1. Introduction

The seventeenth session and centenary of the Hague Conference on Private International Law concluded with a Draft Convention on protection of children and co-operation in respect of intercountry adoption. This was adopted unanimously by the 66 States present at the session on May 29, 1993.

The Convention was immediately signed by Brazil, Costa Rica, Mexico and Romania. By the end of April 1994, the Convention had been signed by 13 States, including both States of origin of children adopted abroad and receiving States, i.e., countries to which the children are adopted. Finland was the first Nordic State to sign the Convention (April 1994), and Denmark, Norway and Sweden are expected to do so in the near future. The Convention will enter into force after it has been ratified, accepted or approved of by three Member States of the conference or other States which participated in the seventeenth session.

Intercountry adoptions (also called “international adoptions”) involve a child living in one country, the prospective adoptive parents living in another country and the transfer of the child to that country to live there with the adoptive parents. The legal problems are manifold. This explains the attention given to intercountry adoptions by several international organizations during the last three decades. A number of important legal instruments have been drawn up, of which one should mention especially the European Convention on Adoption of Children, made at the Council of Europe in 1967, and, not the least, the United Nations Declaration on the Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster

When the decision was taken to include in the agenda of the seventeenth session the preparation of a Convention on adoption of children coming from abroad, it was also decided to open the conference for non-Member States having an interest in the subject, in particular countries of origin of the inter-country adopted children. Of the 66 States represented at the session, 30 were non-Member States participating with full voting rights. The principle that non-Member States may participate in the work of the conference was accepted in 1980, but this was the first time it was implemented in respect of a family law topic. A special commission, under the chairmanship of Mr. T B Smith from Canada and Professor G. Parra Aranguren from Venezuela as reporteur, had prepared a preliminary draft Convention on the topic. The Nordic States were represented in the special commission through Dr. Kaarina Buure-Hägglund from Finland. The conference was presided by Professor Jan Schultsz from the Netherlands.

The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption is the second Convention on adoptions concluded at the Hague conference. In the intercountry adoption context, radical changes have taken place since the Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions was agreed upon at the conference’s tenth session in 1964 (hereinafter called the 1965 Hague Adoption Convention, because it was first signed then). At that time, intercountry adoption was widely expected to develop into a mainly European phenomenon, which explains the contents of the Convention: emphasis was given to the unification of private international law rules with regard to European traditions in this field. The development took, however, another turn. Already towards the end of the 1960s, intercountry adoption had become of a world-wide dimension involving migration of children over long geographical distances and from one society and culture to another very different environment. (See: J. H. A. van Loon, Report on Intercountry Adoption, Hague conference on private international law. Prel Doc No 1, 1990, p 6.) The rules of the 1965 Hague Adoption Convention came short of providing protection to the children concerned. One can say that the Convention was outdated already when it came into force in 1978 after ratification by Austria, Switzerland and the United Kingdom. No other States have since become Parties to that Convention, although it has had an impact on the legislation and case law of some other countries. In Sweden, for example, the Act (1971:796) on International Legal Relations Concerning Adoption, that is still in force, was to a large extent drafted in accordance with it.