an important investment that improves our relationships with other countries and advance our foreign policy objectives. Accordingly, Rep. James Obertstar and I set out to significantly increase the foreign aid budget for orphans and displaced children to 30 million dollars for Fiscal Year 2000. We were successful in securing these funds in the House-passed foreign Operations Appropriations Act this year. Unfortunately, we lost out in Conference but, as you know, the President's veto means we will have another attempt to increase aid for orphans.

It pains my heart to know that the majority of these children are never adopted and are consequently in need of a loving family. In my meetings with the Russian Duma Deputies and judges, I reaffirmed to them that the best place for any child is with their birth parents. Secondly with adoptive parents of that country and thirdly with parents of another nation. As a supporter of the Hague Intercountry Adoption Act, you and I and many other members of this committee are answering the cries for help of thousands of Russian orphans and abandoned children worldwide in their search for a loving family to join by working to keep international adoption as a viable option. We must do the right thing and pass the Hague Intercountry Adoption Act without extraneous legislative provisions not required by the Hague Convention.

As the proud holder of the Congressional seat first held by James Madison, I owe it to my constituents to view legislation with a wary eye if it tramples the rights of the States. In particular to the Hague Intercountry Adoption Act, there are some activist groups with a political agenda in favor of opening State adoption records. It is their right to work in the States to advance their legislative goal. It is my right to say this is a matter best left to the States. Although no one in Congress has publicly stated it is their goal to federalize the opening of adoption records, there is a backdoor approach advocated by some members of the adoption community that may convince people, who do not have a strong understanding of adoption issues, that it is okay to federalize statutes dealing with access to identifying information in confidential adoption records.

A very easy way to advance one's goal of opening adoption records and increasing access to identifying information in all 50 states is to pass federal adoption law pertaining only to international adoptees. By setting the precedent on the federal level for some adoptees and not others, we will have trampled State law on an issue that deeply divides men and women of good character throughout the adoption community.

Once the precedent is set by Congress for the disclosure of identifying information for international adoptions, it will only be a matter of time before someone in Congress advocates the federalizing and disclosure of identifying information for all domestic adoptions. In doing so, we will have ignored the will of the States to decide a matter that is best left to the States to decide. If one is unhappy about their State law, dedicate yourself to reforming the law of your State and let the Congress get on with passing pro-adoption, pro-family legislation like the Hague

Intercountry Adoption Act without trampling State law.

I am relying on this distinguished committee to leave access to adoption records to the States. Disclosure of identifying information remains highly controlled by the States and proposals to increase access to identifying information in Hague Convention adoption records will set a precedent that ignores the laws of the 50 states.

I will address what the Hague Convention states on the matter so there is no confusion.

Article 16(1)(a) of the Hague Convention states that if the Central Authority of the State of origin is satisfied that the child is adoptable, it shall prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child.

Article 16 (2) of the Hague Treaty states that the Central Authority of the State of Origin shall transmit to the Central Authority of the receiving State its report on the child...**taking care not to reveal the identity of the mother and father if, in the State of origin, these identities may not be disclosed.**

Article 30 of the Hague Treaty states that competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the history of his or her parents, as well as the medical history, is preserved. **Most importantly, Section 2 of Article 30 ensures that the child or his or her representative has access to such information, in so far as permitted by the law of that State.** Personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used for which they were gathered or transmitted, according to Article 31 of the Convention.

I strongly support the tougher penalties called for in the Hague Intercountry Adoption Act. Adoptive parents and government officials demand to know unethical behavior will not be tolerated. The Hague Intercountry Adoption Act provides for civil money penalties up to $25,000 for a first violation and up to $50,000 for each subsequent violation by unscrupulous individuals and agencies.

In order to ensure ethical behavior for all involved, the above-mentioned civil penalties apply to any individual who provides adoption services in the United States in connection with Convention adoptions without proper accreditation or approval. Additionally, if one provides false statements, improperly induces consent from a birth mother to relinquish her parental rights or violates the privacy provisions contained in Section 401, they will also be subject to fines of up to $25,000 and $50,000. Criminal penalties in the same amounts will also apply for violations. The strong enforcement provisions included in the Hague Intercountry Adoption Act are a necessary tool to ensure penalties go far beyond the cost of merely doing business.

Thousands of children worldwide are waiting helplessly for parents to read to them, to teach them how to tie shoe laces, to say bedtime prayers with them, and to eat ice-cream with them on a summer night. It is in the best interest for a child to be part of a loving family. The Hague Intercountry Adoption Act gives the U.S. Congress an opportunity to stand-up and reaffirm our support for intercountry adoption. I am proud to support this bill because I have been blessed by my experiences with adoption so now I am doing what I can to help thousands of innocent children find a loving home.

STATEMENT OF

MARY A. RYAN
ASSISTANT SECRETARY FOR CONSULAR AFFAIRS
UNITED STATES DEPARTMENT OF STATE

WEDNESDAY, OCTOBER 20, 1999

BEFORE THE COMMITTEE ON INTERNATIONAL RELATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

THE HAGUE CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

Mr. Chairman and Members of the House International Relations Committee, I am delighted to have the opportunity to discuss international adoption, the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, and proposed implementing legislation for that Convention. Along with me today is Jamison Borek, Deputy Legal Adviser for the State Department, in case you have legal questions that could be better answered by an expert attorney.

I would like to thank you, Mr. Chairman, and the other Members of Congress who have shown such a personal interest in the Convention and its implementation, as well as the dedicated staff who have devoted long hours and worked so diligently on H.R. 2909. While there are some differences, we are pleased that the legislation overall is very similar to the Administration's own proposal.

I would like to focus my remarks today on the current situation in international adoption from the U.S. Government's perspective, including the federal government role. I would also like to outline the Hague Adoption Convention, its benefits, and how the Convention and its implementing legislation will work to remedy current problems in international adoption. My hope today is that the committee will understand the immediate need for the Hague Adoption Convention, and the fact that if it is not acted upon soon, countless numbers of potential American parents will suffer. More importantly, many orphaned children around the world will be denied a loving family.

Mr. Chairman, the welfare and protection of American citizens is the State Department's highest priority. This includes American parents building families through international adoption, as well as American children finding families abroad through international adoption. We want to ensure that our children are protected once overseas

and that those brought to our shores and their adoptive parents are equally protected. These are concerns that many Members of Congress share.

The United States, particularly since the end of World War II, has opened its arms to orphaned and abandoned children around the world, and many Americans have looked to international adoption to build families and to provide a better life for these children. The families are as diverse as America itself, including extended families, married couples, multicultural families, and single-parent households.

We believe that Americans currently adopt more children from abroad than the citizens of all other countries combined. In fiscal year 1998, 15,744 children were adopted from abroad. This is compared to the beginning of the decade, when international adoption totaled 7,093 in 1990.

The majority of children adopted from overseas over the years have come from Asian countries, primarily Korea. Since 1955, more than 98,000 children have been adopted from South Korea alone. In the five-year period 1976 to 1981, Americans adopted more than 5,000 South American children, almost 80% coming from Colombia. It was not until the early 1990s with the breakup of the Soviet bloc, that Eastern European countries became the largest source of adoptable children for Americans. Since 1992, over 15,000 children have come from Russia, 3,900 have come from Guatemala, and 11,500 from China.

These adopted children have enriched families throughout the United States and have become an integral part of our community. Many have grown up to become business leaders, doctors, lawyers, scientists, teachers, community leaders; some have devoted their lives to giving children like themselves a chance to grow up in loving adoptive families.

The federal government's current role in intercountry adoption is small. In the United States, family law, including adoption and related laws, rules, and procedures, is set by the states. The federal government's role is limited primarily to immigration processing, providing information, and working with foreign governments to ensure Americans are not discriminated against when adopting from abroad. The State Department's Office of Children's Issues provides country-specific information about international adoption, general information about U.S. visa requirements, and other important information about travel situations, attorneys abroad, and authentication of documents for use abroad. The Immigration and Naturalization Service (INS) receives and processes applications by prospective adoptive parents for approval to adopt a child from abroad, and for the immigration and subsequent naturalization of such a child. The Department of Health and Human Services (HHS) works with the states to improve adoption practices through information exchange, training, and technical assistance on a variety of matters, including adoption agency licensing issues, and has extensive experience working with the states to further the adoption of U.S. children with special needs who are in foster care.

The Convention

Sadly, along with all the positive benefits of international adoption, I must acknowledge that there have been some abuses. This fact ultimately prompted 66 countries to convene in The Hague to prepare a convention to provide standards and procedures for intercountry adoptions, which would protect children, their birth parents, and their adoptive parents. Intergovernmental negotiations began in 1991 under the auspices of the Hague Conference on Private International Law, after the international community realized that there was a need for internationally prepared standards for intercountry adoption. These efforts produced the 1993 Hague Convention on Intercountry Adoption, the first formal international mechanism to facilitate the process and protect the integrity of intercountry adoption. The Convention will enable many more children around the world to become part of loving and supportive families—something every child deserves.

The text of the Convention, the President's Letter of Transmittal, and the Acting Secretary of State's Letter of Submittal, may be found in Senate Treaty Doc. 105-51, issued on June 11, 1998. Senate Bill 682 (Helms-Landrieu) was introduced on March 23, 1999, as implementing legislation for the Convention. As you are aware, Mr. Chairman, the Senate Foreign Relations Committee just held a hearing to discuss the Convention and its implementation on October 5.

The United States, as the world's major receiving country for children in intercountry adoption, played a very active role in the negotiations at The Hague. We believe that we were successful in ensuring that the Convention's requirements were realistic, would be effective in protecting children and biological and adoptive parents, and would serve to discourage child trafficking and associated child abductions and fraud. At the same time, we succeeded in ensuring that the Convention imposed no requirement that would be unconstitutional in the United States or would unduly burden the already daunting process of adopting a child from abroad.

The drafters of the Convention believed that a properly safeguarded international adoption was a better alternative for care of an orphaned or abandoned child than institutional care in the child's country of origin. The Convention recognizes that growing up in a family environment is critical for the harmonious development of the child's personality, and it appropriately safeguards intercountry adoptions. The Convention is designed to ensure that adoptions will take place when they are in the child's best interests, and that the abduction of, and trafficking in, children and other abuses will be prevented.

In the years before negotiations began and throughout the lengthy deliberations, the U.S. delegation sought guidance from the U.S. adoption community, including adoption agencies, lawyers, social workers, and adoptive parents. Representatives from the adoption community were on our delegation to preparatory sessions. Following

endorsement of the Convention by U.S. adoption interests and the American Bar Association, the United States signed the Convention in March 1994, signaling our intent to ratify. Since its adoption, 35 countries have either ratified or acceded to the Convention, and 12 others have signed but not yet ratified, making it perhaps the most quickly, enthusiastically and broadly accepted Hague Convention in the more than 100-year history of the Hague Conference.

The Convention requires that:

- Certain determinations, such as adoptability of the child, eligibility to immigrate, parent suitability and counseling, be made before the adoption can proceed.

- Every country establish a national government-level Central Authority to carry out certain functions that include cooperating with other Central Authorities, overseeing local implementation of the Convention, and providing access to information on its government's adoption laws. Case-specific functions under the Convention, such as adoption counseling, matching children with prospective adoptive parents, preparation of reports on the child and the adoptive parents, and post-placement services may be performed by adoption agencies and other international adoption service providers.

- Every country establish a national government-level process for uniform screening and authorization of adoption service providers.

- Certified Convention adoptions be recognized in all other party countries.

Last and most important, the Convention imposes requirements that protect a child's welfare throughout the adoption process. Under the Convention, a mechanism will be in place to track outgoing Hague adoption cases, providing a level of protection previously unavailable to U.S. children taken abroad for adoption.

Every party country is able to establish further conditions and restrictions beyond those specified in the Convention. The Convention leaves many details of implementation up to party countries.

Implementation

After the United States signed the Convention in 1994, the Department of State, the Immigration and Naturalization Service, and the Department of Health and Human Services consulted with the private adoption community, parents, lawyers, and other professionals on the general concepts of proposed federal implementing legislation. The resulting Administration proposal was sent to Congress in June 1998 and submitted once again, with very minor changes, in May 1999. I would like to thank those from other government agencies and the private sector that contributed to this cooperative effort to

prepare legislation.

Both H.R. 2909 and the Administration's proposed implementing legislation would do the following:

- Place the U.S. Central Authority in the Department of State. Its responsibilities would include largely programmatic functions. It would not handle case-specific functions, which would continue under the Convention to be performed by U.S. private adoption service providers.

- Place the functions concerning accreditation or approval of adoption service providers with the Department of Health and Human Services. HHS would work in coordination with the Department of State to carry out necessary accreditation programs, and to promulgate regulations.

- Task the Department of State and INS to develop a case-tracking system for all adoptions of children coming to the U.S. and all Hague adoptions of children leaving the U.S.

- Amend the Immigration and Nationality Act to provide for a category of children adopted pursuant to the Convention, thereby streamlining U.S. immigration procedures for Hague cases.

- Address the funding for the Department of State to ensure adequate resources for the effective performance of its functions as U.S. Central Authority and for the provision of other new adoption-related services.

Mr. Chairman, H.R. 2909 and S. 682 differ as to which agency might be best suited to establish and oversee the accreditation of international adoption service providers. The Administration strongly believes the accrediting function should rest with HHS as proposed in H.R. 2909. HHS is the only federal agency with the relevant and necessary experience evaluating social service and health service providers and their performance throughout the country. In addition to its adoption expertise, HHS has extensive experience with the process of accreditation in the health field and reviewing the standards and practices of accreditation bodies. Just as we are concerned for our children who may leave the United States for adoption abroad, so have other sending countries expressed concern that their children will be properly protected by adoption service providers in receiving countries, including the U.S. In the vast majority of these sending countries, public social welfare authorities are responsible for issues regarding adoption. These authorities and their governments will be reassured to have HHS, a recognized player in the supervision of social services, charged with oversight for the accrediting of U.S. adoption service providers for intercountry adoption.

There are, however, a few suggestions that we stand ready to discuss with the Committee at its convenience. We are concerned, for example, that the provisions in

H.R. 2909 regarding fees for accreditation oversight differ from the Administration's proposed legislation. In the Administration's proposal, HHS would be able to retain fees for the oversight function. We believe that our concerns for adequate financial and human resources for HHS, the State Department and the U.S. Central Authority are shared by the adoption community, which does not want inadequate resources to hamper and delay preparations for implementation of the Convention and the U.S. Central Authority's ability effectively to perform its functions.

Problems in International Adoption Today

Despite the thousands of adoptions that proceed smoothly, some come to our attention which are problematic. Such adoptions are time consuming, extremely resource intensive, almost always generate congressional interest, and often have implications that could jeopardize future adoptions for Americans. We provide all appropriate assistance to the individual American adoptive families, while at the same time recognizing that each country has the authority to determine the eligibility of its own children to be adopted by persons residing abroad. We work with these countries, case by case and issue by issue, to reassure them of our concern for the welfare of their children. We anticipate that the Hague Adoption Convention and its implementation will ameliorate the problems that currently occur without the Convention.

We have identified five major problem areas in international adoptions. First, there are instances when the child has been adopted in his/her country of origin by U.S. citizen parents, yet is subsequently found to be legally ineligible to immigrate to the U.S. with them. The Convention addresses this problem by requiring a child's eligibility to immigrate to the receiving country to be determined before the adoption or placement for adoption occurs. The Convention also ensures that the necessary consents have been given and the child is actually available for adoption. If these criteria are not met, the Hague adoption will not proceed.

A second problem exists when foreign governments ask the U.S. Embassy or State Department for assurances that an adoption agency is legitimate, and that post-placement services and reporting on the child's welfare will be provided. Adoption in the United States is regulated by the states, which oversee home study standards and reviews, and child welfare programs. The federal government cannot give assurances with regard to matters within the competency of the states. Many foreign governments, in particular those where adoptions are regulated by a central legal authority, find it hard to accept that the national government of the U.S. cannot provide such assurances. The Convention and its implementation will help to resolve this problem, by requiring that a Central Authority be established at the national government level.

The third major problem area in intercountry adoption is lack of uniformity in rules and procedures for state licensing of adoption agencies. The vast majority of state licensing standards relate to domestic adoptions and therefore lack the means to ensure that agencies are competent to offer services for intercountry adoptions. Only a handful

of states have international adoption licensing requirements. Information concerning complaints about providers is held by the states. Because prospective adoptive parents may often work with providers in a state other than the one in which they reside, parents generally have little recourse for complaint if problems arise. An agency may not be involved in any adoptions in the state in which it is licensed, but may be placing children in states that have no oversight authority. The Convention and its implementation will require that all adoption service providers for intercountry adoption be screened uniformly and meet the same standards for accreditation approval.

The fourth problem we see is that some adoptive parents are not adequately prepared and counseled for an international adoption, and the adoption placement is disrupted, resulting in the child's removal from the home. The Convention will not cure this problem, but it will help by requiring that all prospective adoptive parents receive intercountry adoption counseling before the adoption. As all parents know, having a new child in the home can be stressful. Adding a different language and cultural factors, and in many international adoptions, the special needs factor as well, makes the situation untenable for certain parents. Adoption counseling will make prospective adoptive parents aware of all that international adoption entails. Furthermore, the Convention will require the adoption service provider to be responsible for follow-up services once a child is placed. In the rare instance when a placement is disrupted before the adoption is final, the service provider will have an obligation to seek a new adoptive home for the child.

The fifth problem area is the need for a single authoritative source of international adoption information. Currently in the U.S. a variety of organizations and government agencies provide information on adoption issues. Sometimes the information provided may be inconsistent or even inaccurate. Under the Convention, the U.S. Central Authority will arrange for access to a central source of information on U.S. state laws relevant to intercountry adoption.

Mr. Chairman, the world will watch how the U.S. implements this Convention and how it protects children, birth parents, and adoptive parents. Several of the largest source countries have indicated that they are looking to us to ratify and implement the Convention quickly, and that they plan to model their programs after ours. These concerns about U.S. ratification and implementation bear directly on the future ability of American parents to adopt children from abroad. Even though the top five countries of origin for children adopted by Americans have not yet ratified the Convention, they realize the benefits of it and have told us they are planning to work only with countries that are parties. Guatemala, the fourth largest source country for adoptions, is considering legislation that would require non-Guatemalan adoptive parents to be residents of a country that has ratified the Convention. Other countries that receive significant numbers of internationally adopted children, such as France and Canada, have already ratified the Convention. Both Mexico and Brazil have restricted adoptions by American citizens because the U.S. has not ratified the Convention. Romania, the seventh largest source country for U.S. adoptive parents, is allowing U.S. citizens to adopt only by special agreement on the basis that the U.S. will seek prompt ratification of the treaty. As you

can see, it is crucial that the Convention be ratified as soon as possible, and that legislation implementing it be passed immediately as well.

Mr. Chairman, we are pleased that you, Members of the International Relations Committee, and other Members of the House of Representatives have taken such a personal interest in this Convention's implementing legislation. Americans adopt more children internationally than any other country. Our citizens will benefit most from the safeguards in this important treaty and how it is implemented. We are eager to work with the Congress and the adoption community to safeguard and facilitate intercountry adoptions for all those qualified, and to bring children and parents together to bond as quickly as possible.

Mr. Chairman, this concludes my testimony. Thank you for this opportunity to testify today.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Washington, D.C. 20201

STATEMENT OF
PATRICIA MONTOYA

COMMISSIONER
ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES
ADMINISTRATION FOR CHILDREN AND FAMILIES
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

ON
THE HAGUE CONVENTION ON PROTECTION OF CHILDREN AND COOPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

BEFORE THE
COMMITTEE ON INTERNATIONAL RELATIONS
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 20, 1999

Chairman Gilman and members of the Committee on International Relations, I am Patricia Montoya, the commissioner of the Administration on Children, Youth and Families at the U.S. Department of Health and Human Services (HHS). I am pleased to appear before you today to discuss the role that HHS expects to play should we be given responsibility for implementing the accreditation provisions contained in Title II of the "Intercountry Adoption Act of 1999".

I would like to commend the approach that members of the House of Representatives have taken in the bipartisan and cross-committee development of H.R. 2909. Both the Administration's proposed legislation and the House bipartisan bill represent sincere efforts to develop consensus on the issues raised by the treaty and to implement the Convention's provisions with the best interests of children firmly at the forefront. In all most respects, H.R. 2909 is similar to the Administration's proposed implementing legislation. As you know, this treaty is an important step toward protecting the interests of children, birth parents and adoptive parents in the rapidly expanding practice of intercountry adoption.

In my statement I will comment on the purposes of accreditation under the Hague Adoption Convention, address why we believe that HHS is the federal agency best suited to implement the accreditation provisions of the bill, and discuss how we envision the accreditation process working once legislation is enacted.

Purpose of Accreditation

Accreditation is a system of measuring an organization's compliance with national standards of best practice. The Hague Adoption Convention requires that adoptions between party states be conducted only by organizations or persons that meet certain standards. Intercountry adoption services performed in the U.S. under the Convention would be covered by accreditation and approval here, while those performed in another country would be performed by providers accredited by that nation. Accreditation and approval are intended to assure that agencies and persons operating under the Convention have the organizational capacities to perform the functions for which they are responsible.

Accreditation will not replace the process of state licensure under which adoption agencies now operate, but rather will supplement it where intercountry adoptions under the Hague Adoption Convention are concerned. It is not our intent to create an excessive or burdensome set of rules, but only, as the Convention specifies, to establish a sound standard of practice. The vast majority of states' licensing standards currently include standards relating only to domestic adoptions and therefore lack the means to assure that agencies are knowledgeable about their responsibilities under the Hague Adoption Convention or of the particular issues that arise with intercountry adoptions. In addition, licensing standards vary greatly among states, while accreditation standards must be consistent in order to assure other nations we have a uniform standard of quality that they may rely upon when they entrust their children to a U.S. agency and the prospective adoptive parents they represent. We hope that

accreditation may also provide prospective adoptive parents some measure of assurance that agencies operate according to sound practice and high ethical standards.

HHS Adoption and Accreditation Experience

As you are aware, there has been some discussion about whether HHS or the State Department should be assigned responsibility for implementing the accreditation provisions of the legislation. While either HHS or the State Department would carry out the accreditation function through one or more private entities, the responsible federal agency would need to be involved in establishing the accreditation standards through promulgation of regulations and by overseeing the accreditation process. Because HHS has extensive experience in adoption and child welfare issues, the Administration believes that HHS is better positioned than the State Department to have responsibility for this function. HHS and the State Department are fully in agreement on this issue.

As you may know, this Administration, along with members of Congress from both parties, has focused a great deal of attention on the issue of adoption over the past several years. Within the federal government, HHS has primary responsibility for carrying out a wide range of programs and activities related to adoption. I would like briefly to describe my agency's current adoption programs. HHS operates the Adoption Assistance Program authorized under title IV-E of the Social Security Act, which provides nearly one billion dollars to states to operate programs of subsidized adoptions for special needs children leaving the foster care system for loving homes. We are also implementing very successfully the Administration's Adoption 2002

Initiative, the goal of which is to double by the year 2002 the annual number of children from the public child welfare system placed in adoptive homes or other permanent living arrangements. Our Adoption Opportunities Program provides $25 million per year in grants to national, state, tribal and local public and non-profit agencies and organizations to demonstrate a variety of adoption related services designed to increase the number of children with special needs adopted from the foster care system. These services include recruitment and preparation of families, kinship adoption, child preparation, agency and court collaborations, agency and community based collaborations, and post adoption services. HHS operates a National Adoption Information Clearinghouse, which, although it specializes in domestic adoption issues, does provide information upon request about intercountry adoption. Approximately 30 percent of the requests received deal with intercountry adoption. And we fund a National Resource Center on Special Needs Adoption which provides technical assistance and training to states regarding their adoption programs. HHS's institutional experience in working with state and local agencies involved in adoption will be invaluable to our national efforts to establish an accreditation process for intercountry adoptions.

Implementation Plans

Once implementing legislation is passed, HHS would designate one or more accrediting entities and would work with them to develop accreditation standards that would be established by regulation. Agencies seeking accreditation would apply to an accrediting entity which would, through visits to the agency's site and examination of the agency's established procedures and policies, determine whether or not the standards for accreditation are met. The accrediting entity

would collect fees from adoption agencies applying for accreditation to cover the costs of the accreditation process. We hope to keep these fees as low as possible and to scale them to agency size so that they will not become burdensome.

As you are aware, the Convention requires that accredited agencies be not-for-profit service providers. But in many nations, including the U.S., adoption services are offered by a variety of agencies, only some of which are nonprofit organizations. Under the Convention, each nation may decide whether for-profit entities or persons may participate in intercountry work.

Both your bill and the Administration's proposal allow for approved persons as well as accredited agencies to perform adoptions under the Hague Adoption Convention. The Administration believes that the qualifications of the agency, not its IRS status, should determine whether it is allowed to offer intercountry adoption services. Provided a for-profit entity or person is able to meet accreditation standards, we do not believe it should be barred from operation under the Hague Adoption Convention.

Conclusion

Let me conclude by assuring the Committee that in implementing the accreditation provisions of the bill, we envision full cooperation with the State Department and the Immigration and Naturalization Service to assure that each of our activities meets the others' needs and enhances the process of intercountry adoption for children and families. Over the past two years as our agencies have discussed implementation of the Convention, we have developed

a positive working relationship which has served us well. We have taken the time to learn about each other's agency, activities and organizational culture, we have become comfortable with each others' perspectives and operating styles and we have learned a great deal about each agency's strengths. We developed our proposal with these strengths in mind, to best make use of the strategic advantages of each agency. We fully expect that this positive working relationship will continue as the implementation phase of activity begins.

This concludes my prepared statement. I would be happy to answer any questions you may have.

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STATEMENT OF

SUSAN A. FREIVALDS

COORDINATOR, HAGUE CONVENTION POLICY
JOINT COUNCIL ON INTERNATIONAL CHILDREN'S SERVICES

OCTOBER 20, 1999

HOUSE COMMITTEE ON INTERNATIONAL AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

STATEMENT OF SUSAN A. FREIVALDS
COORDINATOR, HAGUE CONVENTION POLICY
JOINT COUNCIL ON INTERNATIONAL CHILDREN'S SERVICES

OCTOBER 20, 1999

HOUSE COMMITTEE ON INTERNATIONAL AFFAIRS

Mr. Chairman and members of the Committee:

Thank you for the opportunity to address you today regarding implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, currently under consideration for ratification by the U.S. Senate. I thank you for holding these hearings to explore how the United States might best implement the Convention and provide its protections to children who would benefit from intercountry adoption and to the parents who are adopting them.

I am the Hague Convention Policy Coordinator for the Joint Council on International Children's Services, the nation's oldest and largest affiliation of state-licensed, not-for-profit child welfare agencies serving children through intercountry adoption. The Joint Council's 130 member agencies provide services in an estimated three-quarters of all intercountry adoptions to the United States. I also was a member of the U.S. delegation to the meetings at the Hague that prepared the Convention in 1992 and 1993, where I represented the interests of adoptive and prospective adoptive parents when I was Executive Director of Adoptive Families of America. I myself am the lucky mother of a daughter adopted from Korea 24 years ago when she was an infant.

Joint Council calls for U.S. ratification of the Hague Convention.

The Joint Council and its 130 member agencies call for U.S. ratification of the Hague Convention in the strongest possible terms believing that the Convention's goals of providing a framework for cooperation and safeguards for children, birth parents, and adoptive parents in intercountry adoptions are not only laudable, but also necessary to the continuation of intercountry adoption as a means to provide children overseas with new, permanent, loving families.

We are joined in this call for ratification by the Hague Alliance, an informal affiliation of adoption professionals, legal experts, child welfare organizations, and national association and organizations that support the ratification of the Hague Convention on Intercountry Adoption. This Alliance includes leading U.S. organizations working for child welfare, including Child Welfare League, American Bar Association, National Association of Social Workers, American Public Human Services Association, Catholic Charities, Association of Jewish Family and Children's Agencies, Council on

Accreditation of Services for Families and Children, National Council for Adoption, American Academy of Adoption Attorneys, and North American Council on Adoptable Children, in addition to the Joint Council on International Children's Services. The Hague Alliance strongly recommends U.S. ratification of the Hague Convention, an important credential from this extremely knowledgeable and impressive group.

Conversations with foreign adoption officials have convinced members of the Joint Council that U.S. ratification of the Hague adoption convention is necessary. Not only will the Convention provide many protections for children and parents, it will also safeguard the viability and continuation of the very process itself. Joint Council believes that U.S. ratification may be necessary to keep intercountry adoption open as an alternative for U.S. families and for the children most in the need of families.

Joint Council endorses H.R. 2909, the Intercountry Adoption Act of 1999.

The Joint Council supports enactment of legislation that will enable the United States to implement the Convention in a manner that will allow intercountry adoptions to proceed ethically and expeditiously. We feel that H.R. 2909, the "Intercountry Adoption Act of 1999" co-authored by Mr. Gilman, Mr. Gejdenson, Mr. Camp, and Mr. Delahunt, is such legislation and we endorse its passage. We salute the authors for their hard work and spirit of compromise that have produced this bipartisan bill that the adoption community can embrace.

H.R. 2909 has been written with a minimalist approach to implementation of the Hague Convention. For the most part, only provisions that are essential to implement the Convention have been included. Furthermore, where decisions concerning implementation can be left to state law, they have been. H.R. 2909 rightfully addresses only the implementation of the Hague Convention and does not attempt to impose any conditions or corrections of adoption law or practice that are not required by the Convention. We anticipate that H.R. 2909 would allow adoptions under the Hague Convention to proceed in a manner that is both ethical and expeditious.

While Joint Council endorses H.R. 2909 and encourages its speedy passage by the House, I would like to comment on several of its provisions and perhaps provide some guidance to your further deliberations. In particular, I will address parent-initiated adoptions, accreditation of agencies and approval of persons to provide adoption services, and access to identifying information.

Parent-initiated adoptions should be restricted.

The Hague Convention provides for adoptions to take place not only with the assistance of accredited bodies (in the U.S., these will be state-licensed, not-for-profit adoption agencies) and/or approved persons (primarily attorneys and for-profit adoption agencies), but also by prospective adoptive parents acting on their own behalf. While the Convention provides these three options, it also empowers signatory countries to disallow certain of these methods. Joint Council strongly encourages the Congress to ban intercountry adoption by U.S. prospective adoptive parents acting on their own behalf.

H.R. 2909 appropriately exempts from accreditation or approval agencies or persons providing home study services *only*. This exemption will allow continued convenient access by prospective adoptive parents to home study service providers throughout the country. Quality control will be assured, in most cases, by the fact that an accredited body or an approved person will provide the balance of the adoption services (for example, the referral of the child). The home study, although not directly provided by the accredited or approved body, will have to be acceptable to such a body and will need to meet high standards. Accredited bodies and approved persons who accept substandard home studies will risk losing the status that allows them to provide adoption services under the Hague Convention.

In the instance where prospective adoptive parents have their home study provided by a non-accredited, non-approved provider and then act on their own behalf to complete the adoption, the quality control function I just described will be absent. This scenario, which is an option as H.R. 2909 is currently written, would allow adoptions by U.S. parents with no participation by either an accredited body or an approved person. The safeguards intrinsic in the Convention would be missing.

The home study is not only a tool to screen families for their eligibility and appropriateness to adopt, it is equally important as a means to provide pre-adoption education to prepare families for intercountry adoption. Countries of origin are counting on those of us in the receiving countries to appropriately prepare intercountry adoptive families. If we require no input into the home study from accredited bodies or approved persons, then the Convention will have failed in its goal to protect children. Appropriate screening and preparation of the prospective parents is perhaps the most important protection we can give children who need new families through intercountry adoption. Therefore we ask you to eliminate adoptions to the U.S. by parents acting on their own behalf.

This mandate becomes clear when we remember that intercountry adoption should be about finding families for children, not children for families.

Accreditation is a valuable process to assure delivery of high-quality adoption services.

Joint Council, in its 25 years of existence, has been dedicated to promoting standards of excellence and accountability for adoption professionals and has taken a leadership role in drafting, disseminating, and gaining acceptance for high standards of accreditation for agencies to provide adoption services under the Hague Convention. We have done so not only because accreditation is a vital part of Hague Convention safeguards, but also because it provides rigorous and appropriate opportunities for improved services and professional accountability.

As you are aware, the Hague Convention mandates that agencies and individuals that provide certain services in an intercountry adoption be accredited or approved to provide such services. Although the Convention is silent on the details of this requirement, the

Hague Alliance has promulgated standards of practice for accreditation to provide adoption services under the Hague Convention that have been widely accepted throughout the adoption community. These standards, which the Hague Alliance has made available to the U.S. Departments of State and of Health and Human Services, provide a template for adoption services that are ethical and in the best interests of children.

Some may argue that state licensure of agencies or persons is sufficient to compel compliance with the terms of the Hague Convention. We feel, however, that licensure requirements vary so much from state to state that this is not a viable option to meet the standards of uniformity that federal accreditation or approval would require. Even though the 130 agencies of the Joint Council would be submitting themselves to further scrutiny, expense, and inconvenience, they have chosen to support federal accreditation, in addition to state licensing, to take full advantage of the Hague Convention protections.

H.R. 2909 rightfully determined that state licensure is not sufficient to assure compliance with the Convention and to secure its protections. Joint Council also endorses the provisions in H.R. 2909 that assign to the U.S. Department of Health and Human Services oversight of accreditation and approval of adoption service providers. Proposals that have assigned this function to the Department of State overlook the fact that State has no expertise or experience in supervising accreditation for child welfare services, and we would argue that this lack of expertise would result in greater expense and longer timelines for the accreditation and approval processes. Joint Council urges that HHS retain its traditional role regarding oversight of child welfare services, as proposed in H.R. 2909.

Accreditation as envisioned by the Hague Convention is being called for by adoption authorities in countries all around the world. The United States is one of a few countries, if not the only country, whose federal government does not currently license or accredit adoption agencies. Foreign adoption officials are looking to the U.S. to set a national standard for adoption service providers, to assure the well-being of all the parties to an intercountry adoption, and particularly of the children.

Provisions for access to identifying information must be retained.

As part of its minimalist construct, H.R. 2909 has rightfully deferred to state law determinations concerning access to identifying information in Hague Convention adoption records. In light of evolving child welfare practice and advances in medical knowledge, Joint Council supports access to identifying information under certain circumstances and by means that take into account the needs of all parties. Laws in every state provide such access, whether through court order or by less restrictive methods.

Joint Council's only caution regarding the provisions in H.R. 2909 that address access to identifying information is that they not have the unintended consequence of restricting the provision to prospective adoptive parents of information for which no guarantee of privacy has been either sought or intended. In a number of countries, identifying information is routinely provided to adopting parents, either because it is required for

completion of the adoption or because what we know in this country as "open adoptions" are preferred by the birth parents and the authorities in the child's country of origin. We must make sure that H.R. 2909 does not interfere with the ability of families, both birth and adoptive, to choose an adoption in which identifying information is exchanged, if they so choose.

While intercountry adoptions have traditionally been "confidential," there is now movement toward more openness in adoptions in countries around the world. For example, the Korean government has recently established an office to assist its international adoptees in reuniting with their birth families in Korea.

There are many advantages to U.S. ratification of the Hague Convention.

Many advantages have been identified concerning U.S. ratification of the Convention. Prospective adoptive parents will have assurance that the adoption service provider they are using is experienced, knowledgeable, ethical, and financially sound, because the provider will have undergone a process of accreditation or approval before being allowed to operate under the Convention. Service providers overseas will also be subject to the same sort of scrutiny by their own Central Authorities.

Countries that ratify the Convention are endorsing the declaration, found in the very first clause in the Preamble to the Convention, that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." This is the first time that an international document has recognized the superiority of a permanent family, thereby preferring intercountry adoption to foster care or institutional care in the child's country of origin, a very welcome and important endorsement of intercountry adoption. Child advocates hope that this sort of commitment will result in fewer delays and barriers being placed to intercountry adoption.

The relaxing of orphan visa requirements for "Hague adoptions" would allow U.S. citizens to adopt children who do not meet the current "eligible orphan" requirements, including children with two living birthparents who consent to their adoption and emigration. This change, along with the Convention's requirement that eligibility for immigration be assured before the adoption is finalized, will eliminate most of the uncertainties surrounding the current visa process.

Because the Convention requires its party countries to recognize Convention adoptions finalized in any one of them, re-adoption in the United States will no longer be necessary. The U.S. Central Authority will issue an English-language document certifying that the adoption took place under the Hague Convention. Provisions requiring the preservation of records, including those on the child's origins, will ensure that they will be available, according to the laws of the country in which the records are retained.

Finally, the Central Authorities could become a positive force in facilitating adoptions once a child is identified and approved for intercountry adoption. If there's one thing we know, it is that every day spent in institutional care damages a child. Central Authorities

are directed by the Convention to act expeditiously and there are many ways they could work under the Convention to facilitate the adoption process. For example, if countries of origin should accept the accreditation determinations made by the receiving country, there would be no need for adoption agencies to undergo additional scrutiny before they are allowed to work in certain countries.

Thank you again for allowing me this opportunity to address these critical issues on behalf of the Joint Council on International Children's Services and its 130 member agencies. We must proceed in a thoughtful yet expeditious manner to ratify the Hague Convention on Intercountry Adoption and to enact appropriate implementing legislation. Children around the world are counting on us to secure the future of intercountry adoption to the U.S. in the 21st Century through ratification of the Hague Convention.

Neither Susan Freivalds nor Joint Council on International Children's Services has received funding from any Federal grant or contract during the current fiscal year.

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Currently

Coordinator of Hague Convention Policy, The Joint Council on International Children's Services, 1996 to present.

The JCICS is the nation's oldest and largest affiliation of licensed, nonprofit adoption agencies serving children through intercountry adoption. As Coordinator of Hague Convention Policy, Ms. Freivalds has led the effort to assure workable implementation of the Hague Convention on Intercountry Adoption, including defining standards and procedures to accredit agencies to work in intercountry adoption.

Previously

Executive Director, The National Adoption Foundation, 1996 to 1998

The National Adoption Foundation assists families with the personal finance issues of adoption and adoptive family life through financial support, information, and services.

Executive Director, Adoptive Families of America, 1987-1996.

From 1987 to 1996, Ms. Freivalds headed Adoptive Families of America, directing its growth from a regional adoptive parent support group to its current status as the national nonprofit organization offering support and information for all adoptive and prospective adoptive families. During her tenure, she founded *Adoptive Families* magazine and represented the interests of adoptive families as a member of the official U.S. delegation to treaty negotiations concerning the Hague Convention on Intercountry Adoption in The Hague, Netherlands, 1992 and 1993.

Education

Ph.D. program, University of Minnesota, Department of Economics, 1975-1976. Bush Foundation fellowship.

B.A., University of California (Davis), with high honors, 1972. Winner of the Departmental Citation for Outstanding Economics Student.

Georgetown University, School of Foreign Service, 1964-1966.

Personal
Mother of three daughters, the eldest adopted from Korea.

TESTIMONY

of the

"Adoptmed Group"

submitted to the

HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

on

the "Intercountry Adoption Act of 1999"

by

Jerri Ann Jenista, MD

October 20, 1999

The Adoptmed Group

The "Adoptmed Group" is a coalition of approximately 200 health care professionals and adoption clinics in the United States and Canada who provide services to families providing foster care or adopting children. Our members include pediatricians and family practitioners, nurses, psychologists, occupational and physical therapists and clinical social workers. We provide direct patient care to families with adopted or foster children. Many of us are also involved in research on the medical and developmental issues of adopted children.

We have a very active educational agenda, providing lectures, workshops and written materials to physicians, adoption agencies, social workers, orphanages and adoptive families. Our members travel overseas to orphanages and other child welfare institutions to both observe and educate. Almost all of us are actively involved in humanitarian efforts to improve the social and medical plight of children living without permanent families. In addition, we are currently producing a manual for parents on the health care issues for children adopted internationally.

Limitations of the effect of HR 2909

In essence, we are the medical professionals "on the front lines" in the health care of adopted children. In this role, we see daily evidence that there are many problems in the practice of intercountry adoptions in North America. We applaud the efforts to implement the Hague Convention on Intercountry Adoption in the United States. The following testimony is presented to encourage Members to support this very important legislation to standardize the practice of intercountry adoption and to protect the rights of the children and parents involved.

However, we would also like to point out that implementation of this Convention will affect only about 10% of the intercountry adoptions taking place into the US today. The major countries sending children to the United States have not ratified the Convention and thus, the legislation outlined in HR 2909 will not resolve many of the problems we have outlined below.

Problems in intercountry adoption

In reviewing the medical records of prospective adoptive children for parents and in caring for the children after adoption, we come to hear of many unethical or inappropriate practices in intercountry adoption by agencies, facilitators and private lawyers. The following are all true incidents or practices drawn from our experiences.

The qualifications of the persons providing, collecting or translating the medical records are often unknown to the adopting family. For example, a facilitator working with a licensed adoption agency in Michigan to place children from Russia was discovered by the parents, only during the course of a lawsuit against the agency, to have no social work training and to be functioning without any oversight from the agency. As a matter of fact, the facilitator works as a furniture refinisher and does not speak Russian. However, the parents were limited only to this person for access to any medical information about their prospective child.

The information provided about specific children is often incomplete and/or missing essential data such as the child's growth parameters at **any** point in his life. Quite often families are told that "no other information is or will be available." However, we practitioners may see reports coming from the same orphanage but through two different agencies. The discrepancy between the agencies' records is frequently remarkable. Sometimes we have the opportunity to contact the physician in the other country and almost always, there is extensive further data available, especially for children with significant special needs.

Some agencies or facilitators abrogate their responsibility to ask appropriate questions or collect data by making the family sign a waiver. A widely used waiver states, "We/I fully understand the medical condition of this child and are willing to adopt him/her. We will travel as soon as possible to complete the adoption of this child." Typically, this waiver is followed by a one paragraph description of the child's diagnoses without any social, growth or developmental information. If we, the physicians cannot understand the child's health condition, how is it that the family can?

Some agencies avoid responsibility for collecting medical information by providing no information at all. Instead, they offer the family the "opportunity" to have an independent medical evaluation by a person outside the orphanage. The qualifications of this expert are usually not provided, the expert often has no access to the child's medical records and does not know the child and, of course, the expert charges the family a hefty fee (often $500-800). On occasion, an outside opinion can be invaluable in assessing a child's status but this should never be at the expense of providing the child's original records.

Some agencies deny or brush off parental concerns with unfounded comments such as: "We don't measure head circumferences unless there is a problem." "All children in Russia are born small." "We only place healthy babies." "Our children are healthier than those of other agencies." "Vera, our lawyer, only chooses the best children. " "Those diagnoses on the chart were made up only to allow the child to go for international adoption. They are never true." "All these children need is fresh air, food and a family to recover to normal."

Parents are sometimes denied the opportunity to ask essential follow-up questions. "You can ask anything you want when you get to the orphanage or the court." But what does the family do, when having spent thousands of dollars and traveled 10,000 miles to a country where they don't speak the language to be presented in court with the information that "the parental rights were terminated because the father is in jail." And why is father in jail? "Because he sexually abused the other children in the family, but we have no evidence about this child." Now they are away from their friends and family, in a strange country, faced with a live child for whom they have longed for years, without an opportunity to reflect on what this new information may mean to their family.

Some agencies/facilitators provide no social work services at all but instead send the family to an orphanage to choose their own child. "This way," they are

told, "you can see the child for yourself and ask any questions you want." But how are these parents, who often have never raised a child, to know what questions to ask and to know if the answers seem reasonable? This practice says that there is no value in social work or medical evaluation of a child by a person who has no personal stake in the adoption. If this were an easy process, then why did so many families who chose their own children in Romania come home with such severely impaired children?

Families are placed under undue pressure to accept a child. For example, some agencies allow only 24 hours for the consideration of a child. At least one does not allow the family to take home the medical information, video or pictures to review the data under calmer circumstances. Families are told that a court date is already set and that, if they miss this appointment, they will have to wait months for another one. Parents are threatened that, "Other families/agencies are considering this child and whoever decides first will get the child."

Unfair practices are used to coerce families. For example, the family is given a video or picture of a child and left without medical records for days or weeks. When they are thoroughly bonded to the photograph, they are then given records detailing significant medical issues they would never have considered if they had seen the paperwork before the child.

Families are made to "pick the best of the litter." In this situation, the family is given a video tape of up to a dozen children, usually with scanty or no medical information and told to "Choose the one you like best." Again, where is the consideration for appropriate social work practices?

"Bait and switch" practices are not common but exist. The family finds a child, typically on an Internet website and inquires only to be told, "That child is not available but we have many others. Just send in your $2000 initial retainer fee (non-refundable, of course) and we will send you more information."

Many placing agencies provide no education about the medical or developmental concerns of children coming from orphanages. Some resolve this by having the family sign a waiver stating that there are many unpredictable and unknown problems and that parents should beware. Others leave this responsibility to the home study agency worker who likely has never seen or heard of the child in question and may have no intercountry adoption experience. Others require that families get a medical opinion on the child's records, leaving the full responsibility for the education to the health care provider.

There is no mandated follow-up of adoptions. Many agencies and others do not make any effort to track the outcome of their placements, reassuring families with comments such as, "No family has called us after the adoption to complain." Or "We have a picnic (Christmas party) every year and all our children are doing fine." However, do the unhappy families with problem children ever come to the picnic?

The children coming for intercountry adoption today have true medical and developmental concerns. Malnutrition, deprivation and uncertain social

circumstances can never be good for babies. Yet, there are agencies and facilitators who still deny that there are any problems, and who do not participate in any continuing education on these issues. For example, our Adoptmed Group provided a full day of medical education on all the latest research at the 1999 meeting of the Joint Council on International Children's Services. Although 100 agencies sent representatives, where were the other 70 agencies? Do they already know everything there is to know? And do their clients know whether or not those agency workers have received any continuing education?

Concerns

Because of our daily concerns about these and other practices, we encourage passage of HR 2909. However, we also would worry that this legislation will set up two parallel systems of intercountry adoption in the United States. In one track will be those adoptions performed through accredited agencies from other Convention countries. These will be more expensive, more arduous and more time-consuming. The second track will involve adoptions from non-Convention countries by agencies and others who may have no appropriate resources to place the child in a home best prepared for the child's issues. This track, of course, will be cheaper and quicker, thus luring families away from the more heavily monitored Convention mandated process.

We also wonder how it can be that an individual, whether approved under the Convention or not, can provide the extensive range of services needed to complete an intercountry adoption? If that person can provide all those services, then why are they not required to practice as a licensed agency?

Conclusions

Although implementation of the Hague Convention on Intercountry Adoption will improve the situation in the United States, it is not the ultimate answer to address adoption abuses. We encourage the Congress to address this issue in a broader sense. The children involved will become citizens of our country. Do they deserve any less?

Submitted by Jerri Ann Jenista, MD
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American Academy of Pediatrics

TESTIMONY

of the

AMERICAN ACADEMY OF PEDIATRICS

before the

HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

on

"The Intercountry Adoption Act of 1999"

presented by

Jerri Ann Jenista, MD, FAAP

October 20, 1999

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Mr. Chairman, Members of the Committee, thank you for the opportunity to testify today on legislation to implement the Hague Convention on Intercountry Adoption, an issue of extreme importance to many thousands of orphaned children and the families who want to raise them.

My name is Jerri Ann Jenista, and I testify today on behalf of the American Academy of Pediatrics, an organization of 55,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents and young adults. I am a member of the Academy's Committee on Early Childhood, Adoption and Dependent Care, on which I function as the primary expert on adoption issues, particularly intercountry adoptions.

My professional background is in general pediatric academic medicine and pediatric infectious diseases and emergency medicine. But most of my professional life is spent practicing what has come to be known as "adoption medicine." This field involves providing consultation to prospective adoptive parents, adoption agencies, and child welfare and health care professionals about the medical status of children available for adoption. In addition, we treat adopted children who have special needs related to their backgrounds, for example, infectious diseases acquired in other countries. We also manage the rehabilitation of children suffering developmental, nutritional, emotional or neurological problems related to deprivation or trauma suffered in the early months or years of their lives.

I, myself, have been involved in intercountry adoption since 1982, performing research, providing education to parents and professionals and directly caring for patients. In the past three years alone, I have provided pre-adoption medical review on more than 6,000 cases and ongoing consultative medical care for approximately 300 to 500 new patients each year. I have also traveled extensively, personally witnessing the circumstances of the children being considered for intercountry adoption.

I should also mention that I am the single mother of five children adopted from India, three of whom have significant medical or developmental problems related to the circumstances of their former lives.

There were 16,000 intercountry adoptions last year, and nearly 100,000 over the last decade. Therefore, pediatricians are increasingly drawn into the arena of medical evaluation and the long term care of internationally adopted children. Recent research on early brain development has confirmed that consistent, high-quality caregiving is crucial in the early years of life. Therefore, we know that institutional life and foster care, in the US or abroad, are undesirable options for the permanent placement of children. We also know that when a child cannot remain with his or her birth parents or relatives, and cannot be adopted in-country, international adoption offers a positive solution, both for the child and for prospective adoptive parents.

We have serious concerns, however, about the numbers of children being adopted from overseas who have significant medical and behavioral problems that are poorly understood before arrival in this country. When these children are placed in families who are not prepared emotionally, financially or physically to care for them, the outcome can be devastating for both the child and family. It is our hope that improvements in our current system of placing internationally adopted children will result in a better understanding of the medical and social issues facing adoptees, better preparation of the parents who are building their families through international adoption, and improved long-term mental and physical health for these special children and their families.

We applaud you for your efforts to address these issues, and look forward to the day when the Hague Convention and its implementing legislation and regulations are in place.

Major Concerns Regarding Intercountry Adoption

The Academy's most significant concerns about intercountry adoption are as follows:

- inadequate and/or unavailable information released to families about the health and well being of children being considered for adoption;
- inadequate education and preparation of families to care for children with potential medical or behavioral issues;
- that agencies and adoption facilitators are providing inadequate services and support for adopted children and their families, especially children with special medical, developmental or behavioral needs;
- lack of data on the outcomes of intercountry adoptions.

To understand these issues, some background information about today's intercountry adoptees is helpful.

Background information on children born abroad who are adopted by U.S. families

Over the past 10 years, there has been a dramatic shift in the demographics of international adoption to the United States. In 1989, there were nearly 8,000 adoptions with over half of the children coming from excellent foster care situations in Korea and Latin America. In 1998, the number of adoptions doubled to nearly 16,000 with only 20% of children coming from foster care. Over 80% of today's children come from orphanages of variable quality in China or countries formerly under Soviet control.

Fifteen years ago, the typical adopted child was from Korea. The infant was voluntarily relinquished at birth by a young birthmother who would face social castigation if she raised a child born out of wedlock. Because of Korean social mores, the infant was unlikely to have been exposed *in utero* to alcohol or drugs, and the birthmother likely received some prenatal care. The child was placed almost immediately after birth into foster care with a Korean family who was carefully trained and long-experienced in foster parenting. The child received medical evaluation and treatment in a Westernized

health care system. The adopting US family received some information about the birth parents' medical and social history, as well as detailed and accurate medical reports on the child's condition. Arrival and adoption in the United States usually took place before the infant was a year of age, facilitating parent-child bonding and attachment.

After arrival in the adoptive home, most Korean children did remarkably well, exhibiting only a few problems specific to intercountry adoption: a somewhat increased risk of chronic hepatitis B infection and minor developmental delays due to a different philosophy of parenting in the Korean culture.

Today, the typical child comes from one of two regions.

The first child is a girl from China. She is almost invariably relinquished by her birth family because of the "one child policy," an attempt to control population growth which penalizes families financially if they have more than one child. Since it is illegal to give a child up for adoption, many female Chinese infants are abandoned in public places or on the steps of an orphanage. This method of relinquishing a child means that there is no medical or social information about the birth family, pregnancy, birth process or medical issues after birth.

The child will wait for adoption in an institutional setting -- an orphanage -- that is of variable quality in terms of physical facilities, nutritional support and caregiver-to-child ratio. The medical care she receives will be scant and from a medical system with different beliefs and limited resources. Her adoptive family will receive little or no useful information about her health, and much of the written documentation will be unreliable or inadequate to evaluate her medical or developmental state. She will most often arrive in the United States as a toddler, so her adjustment and bonding process will be much different, and generally more difficult, than that of an infant.

After arrival, the Chinese girl and her adoptive family face the immediate issues of malnutrition; growth retardation; nutritional deficiencies, including rickets, anemia, lead poisoning and hypothyroidism; inadequate immunizations; and a markedly increased risk of many infectious diseases, including hepatitis A, B and C, intestinal parasites and tuberculosis. For many girls there are long-term challenges including undiagnosed congenital defects and medical conditions such as cerebral palsy, significant global developmental delays, especially in speech and language, and behavioral problems such as poor social skills, attachment disorders and school failure.

Today's second child is from one of the nations formerly under Soviet control, such as Russia, Ukraine, Kazakhstan or Romania. The economic crisis in Eastern Europe has dramatically increased the number of orphans and has also increased the number of children who are at high risk for medical and behavioral problems. An orphan from one of these countries is often relinquished by the birth family because of economic hardship or family strife. More than 25% of children offered for adoption are available because of an involuntary termination of parental rights following significant abuse or neglect in the birth family.

The rates of prematurity and low birth weight, prenatal exposure to drugs, alcohol and tobacco, and to sexually transmitted diseases such as HIV infection, hepatitis B and C, and syphilis, are at unprecedented high levels. The incidence of previous physical or sexual abuse, physical and mental disabilities, chronic medical conditions and adverse social circumstances are virtually the same in Russia as in children entering into foster care in California.

All of the children awaiting adoption will live in a regimented orphanage setting, with inadequate stimulation and nutrition to grow and develop normally. For some children, medical care is poor or non-existent. For others, medical care is extensive but is practiced on a model almost unintelligible to Western practitioners, depending very heavily on neurologic diagnoses and widespread use of unusual and potentially dangerous drugs. The scanty medical information received by the potential adoptive family will contain very strange medical terminology. Diagnoses, lab tests and immunizations may be difficult to interpret, inaccurate or falsified. This child probably will not "come home" to adoptive parents until he is a toddler or older child. About 10% of the children will arrive into their new adoptive families accompanied by a biologic sibling or another unrelated child being adopted at the same time. The high risk medical and social background, prolonged institutional living, and added stress of competing with another adopted child, set up a situation fraught with risk for difficult transitions and tenuous emotional attachments to the new parents.

After adoption, this second child and his family face all the issues of the Chinese child and more. All outcome studies of children adopted from Eastern Europe and the former Soviet Union have demonstrated high rates of nutritional and growth disorders, infectious diseases including tuberculosis, undiagnosed medical conditions and universal global developmental delay. All studies indicate that these previously institutionalized children have long-term developmental, cognitive and behavioral issues that persist well into the school years and perhaps beyond. The degree of impairment is clearly related to length of institutionalization; the longer the child lives in an orphanage, the worse off he is.

In my own research, about ten percent of the children from orphanages referred to families for potential intercountry adoption should be considered at "high-risk," that is, the child has an irreparable and severe medical, developmental or emotional condition. Another 40% of children have sufficient information noted on their records to determine that they have a "moderate risk" of a long-term developmental, medical or behavioral problem. In summary, all children adopted from institutional settings, that is most of the children being adopted to the US today, should be considered to have special needs.

Concern about the adequacy and availability of information released to families about the health and well being of children being considered for adoption.

All too often, pediatricians encounter families who did not appreciate that their adopted (or prospective adoptive) children had significant medical, psychological, and/or developmental problems. Reassured by "happy family" stories in the agency literature or

on the Internet, the parents thought they were adopting a child who was basically healthy, needing only some tender loving care and attention to become perfectly "normal." Instead, they have committed to raising a child with significant developmental delays or disabilities, psychological damage from abuse or neglect, and/or very challenging behavior problems.

While biological children can present the same surprises and challenges, most parents understand that having their own child involves these risks. Parents who adopt a child from another country often believe that they are avoiding such risks because they are choosing the child they will adopt. In fact, some adoptive parents seek a child from another country because they do not wish to adopt a child from the US foster care system who is likely to have a background of abuse, neglect or serious health problems.

When information about an adopted child is insufficient, misleading or inaccurate, the family is surprised, possibly disappointed, and usually ill-equipped to handle the child's problems. This situation can lead to significant strains in the family (including adverse effects on the child's adoptive siblings), abuse or neglect of the adopted child (resulting in involvement of the child welfare system), disruption of a pending adoption, or even dissolution of a finalized adoption.

This gap between expectations and reality is reflected in the significant increase in the number of wrongful adoption suits against agencies and facilitators of international adoption. The basis of these suits uniformly has been undisclosed or "should-have-been-foreseen" medical or behavioral problems.

We have a long experience in the United States with the adoption of children with special needs. All of this experience indicates that, the better prepared the family is for a child's specific needs, the more successful even the most difficult of placements. If we know what works in placing our own "high-risk" children, then why would we provide anything less for children who will become citizens of our country?

In part, the dearth of accurate information about a child's condition is due to the poor quantity and quality of records kept in the country of origin. Agencies and other adoption facilitators are obviously subject to the goodwill and cooperation of the countries involved. At times, crucial medical or social information simply does not exist, as in the case of the Chinese infant described above.

In other cases, however, the information is not provided to prospective families because some agencies and adoption facilitators make **no effort** to pursue available medical, social and developmental information on a child. The reports supplied by these agencies are completely inadequate to determine the condition of the child. Currently, approximately 40% of the records submitted to my office fall in the category of "unable to assess because of inadequate information."

In addition, some agencies and facilitators request or require families to sign waivers that absolve the agency of the responsibility to collect pertinent data on the medical and social

history of the child being considered for adoption. Agencies and facilitators may pressure families to make decisions about a referral on a child from overseas on very short notice, before they are able to garner adequate information or obtain medical consultation regarding specific conditions. Indeed, some agencies and facilitators do not require, or may even actively discourage, outside medical consultation for families. We consider these practices unethical and damaging to families and children.

Concern about the education and preparation of families about potential medical or behavioral issues.

It is clear from the few studies done in this country that there are significant medical and behavioral problems unique or far more common in internationally adopted children than in those adopted domestically. For example, we know that these children, especially from Eastern Europe and Asia, have a host of identifiable medical conditions, such as rickets, congenital syphilis, fetal alcohol syndrome and inherited blood disorders. We know that orphanage life results in significant developmental delay and growth failure. We know from the best long-term study of Romanian orphans that one-third of the children have mild behavioral issues five years after placement and one-third have moderate to severe behavioral difficulties. That study also outlined clearly other risk factors for poor outcome: adoption of an older child, institutionalization for longer than two years, and adoption of more than one child at the same time.

Given the significant likelihood that a child adopted from another country will have some physical, developmental and/or emotional problems, it is extremely important that potential parents understand the need to obtain whatever information exists on their prospective child. They should also understand the limitations of the information and the fact that it might not be accurate. When there is no child-specific information, they should understand the social and medical circumstances in the country where their potential child resides. Finally, they should understand exactly what it would mean to their family if they adopt a child with medical or psychological problems.

Currently, however, many prospective parents receive insufficient information about the specific child they are considering or about the general risks associated with adopting any child from abroad. In many circumstances, the agency, facilitator or lawyer placing the child provides no education at all to the prospective family, leaving that responsibility to the agency or social worker that performed the "home study." The home study agency or social worker may have no personal or professional experience with intercountry adoption and presumes that the agency actually referring the child will take on this duty. In the end, it is only the child and the parent who suffer.

The insufficient education of families may be due in part to a change in the types of agencies involved in international adoption. There has been a change in agency composition from philanthropic or missionary institutions to an increasing number of private or for-profit companies and individual entrepreneurs. In the early 1980s, the International Concerns Committee for Children listed 46 agencies involved in international adoption; in 1999, there are 176.

In addition, there seems to have been a change in the expectations of families involved in international adoptions. Many are seeking a child from abroad because of infertility problems. After suffering the stresses and disappointments of this condition, and especially of failed treatment attempts, these couples may have especially high hopes for a very healthy, happy child. The extraordinarily high cost of intercountry adoption, often over $20,000, also instills in prospective parents a high expectation for the health of the child.

In short, the combination of aggressive, entrepreneurial agencies, the family image of the "perfect child," and the inadequacy of medical records available from the major countries of origin, creates a dangerous set up for disappointment, dissatisfaction and frustration with an adoption.

Concern that agencies and adoption facilitators are not providing adequate services and support for adopted children and their families before *and* after the child arrives in the U.S.

Once a family decides to go forward with an adoption, they will need education and services to help them integrate the child into their family, and to anticipate medical or psychosocial difficulties that may arise.

Although we clearly need more data on intercountry adoptions (as discussed below) we do have a wealth of information from adoption and foster care experience in the United States. While there are some differences between international and domestic orphans, there are more similarities in terms of circumstances of abandonment and risks to health and well being. The US information clearly shows us that pre- and post-adoption support services are essential to the success of adoption, especially of children with special needs.

Yet, at present, intercountry adoption agencies and facilitators have no responsibility to provide support for, or even to keep track of the children that they place in adoptive homes. This divorce of adoption process and outcome means that agencies do not feel accountable for placements, and many families whose children are diagnosed with special needs do not receive adequate guidance on how to manage or treat their children. Failure to provide pre- and post-adoption services in these cases increases the chances of a poor outcome.

Tragedies for both children and parents may develop when families are unprepared to deal with challenging children. Extreme examples include the death of a toddler at the hands of an adoptive mother in Colorado, and the removal by child protective services of two children allegedly abused by adoptive parents trying to control the children's behavior on a flight home from Eastern Europe. Had these families understood that their children might have significant behavior problems, they might have chosen not to adopt them. If they went forward with the adoptions anyway, these sad outcomes might have been averted with pre-adoption training and post-adoption support services.

Pre- and post-adoption services are required for domestic adoptions. There are ample reasons to require such services for intercountry adoptions as well.

Concerns about inadequate data on outcomes of intercountry adoptions.

An important step in ensuring adequate services for internationally adopted children is to improve our understanding of the nature of the medical, developmental and behavioral issues that these children and families face, both on arrival and in the long term. As discussed above, many adoption agencies do not monitor the outcomes of their placements, so it is difficult to assess the determinants of success or failure.

To respect the privacy of adoptive families, data collection on outcomes would have to be voluntary, or derived from public sources, such as immigration records. We urge that further efforts be made to collect longitudinal data that will help improve the adjustment process and ultimate outcomes for children adopted from other countries.

Summary and Recommendations

We know that children being adopted internationally, particularly from China and the former Soviet-controlled countries may have significant medical, developmental and behavioral problems. The incidence and extent of these problems needs further study. As medical professionals and child advocates we clearly see a need for constructive change in how international adoptions take place. Agencies and other facilitators of international adoption need to improve the methods they use to gather information on children being considered for adoption. They need to improve the preparation and education of families prior to adoption. They need to establish accountability for providing support after placement.

The Academy recommends that:

- Facilitation of intercountry adoption should be permitted only by fully qualified adoption agencies with a sufficient professional staff to meet practical and ethical standards of conduct. If any other individuals or entities are permitted to facilitate adoptions, they should **ALL** be required to meet such standards.

- The Secretary should develop specific guidelines for information sought and obtained from orphanages regarding individual children being considered for adoption. Adoption agencies and facilitators should be required to make every effort to obtain existing information and make it available to families. If the information is not available, an explanation should be required.

- Agencies and adoption facilitators should not be allowed to require families to sign waivers absolving them of the responsibility for collecting medical data.

- Agencies and adoption facilitators should be required to provide education to families about common or potential problems seen in international adoptees. This education

should include information about medical, social and developmental concerns and should be provided in depth and over time, pursuant to guidelines established by regulation.

- Agencies and adoption facilitators should be required to provide families with adequate time after receiving information about a child to obtain medical consultation. When a child is at high risk of special needs, the prospective parents should be given the opportunity to ask for further information.

- Agencies and adoption facilitators should be required to give families sufficient time to reflect on information before making a decision on an individual child, taking into account the age and circumstances of the child. This decision-making time should be shorter for an infant and longer for an older child, since the history of older children is more complex and the additional waiting time is relatively less important to an older child than to an infant.

- Agencies and adoption facilitators should be required to provide post-adoption services to families and make efforts to determine the well-being of the adopted child.

- Prolonged waits in temporary foster care or institutions are not good for children, especially in the early years when brain development is most active and sensitive to the environment. Barriers that delay intercountry adoption both **into** and **out of** the United States should be removed.

- A method of data collection about the numbers and progress of international adoptees is essential to the provision of adequate care for these children and should be established.

- Access to affordable health care should be available to adopted children upon arrival in the US. Currently, only ERISA-covered plans must cover adopted children automatically; others often are denied insurance for failure to meet unrealistic notification requirements or are denied coverage for pre-existing conditions.

While we have several serious concerns about the current process of conducting intercountry adoptions, it is important to re-emphasize that we strongly believe that such adoptions are a positive and desirable solution for placement of orphaned or abandoned children. The vast majority of intercountry adoptions have been tremendously successful, building happy "forever families." Our goal is to continue to advocate for these children by trying to ensure that the adoption process is ethical and reasonable and, ultimately, an optimal experience for children and families.

Specific comments on H.R. 2909 are attached.

COMMENTS ON PROVISIONS OF H.R. 2909
(American Academy of Pediatrics)

Section 102(c)

We are concerned about how the Secretary of State is going to obtain the data to monitor individual Convention adoption cases involving United States citizens. A case is not specifically defined. However, if a case is considered to be any child considered for adoption (that is, a "referral"), the sheer volume of referrals for adoption into this country would make such monitoring cumbersome and expensive.

Section 104(b)(3)

We suggest adding the words "or dissolved" after "disrupted." "Disrupted" adoptions are those in which a pending adoption is not finalized. "Dissolved" adoptions are those that were finalized, but parental rights were later terminated at the parents' request. Since most intercountry adoptions are final in the country of adoption, most "failures" are dissolutions rather than disruptions.

With respect to both disruptions and dissolutions, however, it would be difficult to systematically collect this information, as no mechanisms are in place to do so. Although we agree that such information would be very helpful in improving the intercountry adoption process and outcomes for children and families, it difficult to imagine how the data could be gathered without violating family privacy.

Section 104(b)(6)

We recommend that the nonspecific term "adoption fees" be defined so that it encompasses all costs, such as required "donations" to the orphanage and other payments that agencies may not label as a "fee."

Section 104(b)(7)

Again, we are concerned about how the data on the number of Convention adoptions that were vacated for cause will be determined.

Section 204(b)(1)(C)(iii)

We recommend that the bill (or Secretary by regulation) provide how "sensitive individual information" will be safeguarded and how this will be enforced in states with particular laws regarding such information.

Section 204(b)(2)

This section provides for "approval" of for-profit entities to facilitate intercountry adoptions if they meet the standards required for adoption agencies to become "accredited." We agree that individual facilitators and private attorneys should be held to the same standards as agencies, since we believe those standards are necessary to facilitate an adoption in the optimal manner (such as providing the necessary screening, education, counseling, and support services to families). If "persons" must meet the standards of accredited and licensed agencies in order to be "approved," then we recommend that they also be considered licensed and accredited "agencies."

Section 401(b)(1)

We object to the idea that identifying information availability varies by the state of residence of the adoptive parents. This might encourage families to move from one state to another in order to change availability of information for their adopted child. The Convention defines confidentiality of information by the laws of the sending Convention country. This seems to be a more sensible rule.

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TESTIMONY CONCERNING H.R. 2909
THE INTERCOUNTRY ADOPTION ACT OF 1999

HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

OCTOBER 20, 1999

Respectfully Submitted

by

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Council on Accreditation of Services for Families and Children, Inc.

The Council on Accreditation of Services for Families and Children, Inc. ("The Council" or "COA") welcomes this opportunity to submit testimony on H.R. 2909, The Intercountry Adoption Act of 1999. One of the most critical challenges in the international social service community today is the protection of children, birth families, and adoptive families involved in intercountry adoption. Abuses in the intercountry adoption arena affect a large number of the world's families. In 1998, 15,774 international adoptions took place. The United States consistently leads all nations in the number of international children its citizens adopt. Sadly, it is too often the case that ethical and financial malfeasance, such as child abduction and trafficking, undermine what should be a harmonious, eagerly-awaited event. The Council commends the efforts of the bill's bipartisan sponsors for their work both to ratify the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the "Convention") and their efforts to advance legislation to implement the Convention. We look forward to working with the Department of State to promote ethical, high quality adoptions across country lines and to increase the accountability of the international adoption community. Through the use of COA accreditation, we can create permanent, safe, and caring homes for children around the world.

I. Organizational Background

The Council is the only fully operational international accreditation system with experience in conducting intercountry and domestic adoption. It is the nation's leading accreditor of adoption and child welfare services. The Council's track record in accrediting adoption services is unrivaled. The Council is now in its *21st year* of evaluating and promoting best practice in the adoption community. It currently accredits 226 adoption agencies. Along with other core child welfare services, adoption was among the nine services that COA accredited at its inception in 1977 and continues to accredit. In 1992, COA began to accredit intercountry adoption services and currently accredits eleven (11) intercountry adoption programs. It is the nation's only organizational accreditor of intercountry adoption and the best qualified to accredit organizations under the Hague Convention.

Protecting the safety and well being of children is at the core of COA's mission. The Council seeks to promote standards, champion quality services for children, youth, and families, and advocate for the value of accreditation. As of October 14, 1999, over 1200 organizations were either accredited or in the process of becoming accredited by COA.

The Council has a long history of promoting quality services for vulnerable families. The organization was founded in 1977 by the Child Welfare League of America and Family Service America; both organizations had previously accredited their own members and were committed to creating a private, independent regulator to improve quality and accountability of member organizations. The result was a field-driven set of standards and an accreditation process designed to promote agency compliance with the highest standards available in the social service field. These standards would "stand on the shoulders" of state and federal licensing authorities. Indeed, COA accreditation offers agencies an opportunity to assess themselves against national standards developed and applied by peers from their own fields of service.

Since 1977, COA has steadily expanded the scope of the services it accredits. In addition to adding several new services in the *1997 Standards for Behavioral Healthcare and Community Support and Education Services*, COA has improved existing sections of service-specific standards to create an instrument broadly and uniquely applicable across age groups, special needs populations, and diverse

settings and service approaches. COA currently has thirty-nine (39) service sections encompassing over fifty (50) types of behavioral health care and social and community services.

Over twenty (20) national social service associations have demonstrated their support for COA accreditation through becoming Sponsor or Supporting Organizations. These organizations are set forth below. Importantly, almost all of the leading associations in the area of adoption formally endorse COA accreditation, including the Joint Council on International Children's Services, the National Center for Adoption, and the Child Welfare League of America.

COA SPONSORS	*COA SUPPORTING ORGANIZATIONS*
Alliance for Children & Families	American Association of Children's Residential Centers
Association of Jewish Family & Children's Agencies	American Network of Community Options & Resources
Catholic Charities USA	Child Welfare League of Canada
Child Welfare League of America	EAGLE Program of United Methodist Association of Health & Welfare Ministries
Foster Family-Based Treatment Association	Joint Council on International Children's Services
Lutheran Services of America	Mental Health Corporations of America, Inc.
National Council for Adoption	National Alliance for the Mentally Ill
National Foundation for Consumer Credit	National Association of Family-Based Services
National Network for Youth	National Association of Psychiatric Treatment Centers for Children
Prevent Child Abuse America	National Association of State Alcohol & Drug Abuse Directors, Inc.
	National Association of Therapeutic Wilderness Camps
	National Council for Community Behavioral Healthcare
	Volunteers of America

II. Preparation for Passage of the Intercountry Adoption Act

The Council has tracked and prepared for the ratification and implementation of the Hague Intercountry Adoption Act since the mid-1990s. In anticipation of the legislation, COA and other national child welfare policymakers formed an *ad hoc* consortium called the Hague Alliance. The Council was the only accreditor involved in these discussions.

For the past five years this consortium has prepared legislative recommendations and implementation protocols for the Department of State. The Hague Alliance promotes public awareness of intercountry adoption and has vigorously advocated for the ratification of the Hague Convention. The Council joined several organizations in this loose association including: the Joint Council on International Children's Services, the National Council for Adoption, the American Public Human Services Association, the National Association of Social Workers, and the America Bar Association Center for Children and the Law, among others.

Anticipating the need for rigorous, field driven best practice standards in intercountry adoption, this consortium developed two sets of criteria based on Hague Convention principles and social work practice—(1) the Hague Addendum to COA's standards embodied in S15, Intercountry Adoption and (2) the Hague Convention Recognition Criteria, also known as Hague Program Certification. The core principles from both sets of criteria have been reviewed by the State Department, under the direction of Peter Pfund. The Hague Alliance proposes that these standards be used by the Central Authority in the United States to accredit agencies in the United States under the Hague Convention. It further recommends that these criteria be used as the basis of an "accreditation" protocol to be implemented by the Central Authority.

These standards of practice are now available for review, revision, and implementation by the United States Central Authority. Over the past several years, COA has also begun to frame an operational scheme for accrediting the forthcoming agencies seeking approval under the Hague Convention.

Summary of Intercountry Adoption Standards: Hague Addendum (S15) and Hague Program Certification

(1) Hague Addendum to COA's 1997 Standards—S15

The twenty (20) organizations composing the Hague Alliance provided the key practice components that are reflected in COA's standards for intercountry adoption. This section appears in COA's *1997 Standards for Behavioral Healthcare and Community Support and Education Services* as S15. The Hague Alliance designed these criteria for intercountry adoption providers currently accredited by COA or wishing to be accredited both by COA and under the Hague Convention. These standards represent an assurance to the international community that providers complying with these standards are delivering a service that meets the international requirements established by the Hague Convention. The standards embody the fundamental criteria for providing quality intercountry adoption services. The accreditation process based on these standards ensures that agencies conducting intercountry adoptions are reputable, have knowledge of the special issues and expertise needed to provide service in a competent manner, and follow sound business practices.

Use of S15, also known as the Hague Addendum, will allow providers currently accredited by COA to avoid a duplicative and costly process of accreditation when the Hague Convention is ratified.

The Council's S15 intercountry adoption standards were disseminated to over 3000 social service, government, and academic institutions as part of the field comment review that all proposed standards undergo before being published. Each layer of public input resulted in a series of practice principles that have received almost universal support by the foremost experts in the intercountry adoption field. The document details the vital financial, ethical, and social work principles that all intercountry adoption organizations should employ in order to achieve accreditation.

(2) Hague Convention Recognition Criteria—Hague Program "Certification"

While it is COA's preference that full COA accreditation be the method chosen to determine which agencies will be listed as those approved by the Central Authority, it has developed an alternative approach which will be known as Hague Program Certification. These "certification" standards can be used by agencies that are only interested in having their intercountry adoption practice accredited

under the Hague Treaty. These standards contain all of the practice components contained in S15 and include a less intensive version of COA's generic standards.

The Council's Board of Trustees determined that "certification" would be an appropriate term for these standards in order to distinguish them from COA's main product—accreditation standards. That the Hague Convention refers to accreditation rather than certification is an issue of semantics COA can address if confusion arises.

In the opinion of the Hague Alliance, the certification standards are the minimum requirements necessary for an intercountry adoption agency to responsibly offer a service of high quality. These criteria represent what the field of adoption professionals consider to be the important measures of best practice in adoption, including requirements for management and organization of non-profit adoption agencies. These criteria were drawn, in large part, from COA's current adoption standards and supplemented by additional requirements unique to the intercountry adoption field and to the Hague Convention.

It is COA's practice to develop certification standards for industries that are in the nascent stages of their development and cannot succeed under the rigor of COA's accreditation standards. The less intensive standards are offered to prime the organization to complete the final test in quality, COA accreditation, at a later date.

Both the Hague Addendum and Hague Certification standards include standards on the following:

- legal/regulatory compliance issues
- ethical financial management--fees are reasonable, families are advised of fees up front, and no payment is accepted for a referral
- service delivery issues--appropriate disclosure of medical information on the child, preparing the child and family for placement through pre-adoptive orientation, record keeping, and post placement services
- human resource requirements for trained and qualified personnel --appropriate clinical skills and judgement
- outcomes for children who are adopted

Capability

In addition to developing standards, COA has also prepared for the Treaty's ratification through developing the appropriate infrastructure to accredit agencies seeking Hague accreditation. Thus far, COA has already established a cadre of peer reviewers who are experts in the area of intercountry adoption. In addition to performing COA accreditation reviews, these seasoned peers can be used for Hague certification site reviews. Moreover, COA is prepared to create a separate accreditation commission to make accreditation decisions regarding those organizations seeking Hague certification.

In the event that the Central Authority selects COA as an approved accreditor, COA will begin to estimate numbers of applications for accreditation and certification and will increase organizational capacity accordingly. Additional steps will include:

1. The incorporation into standards of any additional requirements based on Hague implementing legislation.
2. Publishing materials
3. Training additional peers
4. Establishing operational procedures
5. Scheduling site visits

III. Detail on COA Accreditation System

A. Accreditation Standards

The Council's standards provide a blueprint for organizational success. The standards are of two types: generic and service. The generic standards address practice elements that are universal to all organizations, such as governance, human resources, financial management, and quality improvement. The Council's generic standards apply to all applicant organizations regardless of type. The second type of standard, the service section, covers elements of practice that are unique to the over fifty (50) areas COA accredits. For example, S15, Intercountry Adoption Services addresses financial management, legal compliance, and human resource issues which define best practice in this specific area. In combination, the generic and service standards create a comprehensive picture of what is needed for sound organizational functioning.

To ensure reliability and validity, COA's best practice standards and indicators for compliance are compiled and reviewed in a structured manner by standards advisory panels and focus groups as well as informally by staff, peers and accredited organizations. This process is on-going and constant. The Accreditation Commission, COA's impartial decision-making body, also ensures consistency of interpretations and ratings during their review and decision-making process.

All of COA's standards are developed through a consensus-building process that incorporates broad-based feedback from stakeholders at each stage of development. Panels of professionals and consumers contribute structured comment through standards advisory panels. The Hague Alliance acted as a *de facto* standards panel for purposes of the intercountry adoption standards. When COA's domestic adoption standards were developed in the mid 1970s, they too were produced with the advice and participation of social service experts such as the Child Welfare League of America and Family Service America.

B. Accreditation Process

Consistent with our mission and values, COA's accreditation process is designed to facilitate organizational improvement. Accreditation is viewed as a structured means of positive organizational change, rather than an adversarial process. Because COA's process is about agency improvement rather than evaluation of specific programs, COA is an *organizational accreditor* rather than some of its peers which are program accreditors. Achieving the status of accreditation demonstrates that the entire organization has met the highest standard of quality its field has set. The Council's goal to

provide the organization with all the tools needed for organizational success. This success depends on sequential, demonstrable service improvement until compliance with standards is achieved. Almost every organization, even those recognized as exemplary, will experience growth and change.

The accreditation process is an orderly, sequential process through which an organization seeking accreditation is given a series of opportunities to demonstrate compliance with applicable standards. Beginning with the Self-Study process, an organization is given the framework for demonstrating compliance with COA's standards. Additional opportunities are provided when the review team is on-site and during the response period after the organization receives its preliminary report. Finally, if areas are identified as needing remediation, the organization is given a reasonable time frame for making the changes.

One unique aspect of COA's accreditation process is the self-guided, detailed self-study through which the organization undergoes a highly effective quality improvement process and strives to demonstrate to COA and to the peer review team that it is in compliance with the standards. This self-study process takes between four and eight months and involves participatory self-evaluation and change, where needed. Most organizations complete the entire accreditation process within 12 months—the timeline runs from the point of application to the point of decision-making. An organization facing an internally or externally imposed deadline may opt for an accelerated timeline.

The accreditation process evolves through four steps: documentation, verification, decision, and appeal.

Step 1: Documentation

The organization undergoing accreditation must address every applicable standard and collect and append the required documentation and information. During the self-study process the organization gathers comprehensive documentation and information about the organization from a variety of sources set forth below. The varying sources of information contribute to a complete picture of the agency as viewed in its community:

- *From the organization itself:* Prior to the site visit, the organization will gather documentation in the form of copies of policies, procedures, organizational materials, as well as complete a number of forms and questionnaires found in the *Self-Study Manual.* During the site visit, the review team will observe the facility and the organization's programs, interview consumers, board members, personnel and care providers, and review documents and records. The review team will ask questions about compliance and then provide a chance for the organization to identify additional information and documentation that supports the organization's responses.

- *From other organizations:* Input is solicited through a community questionnaire and through additional follow-up contact by the team, as indicated. The organization will distribute the questionnaire to community organizations familiar with its work which will return it directly to COA.

- *From service recipients:* Input is sought also through consumer surveys and consumer interviews. A written survey of a random sample of consumers or the parents/legal guardians of young children or other consumers incapable of completing or understanding the form is part of the self-study. Direct interviews by the review team of a sample of consumers are carried out where indicated in the *Self-Study Manual,* or where needed to determine compliance in the judgment of the review team.

Step Two: Verification

The following ten steps describe the verification phase of the accreditation process:

1. Following receipt of the Self-Study Manual and prior to the site visit the team members begin to determine compliance with the standards based on pre-site documentation.
2. The team leader makes site visit arrangements with the organization.
3. The team conducts the site visit -- a minimum of two reviewers over at least two full days.
4. The team submits its report to COA at the conclusion of the site visit.
5. COA sends a preliminary accreditation report to the organization for its response.
6. The organization returns its response to COA within thirty (30) days of receipt.

Step Three: Accreditation Decision

The Council sends a non-identifying copy of the team report and the organization's response to the elected, volunteer Accreditation Commission. A copy of the organization's response is also sent to the team for additional comment.

At this point, the Accreditation Commission reviews the report, changes any ratings, as appropriate, and makes a decision regarding the organization's accreditation. The Council notifies the organization of the decision and notifies its Board of Trustees which then ratifies the Accreditation Commission's decision.

Accreditation decisions include:

A. For previously unaccredited organizations

- Full accreditation for a three or four-year cycle, as chosen by the organization, or as required by funders
- Deferral of accreditation decision to gather additional information
- Deferral of accreditation decision for remediation
- Denial of accreditation
- Place the accreditation process on hold

B. For previously accredited organizations

- Full accreditation for a three or four-year cycle, as chosen by the organization or as required by funders
- Deferral of accreditation decision to gather additional information
- Deferral of accreditation decision for remediation
- Probationary accreditation status
- Suspension of Accreditation
- Revocation of Accreditation

Step Four: Appeals Process

Applicant and accredited organizations may appeal certain decisions made by COA's Board of Trustees. Organizations may appeal the determination of ineligibility or the denial or revocation of accreditation. In these circumstances, the organization must identify the grounds for the appeal and the specific facts that support the same.

The possible decisions upon appeal include:

- Uphold the underlying decision; or
- Remand the issue to the original decision making body for further consideration who will either:
  - Reaffirm its original position;
  - Accept the recommendation of the designated review body; or
  - Arrive at a new decision based on the written concerns and new materials.

IV. Accreditation Award and Continuing Compliance

The maximum award period for currently accredited organizations is four years. However, COA's board has approved a policy allowing organizations to select a three-year cycle. This option is available for all organizations and has become important due to managed care environments and legislative mandates. Arrangements have been made with other state systems for three-year cycles to meet their reporting and monitoring requirements.

After initial accreditation, an organization undergoes a reaccreditation study prior to the expiration date on its certificate of accreditation. A reaccreditation study provides an in-depth review of an organization's performance at reasonable intervals and is the process by which COA determines an organization's continued compliance with, at a minimum, its weighted standards. Reaccreditation usually occurs on an alternating cycle of focused self-study/site visit and full self-study/site visit. Site visits other than for reaccreditation may also occur to review an additional service, for sampling purposes and quality assurance or for remedial/interim reviews.

Between accreditation reviews, organizations are required to maintain compliance with COA's standards and to demonstrate continued compliance through completion of Maintenance of Accreditation Reports (MOA). The MOA requires self-reporting of changes or events which could have an impact on continued compliance, and cooperation with any interim review processes, site visits, or external complaint review processes.

Using these reporting mechanisms, COA reserves the right and discretion to review the accreditation of an organization at any time and to place an organization on probation or to suspend or revoke accreditation when informed that "sufficiently serious conditions" exist or have existed at the organization.

V. Peer Review Process

COA's peer review system is based on principles which promote fairness and expertise. Staffed by nearly 1000 volunteer professionals committed to quality improvement, COA's peer review system ensures an objective and professional decision-making process. The integrity underlying such decision making and broad agency participation in the accreditation process, both of which characterize the COA process, are attributes of a quality system of accreditation.

All COA Peer Reviewers must meet the following criteria:

1. A graduate degree in a human service discipline or a non-human service degree and are in a senior management position.
2. At least five years post-graduate experience.
3. Nomination by COA, one of the Council's affiliated national organizations or by another Peer Reviewer.
4. Individuals must be from a COA accredited organization or from an organization in the process, some exceptions exist.
5. Individuals must complete COA's two day training program. Reviewers are also expected to complete an experienced peer reviewer training every three years.
6. Continuing eligibility is based upon good performance in conducting reviews. Reviewers are evaluated by their team members as well as by the organization after each site visit.
7. Reviewers who are unavailable to conduct a site visit within twelve (12) months of being trained will need to complete an experienced peer reviewer training course before being assigned to a further site visit.
8. All reviewers must agree to adhere to and sign COA's Policy on Confidentiality and Professional Conduct.
9. Peer Reviewers are expected to perform one site visit per year in order to maintain their active status.

All Peer Reviewers use the rating indicators in the *Self-Study Manual* to guide their scoring of compliance for each standard. However, their expertise and professional judgement are also important to the process. Neither the Peer Review Team on-site or COA staff make the decision regarding accreditation for an organization. The Accreditation decisions are made by COA's Accreditation Commission.

VI. Professional Practices

The Council's *Accreditation Policies and Procedures* outline many protections to the agency and the consumer to safeguard the integrity of the decision-making process.

Conflict of Interest

Peer Reviewers and applicant organizations are expected to disclose an apparent or actual conflict of interest regarding possible peer reviewer assignments. In no case will a Peer Reviewer study an organization if there is a known or apparent conflict of interest, *e.g.* in an organization in which (s)he has previously been employed or within his/her own state or province. Similarly, Accreditation Commission members who have a conflict of interest regarding an organization do not participate in the deliberations or the vote.

Complaints and Grievances

Complaints and grievances are encouraged and accepted regarding a variety of processes and situations. The policies regarding submission of complaints and acceptable types are described below:

1. COA encourages organizations to bring any concerns it has about COA's performance to COA's attention.

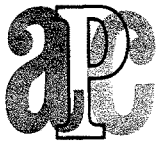
2. Applicant organizations that have a grievance against a Peer Reviewer (or team) related to his/her performance must notify COA's President/Chief Executive Officer in writing and follow the prescribed procedures. COA will then notify the peer review team of the grievance and its details. Each member of the team will be provided the opportunity to respond to the grievance. These grievances are then reviewed by an Accreditation Commission for a decision.

3. COA also reviews appropriately submitted concerns about accredited organizations to determine whether the allegations, if true, impact the accreditation of the organization.

The possible accreditation decisions related to complaints include:

- Continued Accreditation
- Probation (corrective action plan required)
- Suspension (corrective action plan and required site-visit)
- Revocation

In sum, the Council again commends this Committee for moving forward to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. We applaud the efforts of the House of Representatives in creating this vital piece of legislation. We look forward to continuing to work with you to ease the transition of children finding new homes in new lands.



Adoptive Parents Committee, Inc./State Association
P.O. Box 3525, Church Street Station, New York, N.Y. 10008-3525
"Not a placement agency"

1-800-207-0660

Samuel H. Pitkowsky
Vice President of the Adoptive Parents Committee, Inc.
Hearing Date: October 20, 1999
House Committee on International Relations

I certify that neither the Adoptive Parents Committee, Inc. nor I have received a Federal Grant or contract during this year or any other year.

Sam Pitkowsky _____
Vice President, Adoptive Parents Committee, Inc.

"Let every child eligible for adoption become available for adoption"

I am Sam Pitkowsky, father of two daughters, both adopted internationally, and Vice President of the Adoptive Parents Committee, Inc. (APC), a volunteer organization dedicated to promoting and improving all areas of adoption. APC is a non-profit, non-sectarian parent support group run solely by unpaid volunteers. APC is dedicated to a belief that every child deserves a secure permanent and loving family. APC was organized in 1955 by a group of people united around their adoption experiences. APC currently has over two thousand five hundred member families in the Tri-State area. Our membership consists of single, as well as married, adoptive parents, prospective adoptive parents, and community members who are concerned with the welfare of children.

APC provides education, information and support with regard to all aspects of adoption and interim (foster) care. Our four chapters each hold monthly meetings, provide informational workshops, educational panels, and take turns holding an annual regional conference, with attendance of 2,000 people. We publish a monthly newsletter and work closely with local legislatures to improve laws and procedures governing adoption.

Over the years APC has been amongst the leaders of parent groups as advocates for adoption. We are members of the North American Council on Adoptable Children (NACAC), the Adoptive Families of America (AFA), New York State Citizens Coalition for Children and the Joint Council on International Children Services.

For the past ten years APC and its members have been following the development of the Hague Convention on Intercountry Adoption and proposed implementing legislation. As a result of our efforts, APC was invited to represent the concerns of adoptive parents as a member of the Hague Alliance, an ad hoc group of attorneys, adoption agencies and other concerned members of the adoption community.

The Adoptive Parent's Committee views the Hague Convention on Intercountry Adoption as a progressive step toward promoting adoption and protecting children, birth parents and adoptive parents from unscrupulous adoption practices. The Convention acknowledges adoption as a positive alternative for children whose biological parent(s) are unable to care for them. Furthermore, the Convention gives adoptees the same legal status as children who are born into their families, affirming adoption as a legal process of merit. APC supports these underlying principles that led to the drafting of the Convention. We support the ratification of the Treaty provided appropriate implementing legislation is enacted. Such implementing legislation should fully support the Convention in both spirit and practice without placing undue burdens or obstacles on the adoption process. Provisions that may result in delays to the adoption process or may prohibit qualified individuals from adopting would be contrary to the spirit and purpose of the Convention and have no place in U.S. implementing legislation. We appreciate the efforts of this Committee and other members of the Congress to ensure that any legislation passed will benefit children and families.

In reviewing H.R. 2909, we saw several items that will promote appropriate implementation of the Convention in a manner that continues to support all avenues of

adoption currently available to U.S. citizens. S.682 imposes an additional 12-month wait for U.S. citizen children to be eligible for international adoption and limits adoption of U.S. children to married men and women. Not only would this be an obstacle to placement for U.S. children but also may force a reciprocal regulation by other countries which would inhibit certain U.S. citizens from adopting. In contrast, H.R. 2909 promotes adoption by allowing children who are available for adoption to be eligible for international adoption (303.1.C). It also provides for both single and married persons to adopt thus providing a larger pool of prospective adoptive parents for children who are waiting to be adopted.

We applaud Section 202.a of H.R. 2909 because it allows for the role of approved persons in providing adoption services. By making provisions for approval of persons, as well as accreditation of agencies, we would be providing a broad base of adoption service providers for use by U.S. citizens seeking to adopt. This will help avoid unnecessary delays in the adoption process. We feel that this is consistent with the spirit and intent of the Convention.

By delegating the Central Authority function of accreditation and approval oversight to the Department of Health and Human Services, the bill enhances the efficiency of the accreditation/approval process. HHS has a long history of overseeing social service programs. Staff members of HHS have a better understanding of the social and emotional aspects of adoption and are better qualified to carry out the function of overseeing accreditation/approval of adoption service providers than the Department of State.

We are strongly in favor of allowing the Central Authority to retain fees generated in order to maintain its functioning and integrity. It has been demonstrated in other countries where Central Authorities have been created with insufficient funding that adoptions have decreased and the process has been significantly delayed due to lack of adequate funding. By ensuring that the Central Authority is adequately funded, we ensure the efficient and timely completion of international adoptions.

By eliminating the requirement of Senate Bill 682, section 105.b.3, requiring tracking and data collection of adoptive families, we believe the right to privacy of adoptive families is protected. Such tracking and data collection would have imposed an unwarranted burden and invasion of privacy upon adoptive families that is not imposed upon families that are formed biologically.

While the above mentioned points are positive aspects of this proposed legislation there remain several points that could be improved upon.

Section 302.G, sets the age limitation on children eligible for immigration to the U.S. for adoption at 16 years. This age limit should be changed to reflect the language of the Convention, which is 18 years.

Section 304, (Voiding of Adoptions for Cause), does not provide a time limitation during which an adoption can be voided. By not setting a time limit for voiding an adoption, children are never truly secure in their legal or social status as the child of their adoptive parents. The Convention seeks to provide for the legal and social recognition of adoption

and to promote adoption as an option for permanency preferred to indefinite interim (foster) care. Senate 682 had provided for a two-year time frame. While there is no "magic" time frame during which voiding of an adoption will not traumatize a child, we feel a limit of one year is reasonable and should be amended to this section.

The proposed amendments to the Immigration and Naturalization Act (sec 303) go a long way to broaden children's eligibility for adoption by U.S. citizens. However, no provision is made for granting immediate U.S. citizenship upon entry into the U.S. when a child has been or is going to be adopted by an U.S. citizen. The biological children of U.S. citizens born abroad receive U.S. citizenship immediately upon presentation of their parent's citizenship at an U.S. embassy. Adopted children are entitled to the same treatment as biological children under the law and in practice. In keeping with the Convention, the United States should give full recognition to the legal status of adoptions by granting immediate and automatic citizenship to children adopted under the Convention.

Many members of the adoption community agree that adopted persons have a right to know their personal history, including the identity of their biological family. By deferring to state laws on the issue of disclosure of identifying information, the bill does not outright deny access to personal history, nor does it fully support adopted persons seeking personal identifying information. Language that speaks more positively on the issue of an adoptee's right to identifying information would be preferred.

In Senate 682, as well as H.R. 2909, the issue of the ability of non-U.S. citizens, habitually residing in the United States to adopt internationally, was not addressed. These residents should be allowed to immigrate a child for adoption, provided the child meets the orphan definition.

There are several other issues that we would like to comment on. The first of these may be termed "consumer protections". Through the accreditation and approval of adoption service providers and the oversight of the Department of Health and Human Services, the Hague Convention on Intercountry Adoption and this implementing Legislation would ensure that only qualified professionals charging reasonable fees would be working in the field of international adoption. Additionally, setting civil penalties for fraud, misrepresentation or bribery for the purpose of obtaining relinquishment of parental rights or parental consent for adoption will protect all members of the triad. Children will not be needlessly removed from their birth families, birth parents will not be coerced into making a decision that is not in the interests of themselves or their child and adoptive parents will be protected from the potential loss of an adopted child due to voiding of an adoption for cause.

One area of inappropriate practice, however, is not addressed. That is, no penalties are set for misrepresentation of facts that would lead to a "wrongful adoption". Wrongful adoption results when a portion of the child's medical or psychosocial history is not reported or is misrepresented to prospective adoptive parents. Based on incomplete or fraudulent information, the prospective parent chooses to adopt the child. After the adoption is finalized, the adoptive parent becomes aware of a medical, emotional or

psychological condition of the child which they feel unable to adequately care for. In some instances, this contributes to the disruption of the adoption, a tragedy for the child and adoptive parents alike. Should an adoption disrupt the child will become the ward of the state until an alternative placement can be found thus placing an additional strain on an already overburden social welfare system. Placing penalties on such misrepresentations will help prevent children from being adopted by someone who can not meet the child's needs and will ensure that the prospective adoptive parent has sufficient information on a child's condition so that appropriate post adoption services can be established for the child before the child moves into the family, thus preventing tragic adoption disruptions.

A related issue that we wish to comment on is access to translated medical records by the prospective adoptive parents. Currently some agencies do provide translated medical records. Others, however, do not. When medical records are supplied, but not translated, it is up to the prospective adoptive parent to obtain a translation in order to learn the medical history of the child. If the translator retained by the prospective adoptive parent is not familiar with medical terminology, unintentional misrepresentation of the child's medical condition may result. This could lead to an unintended wrongful adoption. Placement agencies have better access to qualified translators than do prospective adoptive parents. By requiring placement agencies to provide translated medical records, the prospective adoptive parents will be able to make a more informed decision as to whether to proceed with the adoption and be able to properly prepare for the arrival of their child.

The last item that we wish to address is the accreditation process. In order to ensure that small agencies, which have limited personnel, limited time and limited funds, will be able to complete the accreditation process it is important that the regulations not be overly restrictive. The requirements should pertain to the performance of adoption services and not focus on operational issues such as office size and number of fire extinguishers. Time on task required to complete the accreditation process should not be so great that small agencies would need to restrict their daily operations and current services to children and clients. Likewise, the fees for accreditation should be reasonable and on a sliding scale based on the number of international adoptions completed annually. Since any accreditation process is going to take time away from serving clients and children, it is recommended that the accreditation be renewable only every three years, unless the agency comes under investigation by the Central Authority. Any re-accreditation requirement of less than three years would be burdensome, would switch the focus away from servicing families and eliminate competition of service providers. The accreditation should pertain only to international adoption programs as regulations for domestic adoption are established by State Law.

In closing, the Adoptive Parents Committee restates its support of the Convention as a progressive step towards promoting adoption and protecting children, birth parents and adoptive parents and its appreciation of the positive aspects of H.R 2909. We feel that with a few changes this bill would provide for the appropriate implementation of the Hague Convention on Intercountry Adoption.

We appreciate that this Committee has sought out the opinions of members of the adoption community and we are especially grateful that the views and ideas of adoptive parents have been requested. This type of open communication can only lead to positive legislation that will benefit children and families.

Respectfully submitted,

Sam Pitkowsky
Vice President of
Adoptive Parents Committee, Inc.

Kathleen Carney Sacco, LCSW
International Adoptee and Social Worker, Family and Children's Agency, Inc.
Before the House Committee on International Relations
For House Bill 2909- Intercountry Adoption Act of 1999
Wednesday, October 20, 1999

Good morning Mr. Chairman and Honorable Committee members. I wish to thank you for the privilege and opportunity to testify on behalf of House Bill 2909-"Intercountry Adoption Act of 1999." My name is Kathy Sacco, and I am an adoption social worker for Family and Children's Agency based in Connecticut. My work has included assisting and educating families adopting domestically and also families adopting internationally from Korea, Russia, China, Guatemala and Vietnam. However my first experience in adoption occurred on Christmas Eve, 1976, when my sister, Kristi and I arrived in this country aboard a flight from Korea to meet my awaiting parents at LAX International Airport. So I come before you today not only as a professional, but also as an international adoptee.

In my personal experience of adoption, and as a professional social worker, I have come to know adoption as a process rife with paradoxes. Birth parents must grieve the loss of a child, which for a variety of cultural and economic reasons, they choose to relinquish. Adoptive parents choose to experience the abundant joy and uncertainty of building their families through adoption. For the adoptee, the paradox lies within. As an adopted child goes through life they often experience bittersweet feelings of loss and abandonment mixed with the security and comfort within their "forever families". For me as an adult adoptee there lies another underlying contradiction in the journey of adoption. As birth parents, adoptive parents, adoption agencies and governments make life-transforming choices, the child is at the fate of these monumental decisions.

According to my own adoption record, my biological sister and I were abandoned on June 19, 1976 in Inchon. I was five years old and my sister was two months old. At that moment, my birth mother made a courageous choice that she could no longer parent Kristi and me. Like many adoptees, I have thought innumerable times about the factors that led to this momentous decision. Was she so impoverished that she could no longer provide for us? Was our family life one of abuse and alcoholism? For whatever reason my birth mother made her choice, my destiny was forever changed. Meanwhile, in California, a couple was making their own life changing choices about adoption. My parents were informed by a social worker that two sisters were available for adoption. My parents made their own courageous decision, to adopt two girls who they had only seen in blurry black and white photos from halfway across the globe [See Picture A]. They anxiously awaited our arrival home and, were told simply to love the girls as if they were their own biological children. For my parents and for some whom adopt today, the quality and amount of information and support is minimal.

Growing up, I was consistently reminded by people and strangers how "lucky" I was that my sister and I were adopted together, especially since I was older. For the general community, adoption is looked on as a great blessing to the adoptee. Undoubtedly, my

life as an inter-country adoptee has meant a loving and nurturing family, greater opportunities, and an environment in which I could strive to reach my fullest potential. Yet the experience of inter-country adoption is not so simple. As a young woman, I found myself as one adoptee stated "tired of being grateful" for being adopted. For the adoptee, adoption brings its own questions about culture, identity, origins and a desire to understand in a powerful way those pivotal choices which others have made that have shaped us as people. These are questions that take a special form in adoption, but have their core in the basic human need to explore one's own identity. It is my own exploration that has led me into this field.

My career as an adoption social worker has been built on a two tiered set of values about the adoption triad. The first value focuses on the needs of the adopted child. Adoptees need to have a voice in the adoption process, through the strong advocacy of national governments and adoption organizations. In my experience adoption agencies vary in their commitment to education and child advocacy. Standards and mechanisms of accreditation will help ensure a high uniform standard for children adopted internationally. These standards must apply across international boundaries of both receiving countries and states of origin. The health and safety of adoptees should not be based on luck or fate. It is the vision and foresight of responsible adults who must protect inter-country adoptees from abuse and exploitation.

The second value focuses on birth parents and adoptive parents who make difficult life decisions about adoption with too little information. Both birth families and adoptive families require more preparation and support in adopting. Education needs to begin as soon as families consider the idea of adoption. While adoptees must accept their lack of choices in their early life, there is no reason why families should enter adoption blindly. Areas of education should include addressing loss issues, child's identity questions including culture and ethnicity, medical concerns and developmental milestones. Post-placement support is also integral to a smooth adoption process. The story of my adoption did not end when my plane landed. Adoption is not simply a one-time occurrence that ends with the placement of the child. It is a life long process that impacts not only the adoptee, but also the adoptive parents. Adoption agencies can serve as lifelong resources for families offering such services as cultural information, counseling and search and reunion support for families.

As an adult adoptee, I sit before you as one example of both the successes and the lessons to be learned about inter-country adoption. The adult adoptee community can be a new voice for both adoptees and for ethical adoption practice. In recent years, adults who have been adopted have begun to join together in organizations to express and celebrate their unique perspective on what is truly a transcultural experience. We can learn immensely from listening to these pioneers in adoption.

An area of great importance to the adoptee community is a necessity to preserve our records and other information related to our adoptions. As an adoption practitioner working with adoptees and families, I have come to understand the need for adoptees to have a better understanding of their history and beginnings. Not all adult adoptees

choose to search, but the choice to search and to have access to records is a powerful one for the community. In the paradox of adoption, the destiny of the child is changed irrevocably by the choices of others. Including a provision to access records in HR2909 would respect the right of adult adoptees to make decisions in regard to their birth histories.

In recent years, we as Korean adoptees, have returned to our country of origin to better understand the circumstances that have led to our adoptions and to seek out birth family members. The reasons why we have chosen to search are varied. Some seek to understand the reasons for their adoptions. Others would like to give birth parents a message. I wanted to search out of curiosity. Where did I get my traits such as, being left-handed, my love of art, or my facial features? What was the exact situation that led to my adoption? Was my birth mother okay? Did I have other birth family? I wanted to give her a message that my sister and I are happy, successful adults. I wanted to tell her not to feel guilty or to worry about us. When I was younger I asked my mom what she would say if I ever found my birth mother. She said, "I would thank her. I would tell her how sorry I was that she could not raise you, but that I was blessed to raise her two daughters." This beautiful sentiment about adoption expressed by my own mother shows that openness in the adoption process can be a unifying factor for all members of the adoption triad.

My husband, Paul and I are expecting our first child this December. Once again I see my life through the lens of adoption. I wonder about my medical history, and how my adoption will affect my child. In our society with its newfound knowledge of the role genetic history, adoptees and their families live in ignorance of their genetic legacies. I know that my child will ask, as I have, about his or her own ethnic connection to Korea. By having access to records, we, as adoptees, can provide a connection to our families' pasts as well as our own.

This past March Paul and I returned to Korea for the first time. I was able to make my own choice to search for my birth family. My parents had given me all my documents that they had received long ago. They were supportive of my desire to search, yet they knew it would be my decision. My goal in searching was not to find new parents, but to obtain a fuller, more complete picture of my past. I was able to look at my original file at the agency in Korea that handled my adoption. Although I did not locate any birth family, I was thankful to have access to these tangible links to my early life. The trip was a great joy to me in many ways. I was able to visit the orphanage where I stayed briefly and got the name of the foster mother who cared for Kristi and me. I found new photos of my sister and me, images rare and precious, taking me back to the earliest recollections of my life [See Picture B]. These small bits of information added pieces to my own personal history, and a valued sense of rootedness that non-adoptees take for granted.

During my visit to the land of my birth, I was tremendously moved and saddened to see all the children that were available for adoption. Although the facilities I visited were immaculate and children well taken care of, there was still a sense of sadness in the children's eyes. Something was missing; there is no substitute for a stable loving family.

As we walked on the grounds of the orphanage where I was briefly cared for, a little girl about four years old- raced up to me with her hands outstretched. She called out to me in a pleading voice, "Umma", which means Mommy in Korean, and grabbed my hands- pulling me along the sidewalk. I couldn't help but be struck by the fact that this little girl was me 23 years ago [See Picture C]. I thought about my own story and the many choices that my birth mother, my parents and adoption organizations made for me. What fate awaited her? What choices would be made for her? Would she be adopted? I suddenly became acutely aware of the thousands of children who have come before me and will come in the future. Would the choices of organizations and brave individuals provide them with a path to a "forever family"? I came to understand my personal commitment to make adoptions better for the children and families.

On our return trip from Korea, Paul and I escorted two babies into the waiting arms of their new families here in the United States. Twenty-three years ago, my sister and I were also carried off a plane into the waiting arms of my parents. As I was entrusted into the care of others, I was now helping to guide these two children through their journey of adoption. My life had truly come full circle. As an adoptee and an adoption professional, I have come to know the profound impact of the choices made by agencies and individuals. The ratification of the Hague Convention can serve as a vital framework in ensuring that these decisions are made prudently and that the needs of adoptees, birth parents and adoptive parents can remain paramount.

Thank your for your time and consideration.

ATTACHMENT
For Testimony-Kathy Carney Sacco

PICTURE A-Referral Picture

PICTURE B-New found picture in file

PICTURE C

TOTAL P.06

NEWS International Relations Committee

U.S. House of Representatives * Benjamin A. Gilman, Chairman * 2170 RHOB * Washington, D.C. 20515

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GILMAN INTRODUCES "INTERCOUNTRY ADOPTION ACT"

WASHINGTON (October 20) – U.S. Rep. Benjamin A. Gilman (20th-NY), Chairman of the House International Relations Committee, announced today the introduction of H.R. 2909, the Intercountry Adoption Act, at a committee hearing on the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.

The United States is a signatory to the Hague Convention but the Senate has not yet ratified the measure. H.R. 2909 is the implementing legislation for the Hague Convention.

The full text of Gilman's remarks follow:

"I would like to welcome all of you here today for this hearing on the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. I greatly appreciate all the experts in the room who have made an effort to be here to share your views and experience. As an adoptive parent of two children, I am understand the importance of developing policies that work for the best interest of the child. I also understand that when parents are seeking to adopt they should expect the highest standards and ethical behavior of the agencies or persons involved with an adoption.

"The fact is that there have been serious abuses in intercountry adoptions enough so that the international community coalesced to produce the Hague Convention. The U.S. signature to this convention affirmed a commitment to improving the intercountry adoption process, and recognized that international adoptions are increasingly a part of establishing families in the United States. With the volume of foreign adoptions in this country, more than 15,000 in 1998, it is important that international standards be in place. These standards will provide parents with the confidence that this emotional undertaking will not leave them open to fraud or abuse. It will also protect the children, and the rights they inherently hold.

"Ratification of the Convention by the Senate triggers the need for implementing legislation. In September I introduced a bipartisan bill, H.R. 2909, the Intercountry Adoption Act, that provides the Administration with the necessary authorities to implement the convention. This bill reflects the extensive work

(more)

of key members -- Mr. Gejdenson, Mr. Camp, Mr. Delahunt, and Mr. Bliley -- and I am grateful to them for their assistance. Today we have 41 cosponsors on that measure. We have made an earnest attempt to craft a bill that matches the U.S. obligations under the Convention. We have followed the recommendation of the Administration to designate the Department of State as the Central Authority, and to assign responsibility for the accreditation process including oversight and enforcement to the Department of Health and Human Services.

"The purpose of today's hearing is to encourage a discussion of the Hague Convention and HR 2909 by those in the international adoption sector, adoptive parents, adoptees and the Administration. The intent is to further our understanding of the range of concerns and if necessary to improve the bill. This measure is designed to carry out our international obligations, and to institute consumer protections in the adoption process.

"There are issues within the adoption community that divide and polarize. One such issue is access to identifying information and privacy concerns. I know there are strongly held views on these issues and the moderate approach taken in H.R. 2909 reflects an effort to accommodate both interests. There is no consensus on the exact formula for access to records, as evidence by the variance in the 50 state laws. In essence the bill defers access to identifying information and records to state law.

"I believe our interests are served by moving this process along as promptly as possible. At this point, 36 countries have ratified the Convention and our nation should be the 37th. We need to affirm to the international community the U.S. commitment to ethical and expeditious adoption practices."

Witnesses at the hearing included: the Honorable Mary Landrieu, United States Senator; the Honorable Tom Bliley, Member of Congress; the Honorable Earl Pomeroy, Member of Congress; the Honorable Mary Ryan, Assistant Secretary for Consular Affairs, U.S. Department of State; Ms. Pat Montoya, Commissioner for Children, Youth, and Families, Department of Health & Human Services; Ms. Susan Freivalds, Hague Coordinator, Joint Council on International Children's Services; Dr. Jerri Ann Jenista, American Academy of Pediatrics; Mr. David Liederman, President and CEO, Council on Accreditation of Services for Families and Children; Mr. Sam Pitkowsky, Adoptive Parents Committee of New York; and Ms. Kathleen Sacco, Adoptee.

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Statement for the Record by Rep. Sam Gejdenson (D-CT)
House Committee on International Relations
Hearing on Intercountry Adoptions
October 20, 1999

"As more countries turn to intercountry adoptions to find families for their children and more Americans turn to intercountry adoption as a way to bring new children into their lives, the issue has called increasing attention to the frustrations and disappointments many of these parents encounter when adopting children from overseas. The number of intercountry adoptions initiated in the United States has increased dramatically in the past ten years–whereas there were only 9,356 intercountry adoptions in 1988, that figure jumped to 15,744 in 1998.

In many parts of the world, children are born to parents who cannot afford to give them the care that they deserve. Frequently, children in foreign countries are abandoned in orphanages, destined to live under insufferable conditions of misery and squalor.

For these children, intercountry adoption offers the promise of a new life; it gives them hope of finding a welcoming home with parents who will shower them with the attention and loving care they so deserve.

Intercountry adoption has also gained prominence in Connecticut, where 288 families adopted children in the year 1996 alone. This past Monday, I had the privilege of learning more about this issue while hosting a roundtable meeting in Vernon, Connecticut for concerned citizens, adoptive parents, social workers and others well-acquainted with this issue. During this meeting, my constituents shared their concerns as well as their very personal stories. For over an hour, I listened to their suggestions on how we can improve this process.

Cynthia Girgenti was one of the many constituents who participated in this discussion. Since adopting her daughter from Guatemala, Girgenti has experienced tremendous frustration while attempting to accomplish a seemingly simple task–to legally change her daughter's name here in the United States. 'We need a point person for grievances," she explained, 'we need a watchdog.'

Regrettably, as intercountry adoptions have increased, so too have the number of abuses. The past few years have witnessed a marked increase in child kidnappings and in the level of corruption system-wide. In addition, parents are frequently provided with inaccurate portrayals of adoptees' medical histories. In many cases, agencies will also exact exorbitant fees from prospective parents.

The Hague Convention on Intercountry Adoption was created to address these abuses.

HR 2909, the Intercountry Adoption Act, of which I am an original co-sponsor, seeks to implement the Convention as a means for dealing with these problems. The primary goals of this legislation are: 1) to establish clear rules governing adoptions; 2) to ensure that agencies are accredited and operating under universally-established standards; 3) to better facilitate the

process by which parents adopt children from overseas; and 4) to protect the rights of adopted children.

However, this is only the beginning. Our challenge is to continue to seek the advice and counsel of parents, adoptees, officials and all others familiar with this issue to find new ways to reform the process–and in so doing–to improve the lives of parents and children worldwide."

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U.S. House of Representatives
Committee on International Relations

Statement of the Honorable William D. Delahunt of Massachusetts
Regarding H.R. 2909, the Intercountry Adoption Act of 1999

Wednesday, October 20, 1999

Mr. Chairman, last month I was proud to join with you, Ranking Member Gejdenson, and over 30 of our colleagues in introducing the Intercountry Adoption Act of 1999. And I want to commend you and the ranking member for your many months of diligent work on this bill and for holding this hearing today.

Prompt U.S. ratification and implementation of the Hague Convention is of enormous importance to many thousands of needy children throughout the world and the American families who adopt them. U.S. ratification will signal to our desire to encourage intercountry adoption, and our commitment to creating a legal framework that will better protect adoptive children and their families.

As many of my colleagues know, my younger daughter, Kara, was born in Vietnam, and came to this country as part of "Operation Baby-Lift" during the fall of Saigon in the early '70s. So I know how important it is that we make it possible for children like my daughter to find safe and loving homes through intercountry adoption when they cannot be placed in their countries of origin.

The bill we are considering today is a blueprint that will enable the United States to carry out its obligations under the Convention. It is the culmination of many months of hard work, during which time we consulted extensively with the Administration and many interested parties within the U.S. adoption community. Again, I want to thank you, Mr. Chairman, as well as Mr. Gejdenson, Mr. Smith, Mr. Bliley, and Mr. Camp, for what has been a thoughtful and bipartisan effort.

From the outset of this project, we agreed that we should adopt a "minimalist" approach, deferring, wherever possible, to the state laws by which we have always

regulated adoption in this country. We tried to steer clear of extraneous and controversial issues. And have resisted attempts to use the bill to carry out changes to domestic adoption practices that are not strictly required to bring our laws into compliance with the Convention.

I believe that process was fundamentally sound, Mr. Chairman, and resulted in what is in most respects a fine piece of legislation. Having said that, I recognize that there are features of the bill as introduced that can be improved. That is, after all, why we have hearings. And I want to assure those in the adoption community who may have concerns about the bill that we are listening.

This is particularly important with regard to one provision of the bill which I understand has caused considerable consternation within the adoption community. I refer to the provision related to disclosure of adoption records.

To say that this is an emotionally-charged issue would be a serious understatement, Mr. Chairman. As an adoptive parent myself, I share the feelings of many thousands of parents about their children's right to their birth records—whether for serious medical reasons or simply to satisfy the need we all have to understand who we are and where we came from.

The Convention requires that records be preserved, and that access be provided to the extent permitted by law. And most of the countries that send children to the United States do permit access. On the other hand, some sending countries do not. And in those countries, birth families have a reasonable expectation that records will not be disclosed.

So, in drafting this bill, we tried to balance the equities. To be sensitive to the concerns of all segments of the adoption community. And to craft language that would allow access in cases of genuine need while permitting the laws that govern access to adoption records both here and abroad to continue to evolve.

Now we have reached the part of the legislative process when we hear reactions from the field. And the early returns suggest that we may not have achieved the balance we were seeking. Some have read our provision as barring access to records which today are freely available as part of the pre-adoption process. As curtailing access even when permitted by the laws of the sending country. And subjecting those who share information to criminal penalties even when this is done with the full knowledge and consent of the birth family.

Without prejudging the merits of these concerns, I think we need to listen to them and consider their ramifications. For children and their families. And for the very goal we are trying to advance: international adoption itself. I am sure that none of us would want to create a situation in which penalties and restrictions we impose on adoptees and their families might cause other countries to stop sending children to the United States.

I know that my colleagues and I will remain open to all points of view on these issues, Mr. Chairman, and I want to assure all segments of the adoption community that this Member of Congress will be listening carefully to what they have to say. That is what this process is for. I have faith in that process, and I believe that in the end we will get it right.

Again, Mr. Chairman, I want to express my appreciation to you for scheduling this hearing. And I look forward to the testimony.

STATEMENT OF SENATOR MARY LANDRIEU BEFORE THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS
HEARING ON THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION
OCTOBER 20, 1999

Mr. Chairman and members of the committee, I would like to thank you for taking the time to carefully consider the Hague Convention on International Adoption and its proposed implementing legislation, HR 2909. Two weeks ago, the Senate Foreign Relations Committee also considered this issue along with legislation introduced by myself, and my esteemed colleague, Senator Helms.

I said it then, and I believe it bears repeating that we must act expeditiously to ratify this treaty and to pass the necessary legislation to ensure that an international system is put into place that protects children, birth parents and adoptive families. Since the convention in 1993, 27 countries have ratified the convention and an additional nine have acceded to its terms. Rather than leading by example, we, the United States, in delaying almost seven years to ratify, have lagged behind in our responsibility to this world's children.

Adoption is a bipartisan issue that brings several different types of people to

the same table, united by their belief that every child deserves a safe and loving home. As a result, there is sometimes disagreement about the appropriate means to that end. In the past, we have been able to come to a compromise and produce legislation that may not be perfect but that meets the needs and addresses the concerns of as many of those involved as possible.

I believe we can again reach a compromise as to how best this treaty is to be implemented. I know that there are several provisions of both the Senate and the House versions of this bill which people do not agree with. For instance, there are some concerns as to whether the State Department should be the sole central authority or should the responsibilities be shared amongst them and the Department of Health and Human Services. Further, I know there are questions as to if and how the implementing legislation should address the issue of open or closed records. While these are all valid concerns, we need to remain committed to the primary purpose of the treaty, which is to provide a framework for an international adoption system that is both ethical and centered on promoting the best interest of the child.

Myself and several of my colleagues in the Senate feel very strongly that there is

a need for this convention and the protections it provides. Only through a treaty like the Hague Convention, can countries be assured that uniform practices and minimum standards exist in the countries receiving their most precious resource, their children. If time continues to pass, and we fail to pass legislation or ratify this treaty, we run the risk that countries who have ratified, will no longer allow adoption by American Citizens.

What this would mean, of course, is that the 12,000 or so families who last year adopted children from abroad would no longer have that option. Perhaps of greater concern, the hundreds of thousands of orphaned children will be then deprived of the chance to have the love and support that so many American families can provide. We simply cannot let this happen.

Through this treaty, the international community, for the first time ever, acknowledges that a family setting exceeds all others in serving the needs of a child. In other words, there is universal recognition that the needs of children are not best served in hospitals or institutions. We must encourage this desire for de- institutionalization and support this treaty which allows international adoption to be a viable choice for children

who have no other alternative.

As the need for more families increases and with it the number of international adoptions, oversight of the adoption system becomes essential. The Intercountry Adoption Implementation Act, both the Senate and House versions, intend to address some of the identified problems and bring assurance to the families that the agencies engaging in the process meet a certain minimum standard.

I know that time is short and that you have several panels waiting to speak to you today. Therefore, I will end before my time has expired. Again, thank you for allowing me to participate in today's hearing and I welcome any further questions you might have.

Statement of Hon. Dave Camp, a Representative in Congress from the State of Michigan

House International Relations Committee Hearing on Intercountry Adoption: Implementation of the Hague Convention on Intercountry Adoption

October 20, 1999

Mr. Chairman and distinguished members of the Committee, I appreciate the opportunity to present testimony before this esteemed panel today. I commend the leadership of Chairman Gilman on an issue as important as international adoption.

Today's hearing is not about international negotiations, or budget numbers, or politics. It's about families, opening their homes and their hearts to children who need a family. Before I came to Congress I saw many adoptions take place first-hand, as a private attorney involved in children's issues. In my years here in the House of Representatives, as a Congressional advocate for adoption, I have seen even more. There's nothing more special than seeing a mom and dad bring a new son or daughter into their family through adoption.

In the last ten years, almost 100,000 children from other countries have been adopted by U.S. families. This enormous growth has created countless opportunities for children to find loving homes. At the same time, with the sharp increase in intercountry adoptions, it's a responsibility of the governments of both receiving and sending countries to ensure that the adoptions are safe, and that they are in the best interests of the child, the birth parents, and the adoptive parents.

For that reason, the United States in 1994 signed the Hague Intercountry Adoption Convention, which establishes basic international procedures for concluding safe intercountry adoptions. The Intercountry Adoption Act, which Chairman Gilman crafted, and of which I am proud to be an original cosponsor, implements the Hague Convention. The bill's first main provision would establish the State Department as a "Central Authority," to monitor intercountry adoptions and provide assistance to adoptive parents in dealing with officials in other countries.

Secondly, the bill calls for the Department of Health and Human Services to designate one or more private, non-profit organizations to serve as accrediting bodies which would then accredit U.S. adoption service providers in accordance with strict standards of ethics, competence, and financial soundness. These accredited agencies could then facilitate intercountry adoptions in other countries under the Hague Treaty.

Accreditation is an important part of the United States commitment to implementation of the Hague Convention. The treaty requires that all agencies providing international adoption services must be accredited. This requirement is central to the intercountry adoption process. It provides assurances to all countries that the many agencies involved in adoption services meet established standards of competence and expertise.

H.R. 2909 assigns to the U.S. Department of Health and Human Services (HHS) the role of accreditation. The Committee will hear today from both the Department of State and HHS on the importance of assigning accreditation functions to HHS. I share the belief of Chairman Gilman, the Administration, and many in the adoption community, that HHS is the

appropriate agency to deal with accreditation issues. Much of my involvement in adoption issues here in Congress, as a member of the House Ways and Means Committee, has been centered on the foster care system and placing children out of foster care and into adoptive homes. The Department of Health and Human Services oversees our nation's foster care system, and our Committee works with HHS on a regular basis on a wide variety of adoption, child welfare, and foster care issues.

HHS is the federal agency with the most expertise in child welfare issues. Additionally, HHS, unlike the Department of State, has experience in domestic accreditation issues, in the examination and evaluation of social service and health service providers. This experience in an analogous area will translate very seamlessly to accreditation of adoption providers. The State Department, on the other hand, has no experience in this arena. State's core mission is "outward-looking" -- the conduct of American diplomacy.

Those who would prefer to see the State Department as the lead accreditation authority will rightfully point out that even HHS has little to no role in adoption currently, so creating a new accreditation authority could as easily be done by the State Department. After all, the adoption process right now is handled almost exclusively by the fifty states, and not the federal government. To that argument I would respond first that HHS has the accreditation experience in analogous areas of human services.

Second, State Department officials have stated on other occasions that in the vast majority of sending countries, public social welfare authorities – not diplomats – are responsible for adoption issues. HHS is equipped with the professionals who have lifetime expertise in human services issues, and a basic organizational infrastructure suited to evaluating domestic social issues. To put a more human face on this issue, HHS is closer to the children and families involved in lifechanging decisions like adoption than State.

Accreditation is a central part of H.R. 2909, but it's only one part of a very important piece of legislation. I look forward to working with the Chairman and the members of the International Relations Committee, and the Administration and adoption community in moving this bill through the legislative process. Thank you for the opportunity to testify.

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STATEMENT

of the

AMERICAN ACADEMY OF ADOPTION ATTORNEYS

concerning

H.R. 2909

INTERCOUNTRY ADOPTION ACT OF 1999

on

October 20, 1999

before the

HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

106th Congress, 1st Session

Statement of the American Academy of Adoption Attorneys

Mr. Chairman and members of the committee, we are honored to be able to submit our views to you. Implementing legislation for the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption has been a long time coming. Countless children have waited too long for the protections the Convention will afford. Thank you, Mr. Chairman, and the other sponsors, for your attention to this historic Convention and to the legislation needed to carry it out.

The Academy is a non-profit association of attorneys, judges, and law school professors from around the country and Canada. The mission of the Academy is to encourage the study and improvement of adoption law and practice standards. Our members represent adoptive parents, birth parents, adoption agencies and others involved in adoptions, including intercountry adoptions. Many of the members of the Academy are adoptive parents and have a personal interest in adoption issues. One of the Academy's highest priorities is to do what we can to encourage and assist in the ratification of the Convention and in the passage of legislation to bring it into successful operation in the United States.

The Academy has been involved in the Hague Convention since the early stages. We participated in the drafting of the Convention in our capacity as a member of the official United States delegation in 1992. We also participated in the negotiations which led to adoption of the Convention on May 29,

1993. Thereafter, the United States Department of State asked the Academy to draft standards for the approval of individual attorneys as intercountry adoption service providers under the Convention.

Obviously, the Academy feels strongly that there is a need for the Convention and the protections it provides. We have all been exposed to the reports of adoption abuses in Romania and some other countries. These abuses were the impetus for the drafting of the Convention. There is no guarantee that the increased vigilance caused by the scandals and the additional protections provided by new laws in individual countries will prevent abuses in the future. Only through a treaty like this Convention can one country be assured that uniform protections are in place in other countries.

The need for the type of protections and the oversight provided by H.R. 2909 is great. Most of the agencies and most of the individuals who currently provide intercountry adoption services are competent and ethical. Like any other area of human endeavor, however, there are some who are not competent or not ethical. Since adoptions most often involve young children, the risks are great and the stakes are high. The adoption of a child is the most important legal transaction in which a person can engage. It is a lifelong relationship and it forever changes the life of those involved.

Adoptive parents who pursue intercountry adoption are vulnerable. They have often gone through years of agonizing and expensive efforts to succeed in having a biologic child. They

have been exposed to reports of how difficult it is to adopt. The situation causes prospective adoptive parents to become desperate. Those unethical adoption service providers who would seek to take advantage of these people may find easy victims. Thus, protections are essential.

The Academy strongly endorses H.R. 2909. It is clear that the drafters of this legislation took great care to closely track the provisions of the Convention and not go beyond those provisions except when necessary. In addition, it appears that every effort was made to avoid superceding state law. We view this as extremely important. Adoption is a part of family law which involves social policy and which has always been almost exclusively left to the states.

There is one aspect of H.R 2909 which causes us concern. Section 304 specifies circumstances under which a final decree of adoption can be voided. The criteria listed have been well chosen with one exception. There should be a specific time limit after which no adoption can be voided for any reason.[1] As a matter of social policy, a child's placement with a family should be made permanent, and the risk of a legal challenge should be cut off, at the earliest possible time. This is why most of the states have a statute of limitations specifically applicable to adoptions and why the statutory time limit is typically six months to one year. Obviously, the social policy behind these statutes involves trade offs, since the legal rights of adults may be curtailed. The

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[1] Both the Administration bill, which was submitted during the last Congress, and S. 682, which is currently pending, contain a 2-year time limit.

states with the statutes in question have come down on the side of the child and his or her right to a permanent family.

The need for a time limit in Section 304 becomes even more pressing when one focuses on the inter-relationship between subsection (a) and subsection (b). Subsection (a) pertains to the ability of state courts of the United States to void adoptions granted by state courts of the United States. Intercountry adoptions are normally granted by the child's country of origin pursuant to the laws of that country. Consequently, subsection (a) is intended to apply to adoptions of United States' children who leave this country to be adopted by citizens of other countries. Subsection (b), on the other hand, pertains to the ability of other countries to void the adoptions of children from those countries placed with citizens of the United States.

As presently drafted, Section 304 imposes no time limit either on states of the United States or on other countries. While one might hope that states of the United States (which typically do not entertain challenges after six months or one year) will apply either their own time limits or some other reasonable time limit, we cannot reasonably rely upon laws of other countries to comport with our state laws and the social judgments of our states. This issue is simply too important to be left to chance when we have the opportunity to provide complete certainty in this statute.

We propose that a specific lime limit of two years or less be added to Section 304. That time limit should apply to both adoptions granted by states of the United States and adoptions

granted by other countries. Our preference would be a time limit of six months. We believe six months is a sufficient period of time for any irregularities in the adoption process to be brought to the attention of the court or other authority.

We are grateful for your leadership, Mr. Chairman, and that of the co-sponsors, in moving the United States toward ratification of the Convention. We urge this committee to pass this historic and much needed legislation.

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SUPPLEMENT

to

STATEMENT

of the

AMERICAN ACADEMY OF ADOPTION ATTORNEYS

concerning

H.R. 2909

INTERCOUNTRY ADOPTION ACT OF 1999

before the

HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

106th Congress, 1st Session

NOVEMBER 1, 1999

In our October 20, 1999 statement, we suggested that a provision be added to Section 304 of H.R. 2909 which would limit the period of time during which a final decree of adoption can be challenged. In order to support our argument, we have researched the laws of the states of the United States. The following is a list of the laws in each state on the subject.

State	Time Period	Exceptions
AL	1 yr	Fraud or where adoptee has been kidnapped.
AK	1 yr	
AZ	1 yr	
AR	1 yr	
CA	1 yr	5 yr if based upon a mental disability of adoptee not known to adoptive parents.
CO	1 yr	
CT	NP*	
DE	2 yr	
DC	1 yr	
FL	1 yr	
GA	6 mo	
HI	1 yr	Fraud
ID	NP	
IL	1 yr	
IN	6 mo	
IA	NP	
KS	1 yr	
KY	1 yr	5 yr if adoptee reveals definite traits of ethnological ancestry different from adoptive parents and adoptive parents had no knowledge prior to adoption.
LA	0	Fraud or duress if challenged within 6 mo from discovery of the fraud or duress.

State	Time Period	Exceptions
ME	NP	
MD	1 yr	
MA	NP	
MI	NP	
MN	0	Fraud
MS	6 mo	
MO	1 yr	
MT	6 mo	
NE	2 yr	
NV	0	
NH	1 yr	
NJ	NP	
NM	1 yr	
NY	NP	
NC	0	Fraud or duress if challenge made within 6 mo after fraud or duress is, or ought reasonably to have been, discovered.
ND	1 yr	
OH	1 yr	
OK	1 yr	
OR	1 yr	
PA	NP	
RI	1 yr	
SC	1 yr	
SD	2 yr	
TN	1 yr	
TX	6 mo	
UT	NP	
VT	6 mo	
VA	6 mo	

State	Time Period	Exceptions
WA	0	Fraud, coercion, or mental incompetence if challenged by a consenting birth parent within 1 yr after (not final decree but) date of termination of parental rights.
WV	6 mo	
WI	1 mo	
WY	NP	

* NP = no provision

The Uniform Adoption Act (UAA) §3-707(d) provides for a 6-mo statute of limitations.

The Indian Child Welfare Act (ICWA) 25 USC §1913(d) provides for a 2-yr statute of limitations.

SUMMARY

Time Period	Number of States
2 yr	3 states & ICWA
1 yr	23 states (4 with exceptions)
6 mo	8 states & UAA
1 mo	1 state
0	5 states (4 with exceptions)
NP	11 states

The National Council of Birthmothers
PO Box 99769
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October 15, 1999

The Honorable Representative Benjamin Gilman, Chair
House International Relations Committee
2170 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 2909 Intercountry Adoption Act of 1999

Mr. Chairman and honored members of the House International Relations Committee – we urge you to kill this bill that presents itself as an implementation of the The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.

HR 2909 is a heinous deviation from the Hague Convention in 6 key areas.

1. It forever closes adoption records of those who are foreign born
2. It denies even humanitarian rights, privilege, or status to birth parents
3. It denies Freedom of Information access now accorded to foreign born adoptees
4. It defines post adoption services as *"other"* than activities relating to identifying or locating birth parents or siblings.
5. It criminalizes anyone who discloses information deemed identifying of the birth family
6. It asserts itself to a higher authority than state law – where the state law is inconsistent with the Convention or this Act.

Article 30 of the Hague Convention specifically requires that ;

1. "The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, **in particular information concerning the identity of his or her parents,** as well as the medical history, **is preserved**.
2. "They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State."

The intent of the Hague Convention is to protect the rights of the child as it pertains to their adoption – and their future as independent adults. ***"It specifically describes the other essential element which is the protection of the biological link between the child and his or her parents.*** The information concerning the child's origin will be held for the child for ***his*** or ***her*** future access.

Sealed adoption records are a failed practice peculiar to the United States. The majority of the world has open records – in that an adopted person when they reach adulthood – is given access to the records of their birth. It is accepted as a matter of course that **an individual has a right to government held records pertaining to themselves**.

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In the past few decades we have come to realize the tragedy of sealed adoption records and the folly of leaving the dispensing of such information up to the whim of third parties. We have seen adoptees die from lack of medical information – when such medical information was in the hands of adoption agencies who refused to pass along the information – or judges who have decided medical emergency was not "good cause" to open the records. We have information of case upon case of government officials willfully defying the law by not providing critical information to adoptees, adoptive parents, and birth parents – **that is theirs by law** to have.

The American Academy of Pediatrics has the following in their Policy Statement:

"Recent adoption research and considerable anecdotal evidence challenge the wisdom of maintaining permanent separation of mature adoptees and their biological families. [2-6] The interests of each member of the adoption triad often change over time. As adoptees reach adolescence, their interest in learning about their biological families frequently increases. This is almost always unrelated to the degree of stability of their adoptive family relationship and is usually seen as **a healthy and normal aspect of their personality development**. Concomitantly the interest of the birth parents in preserving their anonymity may diminish over time. Several studies of birth mothers show that they frequently reconsider and remain uncomfortable with the decision they made to surrender their child. [2,5,6] Often their feelings of guilt, grief, and loss are unresolved, and often they believe that their sense of loss might be lessened by knowing what actually happened to their child. Sometimes the third member of the triad, the adoptive parents, may feel threatened by the desires of their adopted children to search for birth parents when these children become adults and begin to develop their own independent lives, [5,6] but often adoptive parents support their children's efforts to search for their birth parents.

As more and more adult adoptees began to challenge confidential court records and search for their birth parents, support groups and advocate organizations evolved to help organize searches and to lobby for less restrictive state laws.

The actual number of adult adoptees who search for information about their birth parents is unknown but thought to be a small (yet recently increasing) percentage of total adoptees, and the motive of those who search are quite varied. [6] Some are at risk for certain medical problems in which knowledge of a family medical history is important. Others wish to have children and want to know more of their genetic and medical history. (All states require a medical and genetic history to be obtained at the time of adoption but these histories are often incomplete and inaccurate.) Other adult adoptees just believe that they have a right to find out their birth names and family heritage to fill the void that makes them feel incomplete and separates them from their pasts.

Adoption researchers are learning about reunions between adoptees and the birth parents and the impact these reunions have on each member of the adoption triad. [5-7] During the past decade, there seems to have been a change in general attitude among adoption professionals toward search and reunion. Previously the idea of searching for one's birth family was seen as either harmful and/or neurotic. Now such searches and reunions are often seen as healthy and a helpful endeavor for all concerned."

This is a country that prides itself on its freedoms – and welcomes people from all over the world who come to be a part of this land of opportunity.

How can this land of freedom and opportunity – extend its hand to the peoples of the world and use that same hand to slap the face of adopted people who are foreign born?

"United in Support of Adult Adoptee Civil Rights"

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We are only beginning to see the tip of the ice berg when it comes to the horrors that have been visited upon the people's of other lands when it comes to foreign adoptions. Is it any wonder that Russia , India, Korea, China, and other countries are re-examining their policies on foreign adoption – some in fact closing their borders to foreign adoption?

Our own STATE DEPARTMENT has travelers warnings for Americans traveling to Guatemala – NOT TO BE SEEN WITH GUATEMALAN CHILDREN as this could be very dangerous for them – due to the deplorable record of the "American Adoption" industry operating in that country. A multi-billion dollar industry that preys on the poor of that country, that steals children from their families – and presents them to unsuspecting American families.

This type of activity goes on in many countries around the world. We read of illegal adoption rings and their practices – involving foreign countries and individuals within the United States regularly. The Seattle Times reported on Monday October 4, 1999 – of a 21 page federal indictment alleging a widespread scheme – involving baby sellers illegally entering the United States at the Blaine crossing - with poor pregnant Hungarian women.

The sealing of foreign adoption records will only help to protect the individuals and groups involved in these illegal activities by hiding the record of their crimes.

The Hague Convention has as its guiding principal – the protection of the rights of the child – and recognition that the child grows up and as an adult – has the right to information of his or her origins – the identity of his or her parents.

HR 2909 strips away those rights and it is wrong. HR 2909 is not in the best interest of the child – or the adult they grow to be.

With all we have learned about adoption and its present and future implication for all the families involved – let us not take a step backward into the Dark Ages by passing a law that forever renders foreign born adoptees to the permanent status of second class citizens in our country.

Let our shores still continue to represent the free and the brave. Vote NO on HR 2909.

Terri Leber
President
National Council of Birthmothers

"United in Support of Adult Adoptee Civil Rights"

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TESTIMONY SUBMITTED TO

THE INTERNATIONAL RELATIONS COMMITTEE

U. S. HOUSE OF REPRESENTATIVES

FOR THE HEARING ON

THE HAGUE CONVENTION ON INTERCOUNTRY ADOPTION

October 20, 1999

BY

THE CHILD WELFARE LEAGUE OF AMERICA

The Child Welfare League of America (CWLA) welcomes this opportunity to submit testimony on H.R. 2909, the Intercountry Adoption Act. We commend the efforts of the bill's bipartisan sponsors for taking steps to put forth legislation to implement the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (the Convention).

CWLA is an 80-year-old association of more than 1,000 public and private nonprofit community-based agencies that serve more than three million children, youth, and families each year. CWLA member agencies provide the wide array of services necessary to protect and care for abused and neglected children, including child protective services, family preservation, family foster care, treatment foster care, residential group care, adolescent pregnancy prevention, child day care, emergency shelter care, independent living, youth development, and adoption. Nearly 400 of our member agencies provide services that enable children to secure loving, permanent families through adoption. Of that total, approximately 125 agencies provide international adoption services.

CWLA and our member agencies were active participants throughout the convention process. The Child Welfare League of Canada's former executive director was part of the official delegation from Canada to the Hague Conference on Private International Law that led to the enactment of the Convention on Intercountry Adoption. CWLA provided direct input to the official United States delegation during the negotiations leading up to the United States signing the treaty in 1994. CWLA member agencies were represented on the Study Group on Intercountry Adoption convened by the United States Department of State. Following the adoption of the Convention, CWLA member agencies and others in the forefront of intercountry adoptions drafted accreditation standards consistent with the Convention. These draft accreditation standards are available for review and/or revision and implementation by the United States central authority to be designated in legislation to implement the treaty. CWLA also provided input into the proposed implementing legislation transmitted to Congress by the Administration.

NEED FOR ACTION

Intercountry adoption can offer children the advantage of a permanent family for whom a suitable family cannot be found in his or her country of origin. Increasingly, families in the United States are choosing to build their families by adopting children from abroad. The number of children from other countries who were adopted by families in the United States has nearly doubled in the past 10 years.

- In the last 10 years, almost 100,000 children have joined United States families through intercountry adoption.
- In 1988, a total of 9,356 international adoptions were completed.
- In 1998, 15,774 international adoptions were completed in the United States. That number is expected to increase significantly in the next decade.

There is substantial public and governmental interest in attending to and monitoring the international process to protect children from exploitation and abuse and further to ensure their safety and well-being. Recognizing this need, the United States signed the Convention on Intercountry Adoption in 1994. The Convention prescribes a framework for cooperation and a legal structure to safeguard children, birth parents, and adoptive parents involved in intercountry adoption. The Convention addresses safeguards to ensure that intercountry adoptions are in the best interest of children. It establishes a system of cooperation among countries to prevent abduction, sale of, or traffic in children.

The United States signing of the Convention was only the first step. The treaty is not legally binding until the United States Senate ratifies it. To become operational, implementing legislation also needs to be passed by the House and the Senate. As other countries ratify the Convention, they agree to place children for adoption only with countries that offer the same protections. Delay or failure of the United States to ratify and implement the treaty could result in thousands of American families not being able to adopt children from other countries.

COMMENTS ON PROVISONS OF H.R. 2909

We agree with the important goal of the legislation: to ensure that children joining families through adoption across national borders be better protected. Today we offer comments on H.R. 2909.

Establishment of Central Authority
The United States is unique from other countries in that adoption is governed by state laws, which leads to as many as 50 different offices with related but somewhat different eligibility requirements, forms, and procedures for other foreign governments to interact with to complete an intercountry adoption. This variability is very confusing to other countries that have one central authority for handling adoptions and one set of eligibility requirements, forms, and procedures.

Establishing a national central authority will ensure that the United States has a single authoritative source of information about the laws and procedures for intercountry adoptions in the United States. The central authority will serve as a single point of contact for other party countries to look for reliable information about adoption laws in the United States. The central authority will also be responsible for monitoring United States implementation of the Convention, to ensure that the adoption procedures outlined in the Convention are followed. These procedures include ensuring that the necessary consents for adoption have been obtained, the country sending the children has determined that the child is eligible for adoption, and the country receiving the child has determined that the potential adoptive parents are eligible and suited to adopt. H.R. 2909 designates the United States Department of State as the central authority. CWLA agrees that the State Department should have a pivotal role in overseeing intercountry adoptions.

Accreditation Oversight
Under the Convention, all agencies providing international adoption services have to be accredited. CWLA helped prepare draft accreditation standards that are now available for review and/or revision and implementation by the designated United States Central Authority. These standards of practice detail the fundamental requirements for providing quality intercountry adoption services. Given the complexity of intercountry adoption, standards of practice need to be consistent throughout the country, and agencies need to be accredited to demonstrate their competence in this specialized field of adoption. This accreditation process will ensure that agencies doing adoption services are reputable, have knowledge of the special issues and expertise needed to do intercountry adoptions competently, and follow sound business practices.

Licensed, nonprofit adoption agencies play a pivotal role in ensuring protections both for the children and the families seeking to adopt. Although independent intercountry adoptions have been possible in the United States and can continue under the Convention, CWLA believes that, due to the complexities inherent in adoption, all adoptions, domestic or intercountry, need to be completed through a licensed, nonprofit social service agency. The added complexity of intercountry adoption increases the need for the involvement of social service agencies to ensure that the children have been voluntarily released by

their birth parents or freed for adoption in a legally correct manner, and that services were offered to birth parents if they are known, to ensure that they made an uncoerced decision with full knowledge of the implications of their decision.

Social service agencies are also in the best position to prepare families for the challenging and rewarding experience of intercountry adoption and to support them following placement and following the legal completion of their adoptions. Not only do families need to deal with the usual issues of adoption—grief and loss, attachment, explaining adoption to their children, assisting with self-concept, and integrating the reality of both birth family and adoptive family into their own identities—but they must also be prepared to help children with abrupt changes in language, customs, food, climate, dress, and behavioral expectations in their new country.

H.R. 2909 assigns all functions prescribed by the Convention with respect to the accreditation of agencies and the approval of approved persons to provide adoptions serivces to the U.S. Department of Health and Human Services (HHS), in coordination with, the State Department. CWLA strongly supports this structure. HHS has the knowledge and expertise in child welfare policy and practice including adoption services and should have a pivotal role in the accreditation process.

Access to Identifying Information

Article 30 of the Convention mandates that information on the child concerning the child's origin—in particular information concerning the identity of his or her parents as well as the medical history—be preserved. The Convention also states that the child or his or her representative should have access to such information, under appropriate guidance, in so far as is permitted by the law of the state.
The evidence is increasingly clear that individuals who were adopted as children need information about their backgrounds for their optimal mental health. While such information is often fragmentary in intercountry adoptions, what is available should be shared. CWLA is concerned that Section 401 of H.R. 2909 may create potential barriers for adoptees to gain appropriate access to this information. CWLA suggests that H.R. 2909 be modified to follow more closely the conditions for access set forth in the Convention.

In sum, we again commend this Committee for moving forward to implement the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. We applaud the efforts of the members of Congress, who worked diligently in developing this legislation, which we believe can and should move forward, with improvements. We look forward to continuing to work with you to help protect children as they move across national borders to find loving, permanent families.