ANTIGUA AND BARBUDA

STATUTORY INSTRUMENTS

1994, No. 4

Resolution Ratifying the Inter-American Convention on the International Return of Children, done at Montevideo Uruguay July 15, 1989.

WHEREAS the Ratification of the Treaties Act, 1987 (No. 1 of 1987) provides in section 3(1) that where a Treaty to which Antigua and Barbuda becomes a party is one which affects or concerns the relationship of Antigua and Barbuda with any international organisation, agency or association or similar body, such Treaty shall not enter into force with respect to Antigua and Barbuda unless it has been ratified or its ratification has been authorised or approved in accordance with the provisions of the Act;

AND WHEREAS the Inter-American Convention on the International Return of Children is an international agreement which was concluded between the Member States of the Organisation of American States;

AND WHEREAS the Inter-American Convention on Internaitonal Return of Children concerns the relationship of Antigua and Barbuda and the Member States of the Organisation of American States;

NOW, THERFORE, BE IT RESOLVED by this Honourable House that the Inter-American Convention on International Return of Children which is attached hereto as a Schedule be ratified as a Treaty under section 3(1) (c) of the Ratification of Treaties Act, 1987.

Passed the House of Representatives this 10th day of January, 1994.

C. L. Murray,
Speaker.

L.A. Dowe,
Clerk to the House of Representatives.

ORGANIZATION OF AMERICAN STATES

Fourth Inter-American Specialized Conference on Private International Law

July 9 through 15, 1989
Montevideo, Uruguay

Inter-American Convention on the International Return of Children

SCOPE

ARTICLE 1

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

ARTICLE 2

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

ARTICLE 3

For the purposes of this Convention:

(a) Rights of custody include rights relating to the care of the child and, in particular, the right to determine the child's place of residence;

(b) Rights of visitation include the right to take a child for a limited period of time to a place other than the child's habitual residence.

ARTICLE 4

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

ARTICLE 5

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

ARTICLE 6

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

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

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

The Central Authority

ARTICLE 7

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

Specifically the Central Authority shall assist the applicant and competent authorities of the respective States in locating and returning the child. It shall also facilitate the prompt return and delivery of the child to the applicant and assist the parties in obtaining the necessary documents for proceedings under this Convention.

The Central Authorities of the States Parties shall cooperate with one another and exchange information on the operation of the Convention in order to secure the prompt return of children and to achieve the other purposes of this Convention.

RETURN PROCEEDINGS

ARTICLE 8

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

(a) By a letter rogatory;

(b) By filing a request with a central authority; or

(c) Directly, or through diplomatic or consular channels.

ARTICLE 9

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

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

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

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

2. The application or petition shall be accompanied by:

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

(b) Certified document establishing the standing of the applicant;

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

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

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

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

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

ARTICLE 10

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

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

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

ARTICLE 11

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

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

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

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

ARTICLE 12

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

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

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

ARTICLE 13

If within forty-five calendar days after the requesting authority has received notice of a decision to return the child, the steps necessary for the child's return have

not been taken, the return order shall become inoperative and any measures taken shall be lifted.

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

ARTICLE 14

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

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

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

ARTICLE 15

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

ARTICLE 16

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

ARTICLE 17

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

LOCATING MINORS

ARTICLE 18

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

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

ARTICLE 19

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

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

ARTICLE 20

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

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

VISITATION RIGHTS

ARTICLE 21

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

GENERAL PROVISIONS

ARTICLE 22

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

ARTICLE 23

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

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

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

ARTICLE 24

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

ARTICLE 25

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

ARTICLE 27

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

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

FINAL PROVISIONS

ARTICLE 28

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

ARTICLE 30

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

ARTICLE 31

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

ARTICLE 32

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

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

ARTICLE 33

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

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

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

ARTICLE 34

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

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

ARTICLE 35

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

ARTICLE 36

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

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

ARTICLE 37

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

ARTICLE 38

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

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

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

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