Proposals and Comments of the United States of America

The following comments do not constitute all of the United States comments on the Draft Convention. While a few comments on the Draft Explanatory Report are included, there was insufficient time to do a thorough study of the Report. We assume that the Diplomatic Conference and the Permanent Bureau will consider what sort of process should be used to provide States an opportunity to comment on the Report before it is finalized.

The United States intends to submit a separate paper on the treatment of costs under the Convention (Articles 3(c), 6, 8, 14 and 40).

CHAPTER I (SCOPE AND DEFINITIONS) OF
PRELIMINARY DOCUMENT NO. 29
REVISED PRELIMINARY DRAFT CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

Article 2 Scope

1. Para 1: Remove the brackets and retain the bracketed language. We note that this paragraph needs to be read in conjunction with Article 10(3), which states that applications under the Convention shall be determined according to the law of the requested State.

2. Para 3: Children cannot control the circumstances into which they are born. All children are entitled to support from their parents, without regard to the marital status of the parents. Even without the bracketed language, we would interpret Article 2 to cover all children. However, if there is any question about whether the Convention applies to all children, regardless of the marital status of the parents, the United States supports the removal of the brackets and the retention of the bracketed language.

Article 3 Definitions

1. Para (c): The definition of "legal assistance" is closely related to the treatment of costs in Articles 8 and 14. The United States intends to submit a separate paper on that topic and will address this definition there.

Proposals and comments by the delegation of the United States of America

CHAPTER II (ADMINISTRATIVE COOPERATION) OF
PRELIMINARY DOCUMENT NO. 29
REVISED PRELIMINARY DRAFT CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

Article 5 General functions of Central Authorities

1. Clause (b): Article 5(b) is repeated in Article 51(1)(a), except that Article 5 imposes the obligation to provide the information about maintenance laws and procedures on the Central Authority, while Article 51 imposes it on the Contracting State. We strongly support the retention of all of Article 51 and the removal of the brackets. If Article 51 is retained, Article 5(b) can be deleted.

Article 6 Specific Functions of Central Authorities

1. Para 2(i): The United States supports the removal of the brackets and the retention of the bracketed language. The obligation to take "all appropriate measures" to "initiate or facilitate" the institution of proceedings to obtain "any necessary provisional measures" (i.e., freezing of the debtor's assets pending the outcome of the maintenance case) is extremely flexible. Given this flexibility, there can be no harm in including it. And, it might help countries that would like their child support Central Authorities to be able to handle requests from other countries for provisional measures such as the freezing of assets but need a treaty basis in order to be able to do so under their domestic law.

2. Article 6 is closely related to the treatment of costs, and we will address this relationship in the separate paper we submit on costs.

Article 7 Requests for specific measures

1. We believe that this is an important article, because, in some situations, it may be necessary for a Requested Central Authority to take certain specific measures (such as locating the debtor) in order for an applicant in the Requesting State to be able to complete an application to be sent to the Requested State. That is the situation covered by Article 7(1). The United States strongly urges that Article 7(1) be as broad as possible. Therefore, we support the deletion of all of the brackets and the retention of all of the bracketed language. Including Article 6(2)(g), (h), (i), and (j) (facilitation of the obtaining of evidence, the provision of assistance in establishing parentage, assistance with provisional measures, and facilitation of service of documents) in the list of measures will expand the usefulness of Article 7(1).

2. Article 7(2) is important because it might enable a Requesting State to keep the case, at least until an order is established, rather than sending the entire case to the Requested State, if the Requested State could, instead, simply take certain measures to help the Requesting State. This could result in significantly improved efficiency and reduction in over-all costs of the action. We support the deletion of the brackets and the retention of the bracketed language.

3. Given the very real benefit to children that this Article will provide, the very flexible language of the measures under Article 6, and the discretionary nature of the obligations under Article 7, we support the deletion of all brackets within Article 7 and the retention of the bracketed language. The Explanatory Report notes, at paragraph 208, that such specific measures "can already be accomplished on a voluntary basis under the 1956 New York Convention," and the United States strongly agrees with the Reporters' comments at paragraph 217 that "[i]t would be unfortunate if [the language in square brackets] was omitted from a Convention whose primary aim is to improve the recovery of maintenance for children."

Article 8 Central Authority costs

1. Article 8 is closely related to Articles 6, 14, and 40. The United States intends to submit a separate paper dealing with these cost-related articles because of the importance of these articles to us. Our only comment here is that we do not believe that there is any reason to treat costs related to Article 7 requests any differently than costs related to Article 10 requests. We will explain why in our costs paper.

Article 11 Application Contents

1. Although there are two options for Article 11, we believe that the consensus is in favor of Option 1, which would mean that the application forms would be recommended, rather than mandatory. We too prefer Option 1. We support the deletion of the brackets in 11(1)(h) (contact information for person or unit handling an application), which was inserted at the request of the Forms Working Group.

Article 12 Transmission, receipt and processing of applications and cases through Central Authorities

1. Para. 2: The first sentence of this paragraph provides that the requesting Central Authority may only decline to transmit an application if is not satisfied that the requirements of the Convention are met. The explanation of this sentence in the Explanatory Report (paragraphs 336-338) concerns us, as we have a different understanding of the sentence. According to the Report, this sentence means that there is no possibility for the requesting Central Authority to refuse to transmit an application on the grounds that it is not made in good faith or is not well-founded. We agree with the Report that the Special Commission previously decided not to explicitly state that an application could be rejected on those grounds, because of fear that this might encourage a routine ex officio review of the merits of a case by a requesting Central Authority. We

disagree, however, with the Report's interpretation of "when satisfied that the application complies with the requirements of the Convention." We believe that that language is flexible enough to allow a requesting Central Authority to reject an application in the rare case when it is obvious from the face of the application that it was completely without merit. Examples that come to mind would be multiple requests for modification with no claim of changed circumstances, or totally implausible claims against a public figure not based on any credible evidence. Under those very rare circumstances, a requesting Central Authority would certainly have the discretion not to pursue a purely domestic case, and it must also have this discretion in an international case. We believe that the first sentence of 12(2) can be read so as to provide this discretion. The Explanatory Report should be modified to reflect this understanding.

2. The third sentence of 12(2) should be retained without the brackets at the beginning and end of the sentence. It has already been agreed in Article 21 that the documents that accompany an application for recognition and enforcement of a decision do not need to be certified, unless requested. The third sentence simply explains in more detail that the requesting Central Authority would be responsible for obtaining the certified copies from the competent authority and transmitting them to the requested Central Authority. If private agreements and authentic instruments are included in the scope of Chapter IV, then the brackets within the third sentence should be removed and the language retained. We address authentic instruments and private agreements in our comments on Chapter IV.

3. Para. 3: The bracketed language refers to a form for acknowledging receipt of an application. In general, the United States supports the work of the Forms Working Group and the provision of recommended forms. We therefore suggest the deletion of the bracketed language and the addition of a new paragraph 3 bis, which would contain language similar to that in Article 11(4): "An acknowledgement under Article 12 may be made in the form recommended and published by the Hague Conference on Private International Law."

4. Para. 8: The first sentence of this paragraph states that the requested Central Authority may refuse to process an application only if it is manifest that the requirements of the Convention are not fulfilled. As such, it is similar to the first sentence of paragraph 2, except that the standard is even more stringent – it must be "manifest" that the Convention's requirements are not met. It makes sense to have a more stringent standard for the requested Central Authority, as the application will already have been reviewed by the requesting Central Authority to ensure that it complies with the Convention. We have the same concern about the Explanatory Report's interpretation (paragraphs 360 and 361) of this paragraph as we have concerning the Report's interpretation of Article 12(2). The Report (paragraph 360) suggests that "vexatious" or repeat applications by a party "who is abusing the Convention process" could not be rejected under this paragraph. Our reading of Article 12(8) would allow a requested Central Authority to refuse to process an application in the extremely rare case where it was obvious from the face of the application that it had no merit. For example, if a previous application by the same party concerning the same debtor had already been

processed, and had failed for cause, a subsequent application on the same grounds with no change of circumstances would be properly refused. The Report should be modified to reflect this understanding.

Article 13 Means of communications – Admissibility

1. We would like an explanation of the scope of Article 13. Paragraph 366 of the Explanatory Report states that domestic rules of evidence would still be applicable with regard to the substance of the documents. This suggests to us that Article 13 would prohibit a challenge to the admissibility of such documents based on the form of the document. However, Article 13 itself only addresses one aspect of the form of the document, namely the means of communication. Is Article 13 supposed to eliminate all challenges based on form, or just challenges based on the means of communication? For example, a State may require a raised seal in order for a certain type of document to be admissible. So far as we know, if a document with a raised seal is transmitted electronically, the seal is not going to be raised when the document is received. Would Article 13 mean that the requested State's rule on raised seals could not be applied? That is what we would infer from the Explanatory Report; but it is not the only way Article 13 itself could be interpreted. It could also be interpreted as permitting the requested State to apply its rule on raised seals, and not admit the document, so long as its refusal was not based on the fact that the document was transmitted electronically. (Some day there may be a way to transmit a raised seal electronically!) If this second, narrower, interpretation of Article 13 is correct, then the Report should be modified to make it clear that the Article only addresses one aspect of the form of a document. In our consultations with U.S. child support officials, there was no agreement on what Article 13 is intended to mean.

Article 14 Effective access to procedures

1. The United States is submitting a separate paper on costs, which will address Articles 6, 8, 14 and 40.

Proposals and comments by the delegation of the United States of America

CHAPTER IV (RESTRICTIONS ON BRINGING PROCEEDINGS) OF PRELIMINARY DOCUMENT NO. 29
REVISED PRELIMINARY DRAFT CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

The United States makes the following comments and proposals on Chapter IV:

Article 15

1. Para. 2(a): We think there is a typographical error in the first sentence of paragraph 455 of the Explanatory Report. The last part of the sentence should state "EXCEPT IN DISPUTES (emphasis added) relating to obligations in respect of children".

Proposals and Comments of the United States

CHAPTER V (RECOGNITION AND ENFORCEMENT) OF
PRELIMINARY DOCUMENT NO. 29
REVISED PRELIMINARY DRAFT CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

The United States makes the following comments and proposals on Chapter V:

Article 16 Scope of the chapter

1. Para. 3(a): We suggest that it would be clearer if the words "may be made subject to" are deleted and "are subject to" is inserted instead.

2. Para. 4: In the United States, private agreements are not recognized and enforced as decisions unless they are, in fact, incorporated in a decision. The concept of "authentic instruments" does not exist in the United States. However, we would have no objection to removing the brackets and retaining the bracketed language so long as the safeguards included in Article 26(5) and (6) are included. Article 26(5) would require that proceedings for recognition and enforcement of a private agreement or authentic instrument be suspended if either party is challenging its validity before a competent authority. Article 26(6) would allow a State to declare that applications for recognition and enforcement of private agreements and authentic instruments must be made through the requesting State's Central Authority and not directly to the competent authority in the requested State. If private agreements and authentic instruments are included in the scope of the chapter, we should consider carefully which specific provisions of the chapter should not apply to such agreements/instruments.

Article 17 Bases for recognition and enforcement

1. Para. 1(d): A footnote indicates that two delegations may wish to add language permitting a reservation with respect to this paragraph. We urge States to accept this paragraph, the only consequence of which we believe will be to give the United States an additional mandatory jurisdictional basis on which it will be required to recognize other States' decisions. Paragraph (d) covers a subset of the cases covered by paragraph (c). Our understanding is that the United States will be the only or nearly the only State to take a reservation to paragraph (c) (habitual residence of the creditor). But we would not need to take a reservation to paragraph (d), which provides that States shall recognize and enforce a foreign order if the child was resident in the State of origin when the proceedings were instituted, PROVIDED that the respondent lived with the child in that State at some time or lived in that State and provided support for the child there at some time. All of the cases covered by paragraph (d) would thus also be covered by paragraph (c). Paragraph (d) will impose an additional obligation only on States, like the United States, that are not bound by paragraph (c), and that obligation will work to the benefit of other States.

2. Para. 4: We support the substance of this paragraph, which is to require States to take appropriate steps to institute a proceeding to establish a new decision (the State cannot guarantee the result) if they are unable to recognize and enforce a foreign decision as a result of a jurisdictional reservation taken under Article 17(2). Further, we support the proviso that this requirement only applies to applications made through Central Authorities. The last clause of the last sentence ("unless a new application is made under Article 10(1)(d)") could be misread as preventing private attorneys from instituting a proceeding to establish a new decision outside of the Central Authorities system. A direct applicant whose foreign decision has been rejected because of jurisdictional problems can always ask her private attorney to institute a new proceeding with the competent authority to establish a new decision. (We suggest that paragraph 499 of the Explanatory Report be revised to make this clear.) In order to remove these ambiguities, we propose the following language:

> A Central Authority shall, if recognition of a decision is not possible as a result of a reservation under paragraph 2, and, if the debtor is habitually resident in that State, take all appropriate measures to institute a proceeding to establish a decision. The preceding sentence does not apply to direct applications for recognition and enforcement under Article 16(5).

3. Para. 5: This paragraph needs to be revised to reflect its original intent. If a decision in favor of a child under the age of 18 is rejected by virtue only of a reservation under Article 17(1), we agree that the forum State, in a proceeding to establish a new decision, should not be allowed to declare the child ineligible for support by virtue only of the fact that under the lex fori the age of majority is lower than 18. This was the intent of paragraph 5 but, as currently drafted, "eligibility" could be read much more broadly.

The current draft states that a decision in favor of a child under the age of 18 that is rejected solely because of a reservation under Article 17(1) shall be accepted as establishing the "eligibility" of that child for maintenance. The Report (paragraph 501) makes clear that this does not refer to the quantum of maintenance. However, the Report suggests in paragraph 500 that age is only an example of what "eligibility" means under Article 17(5). We believe that age was the sole criteria that this paragraph was intended to address. Otherwise, the paragraph could deny the respondent of legitimate defenses. The following example will illustrate this problem. A default order is established by a U.K. tribunal against a U.S. debtor. The order is rejected by the U.S. tribunal because the sole basis of jurisdiction that could be asserted against the U.S. debtor was that the creditor was habitually resident in the U.K. Under those circumstances, the U.S. debtor had no obligation under U.S. law to participate in the U.K. proceeding. In a U.S. proceeding to establish a new decision, the U.S. debtor seeks to prove that he is not the father of the child. A refusal to allow him to raise this defense would be a denial of due process. And yet, "eligibility" as used in Article 17(5) could be read as meaning that parentage could not be contested.

If there are States where the age of majority is lower than 18, then Article 17(5) should be revised to reflect the narrow rule that such a State cannot declare a child ineligible for support on that basis alone in an establishment case brought under Article 17(4). Otherwise, Article 17(5) should be deleted.

Article 19 Grounds for refusing recognition and enforcement

1. Para.(d): As the Report points out (paragraph 516), the text of this subparagraph does not say anything about the date of the incompatible decision made in a third State. Such a decision should only prevail if it was established prior to the decision at issue in Article 19(d) and the text should be modified to reflect this.

Article 20 Procedure on an application for recognition and enforcement

1. Para 4: Article 20(4) addresses the level of *ex officio* review that will be allowed at this stage in the process. The United States believes that this provision is one of the most important in the Convention. As one of the main goals of the Convention is to simplify the process of recognition and enforcement of foreign child support orders, we believe that the level of review at this stage should be minimal. Later, at the challenge or appeal stage (Article 20 (6-8), the respondent will have a full opportunity to contest the decision. There is no reason why the full review process should be done more than once. At most, the review at the Article 19(4) stage should be limited to the grounds set forth in Article 18(a) (public policy).

We are very concerned that if the *ex officio* review is expanded to include the reasons specified in Articles 17 and all of 19, the result could be a significant delay in getting child support to needy families. It is our experience that the *exequatur* process at this stage can delay the final resolution of the case for months or years. It is our understanding that, in some countries, the competent authority for this *ex officio* review of a foreign order is not even the same entity as the competent authority for the appeal or challenge. Even in countries where there is a single competent authority, there is no reason to have two opportunities for review. **If the Convention provides for a level of review at this stage of the proceedings that goes beyond public policy, in practical terms this may mean that for large numbers of applicants, the Convention will be useless.**

A possible concern of some States is that they may have a one-stage process for recognition and enforcement of foreign orders, rather than the two-stage process contemplated by Article 20. Those states are free to use simpler or more expeditious procedures. This is reflected in Article 20(10), as well as in Article 46(b). We agree with paragraph 548 of the Report that there is some overlap, and suggest the deletion of Article 20(10). We note the concern expressed in footnote 8 and in paragraph 548 of the Report that, while allowing the use of simple expeditious procedures is a good thing, there should be a level of due process which these procedures must meet. We would propose adding language along the following lines to Article 46(b) and/or Article 20(11): "so long as the procedures include the grounds for challenge set forth in Article 20 (7-9)."

We would ask those States that support an expanded *ex officio* review to consider what practical impact that would have. At the Article 20(4) stage, the competent authority will only have before it the documentation received from the petitioner. No additional evidence will be permitted, and the respondent will not at that point even have notice of the case. Thus, it is very unlikely that a competent authority would have any way of knowing whether any of the Article 17 or 19 reasons for refusing recognition exist. The only impact of building in a separate *ex officio* review at this stage would be delay.

2. The use of the phrase "challenge or appeal" in Article 20(5-8): We strongly urge that the words "or appeal" be deleted from these paragraphs, as they are confusing and unnecessary. As used in these paragraphs, "challenge or appeal" refers to a review at the trial, or first, level. The word "appeal" is used with a different meaning in Article 20(10) and Article 14(1), where it means a second review by another body at an appellate level. The deletion of "or appeal" in Article 20(5-8) would make no substantive change but would prevent a great deal of confusion, at least in countries like the United States, where "appeal" is a term reserved for the second level of review, and is not used to refer to a trial-level proceeding.

3. Para. 6: The reference to paragraph 6 should be a reference to paragraph 5.

Article 21 Documents

1. Para 1(c): We have no disagreement with the intended substance of this subparagraph, but suggest that the drafting needs to be made consistent with Article 19(e). As drafted, Article 21(1)(c) literally means that the document must establish that there was NOT notice and an opportunity to be heard when, of course, it is the opposite that is intended.

Article 25 Physical presence of the child or applicant

This important, but not yet discussed, provision should be moved to Chapter VIII (General Provisions), as the provision should apply to requests for establishment and modification, as well as for recognition and enforcement. The brackets should be removed and the bracketed language retained, except that "under this Chapter" should be changed to "under this Convention." Obviously, the entire structure and purpose of the Convention would be undermined if a tribunal could demand the physical presence of the child or other creditor.

Article 26 Authentic instruments and private agreements

1. As stated in our comments on Article 16(4), we have no objection to the inclusion of authentic instruments and private agreements in this chapter, even though authentic instruments are not used in the United States, and private agreements are not recognized as decisions unless they are incorporated into a court decision.

2. Para. 2(c): We make the same comment with regards to this paragraph as we made with regard to Article 19(d), which is that this paragraph needs to address the timing of the decision made in the third State.

3. Para 2 generally: As with Article 20, the documents required under this paragraph do not have to be certified in the first instance. Obviously, there should be at least as much opportunity for authorities to require certified documents in the case of authentic instruments or private agreements as there is in the case of tribunal decisions. We are concerned that Article 26(2) does not completely mirror Article 20, at least with direct applications. If the application goes through the Central Authorities, then Article 12(2) provides that the requested Central Authority can require the submission of certified documents required by Article 20 or Article 26. But Article 20(3) also provides that certified documents can be demanded (in both Central Authority and direct application cases) if there is a challenge, or *sua sponte,* by the competent authority. Similar provisions should be added to Article 26.

Proposals and Comments of the United States

CHAPTER VI (ENFORCEMENT BY THE REQUESTED STATE) OF PRELIMINARY DOCUMENT NO. 29
REVISED PRELIMINARY DRAFT CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

Article 32

This Article can be deleted if Article 51 is retained. We think it makes sense to include all of the requirements for information to be submitted to the Permanent Bureau in Article 51, rather than scattering them throughout the Convention. This is especially true because Article 51 explains that States can fufill all of their informational requirements by completing the Country Profile.

Proposals and Comments of the United States

CHAPTER VII (PUBLIC BODIES) OF
PRELIMINARY DOCUMENT NO. 29
REVISED PRELIMINARY DRAFT CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

Article 33 Public bodies as applicants

1. We strongly believe that the definition of "creditor" should include a public body acting in place of an individual creditor for all child support cases (establishment, recognition and enforcement and modification) covered by the Convention. So long as the public body's recovery is restricted to benefits provided in lieu of child maintenance, we see no reason to treat the public body any differently than the individual creditor. We understand this to mean that the public body can only recover what the debtor would be (or, for prior periods, would have been) obliged to pay as child support. If the public body provided higher benefits than the debtor would be ordered to pay under the relevant child support guidelines, it cannot recover the excess from the debtor; if it provided lower benefits than the debtor was or would have been ordered to pay the individual creditor, it cannot recover more than it paid.

2. We also believe that, for child support cases, public bodies should be treated as applicants under Article 14, i.e., receive the same level of free services. (If there is any exception to free services for wealthy individuals, that exception obviously would not apply to public bodies.)

3. As a technical drafting matter, we note that Article 33(1) uses the phrase "benefits provided in lieu of maintenance" while Article 33(2) uses the phrase "benefits provided … in place of maintenance." We suggest that "in lieu of" be used in both paragraphs.

Proposals and Comments of the United States

CHAPTER VIII (GENERAL PROVISIONS) OF
PRELIMINARY DOCUMENT NO. 29
REVISED PRELIMINARY DRAFT CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

Article 40 Recovery of Costs

1. Article 40(1) may be changed, depending on the resolution of Articles 8 and 14. We will address this in a separate paper on costs.

Article 42 Means and costs of translation

1. Para. 1: We support the flexibility that this paragraph provides Central Authorities and would urge one addition that would provide even further flexibility. The first sentence provides that Central Authorities may agree in an individual case that the translation will be done in the requested State, rather than in the requesting State. We suggest inserting the words "or generally" after "in an individual case." This would make it clear that Central Authorities would have the flexibility to agree that all applications between the two of them would be translated in the requested State. Certain States with which the United States has bilateral arrangements have requested that we not attempt to translate our documents into their languages, but rather let them do it. We note that paragraph 2 addresses the cost of translation in such cases.

2. Para. 3: We suggest that a period be inserted after "related documents" and that the rest of the sentence be deleted. While the United States generally does not charge its own applicants for translation costs, it seems inappropriate for this Convention to be regulating the entirely internal procedures that govern the relation between the requesting Central Authority and its own applicant.

Article 45 Co-ordination of instruments and supplementary agreements

1. Like many States, the United States has concluded a number of bilateral child support agreements, or more informal bilateral reciprocity arrangements, with many foreign countries, as well as nearly all Canadian provinces and territories. All of these are consistent with the objects and purposes of this Convention and, in fact, because of their bilateral nature, they provide for even closer cooperation and more efficient services than may be provided for under the draft Convention. We certainly want to preserve these bilateral agreements and arrangements, and the possibility to continue to conclude additional such agreements and arrangements. We believe that this Article achieves this goal, except in two respects. Article 45(1) protects existing international agreements; Article 45(2) protects the ability to conclude future agreements consistent with the Convention; and Article 45(3) states that the previous two paragraphs also apply to reciprocity schemes, which would cover our informal arrangements with other countries.

2. We have, however, two concerns about Article 45 which we think can be easily addressed. **First**, we note that Article 45 (3) addresses reciprocity schemes "based on special ties between the States concerned." We propose deleting the quoted phrase. It does not add anything. The fact that that a child and custodial parent are in one State and the noncustodial parent with a duty of support in the other seems to us to be enough of a special tie. And it might be misinterpreted as requiring something more. **Second**, Article 45 does not address reciprocity arrangements between a State and the territorial unit of another State, such as the arrangements the United States has, at the federal level, with nearly every Canadian jurisdiction, at the provincial and territorial level. We understand that Canada will be making a proposal to address this, and we expect to support that proposal.

Article 46 Most effective rule

1. We note that this article allows the application of any other law in force in the requested State that provides for more expeditious procedures on an application for recognition and enforcement of maintenance decisions. Among other things, this addresses the concerns of States that have simpler recognition and enforcement procedures than those detailed in Article 20. We refer to our comments on Article 20(11), which note that any simplified procedures still must meet due process standards.

Article 50 Transitional provisions

1. We support removing the brackets and retaining the bracketed language in the title and in Article 50(1). It is sensible that the Convention should apply to applications made after entry into force of the Convention for the relevant States.

2. We propose that Article 50(2) be deleted. There is no reason to exclude from the Convention payments falling due prior to the entry into force of the Convention. To exclude such overdue payments penalizes custodial parents and children with existing cases that involve arrears. It also creates an administrative burden on the competent authority which would have to carve out those arrears accruing prior to the Convention from those arrears accruing after the Convention. Children should not be penalized that way!

Article 51 Provision of information concerning laws, procedures and services

1. We support removing the brackets and retaining the language of Article 51. It will be very useful for Central Authorities to have this information. Moreover, requiring States to make this information available to all will improve the monitoring and review of the implementation of the Convention.

2. Para. 1(d): We think the phrase "including any limitations, in particular limitation periods, on enforcement" is unclear. We would like an explanation and perhaps some revisions to the drafting.

2. Para. (2): The Country Profile will be a very valuable tool. We think the process of amending it should be flexible, and therefore the Country Profile should not be part of the Convention. We thus support deleting the bracketed language.

CHAPTER IX (FINAL PROVISIONS) OF
PRELIMINARY DOCUMENT NO. 29
REVISED PRELIMINARY DRAFT CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE

Article 49 Signature, ratification and accession

1. This provision is very important to the United States. It addresses the extent to which States are permitted to bilateralize the Convention, i.e., decide whether or not to accept a treaty relationship with a specific country. The United States strongly prefers Option 1, which permits a Contracting State to reject a treaty relationship with States that are not members of the Hague Conference and have not participated in the negotiation of the Convention. Under Option 2, no bilateralization would be possible. Because the obligations imposed under this Convention on Central Authorities in Article 6 are drafted so flexibly, there may be a vast difference among States as to the level of services offered. This could result in a lack of reciprocity, with State A providing extensive, free services to State B, while State B provides very little to State A. Option 1 will not completely resolve this problem, because it provides for bilateralization only as regards certain categories of States. But, it is better than Option 2. Within Option 1, the United States strongly prefers the second alternative paragraph 5.

2. The United States remains very concerned about a lack of reciprocity, not so much as between a wealthy and a poor country, but as between two developed countries, one of which provides extensive child support services and one of which does not. We will address these concerns in detail in a separate paper dealing with costs.