

Council on General Affairs and Policy of the Conference – March 2017

Document	Preliminary Document <input checked="" type="checkbox"/> Procedural Document <input type="checkbox"/> Information Document <input type="checkbox"/>	No 11 of December 2016
Title	Conclusions & Recommendations (C&R) of the Working Group on preventing and addressing illicit practices in intercountry adoption (meeting of 13–15 October 2016)	
Author	Working Group on preventing and addressing illicit practices in intercountry adoption (meeting of 13–15 October 2016)	
Agenda item	Item V.1.c.	
Mandate(s)	C&R No 30 of the March 2016 Council on General Affairs and Policy C&R No 45 of the June 2015 Special Commission meeting on the practical operation of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993 Hague Convention) C&R No 24 of the April 2011 Council on General Affairs and Policy C&R No 2 of the June 2010 Special Commission meeting on the practical operation of the 1993 Hague Convention	
Objective	To report on the meeting of Working Group. The Council is invited to take note of the C&Rs of the meeting, in particular to consider C&R Nos 22 to 25, which concern the future work of the Group.	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input checked="" type="checkbox"/> For Information <input type="checkbox"/>	
Annexes	n.a.	
Related documents	n.a.	

Introduction

1. From 13 to 15 October 2016, the Working Group on preventing and addressing illicit practices in intercountry adoption (“the Group”) met at the offices of the Permanent Bureau in The Hague. The meeting was attended by 35 experts representing 20 States, including both States of origin and receiving States, and three international organisations, as well as members of the Permanent Bureau.¹

2. The mandate of the Group is “to consider the development of more effective and practical forms of co-operation between States to prevent and address specific instances of abuse”.² The Group considered a number of proposals on the basis of the discussion of this topic at the 2015 Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (“the 1993 Hague Convention”) and recommendations from States, and other previous work done by this Group.

3. The Group welcomed the different legal measures and practices adopted by some States to improve and raise the minimum standards of the 1993 Hague Convention to prevent and address illicit practices, and encouraged other States to do so.

4. Participants expressed their interest in the following themes: properly implementing the 1993 Hague Convention procedures, verifying the adoptability of the child, ensuring that the best interests of the child is the paramount consideration, understanding States’ responsibilities when problems occur, and the importance of fighting improper financial and other gain. The Group then explored the following matters:

Terminology

5. The Group began its work by recognising the relevant terms that had previously been defined in Hague Conference documents. The Group decided not to add new definitions at this point. It agreed to focus instead on **identifying practical examples** both in receiving States and States of origin of (1) illicit practices and (2) policies, or lack thereof, that create an environment for illicit practices, and (3) activities that, while they may not in themselves be illicit, may facilitate or promote illicit practices.

Co-operation and preventive measures

6. The Group recalled the importance of co-operation as stated in the 1993 Hague Convention and elaborated in the Guides to Good Practice Nos 1 and 2, and the Conclusions and Recommendations of past Special Commission meetings on the 1993 Hague Convention. The Group welcomed the existing communication and co-operation mechanisms at the national and international levels, both to prevent and respond effectively to illicit practices.

7. The Group agreed that when illicit practices occur, there is a particular need for enhanced co-operation and mutual trust between States of origin and receiving States to address them, taking into account the views, needs and legislation of all concerned States and in accordance with the 1993 Hague Convention.

¹ The participating Members were: Albania, Belgium, Brazil, Canada, Korea (Republic of), Denmark, France, India, Ireland, Luxembourg, Malta, Mexico, Netherlands, Norway, Philippines, Switzerland, United States of America, Venezuela and Viet Nam. The following Members – Australia, China (People’s Republic of), Russian Federation – and non-Member Contracting States – Haiti, Togo – were unable to come. The following international organisations also participated in the meeting: United Nations Children’s Fund (UNICEF), Nordic Adoption Council (NAC) and International Social Services (ISS).

² See “Conclusions and Recommendations adopted by the Special Commission (17-25 June 2010)”, para. 2; “Conclusions and Recommendations adopted by the Council on General Affairs and Policy (5-7 April 2011)”, para. 24.

8. The Group recommended that receiving States working in a particular State of origin have a better co-ordinated approach, *e.g.*, through information sharing, joint action and co-operation amongst Central Authorities and Embassies of the receiving States and jointly with the Central Authority of the State of origin.

9. The Group recommended exploring the feasibility of establishing a **secure portal on the Hague Conference website or a similar web-based tool** where States could share information about, for example, specific procedures, mission reports, sample documents, co-ordinated approaches in certain States, alerts of illicit practices and adoption bodies that have lost their accreditation and / or authorisation. The Group agreed that further discussion regarding the specific content of such a database, privacy concerns, and the resources required to develop and maintain such a tool will be needed before taking any decision about its creation.

Co-ordination with the work of the Experts' Group on the Financial Aspects of Intercountry Adoption

10. The Group recognised that the lack of adequate policies on the regulation of financial matters in intercountry adoption is one of the most prevalent sources of illicit practices. The Group welcomed the tools elaborated by the Experts' Group on the Financial Aspects of Intercountry Adoption and emphasised the need for co-ordination between the two Groups.

Fact sheets

11. The Group supported the development of **fact sheets** on 1) illicit practices, 2) inadequate policies and 3) risky activities. These fact sheets would address how each practice, activity or policy could be prevented and addressed, including examples of promising practices. The fact sheets would be updated as needed, and available on the Hague Conference website.

Best interests of the child determination

12. The Group emphasised that since in adoption matters the best interests of the child must always be the paramount consideration, every effort should be made so that determination of the best interests is undertaken thoroughly for each child.

13. The Group discussed whether to develop a list of minimum criteria to use in determining whether an adoption is in the best interests of the child. The Group decided that, on the basis of the work of the subgroup (see below), further consideration could be given to this proposal. The subgroup may also consider the best interests of the child in the post-adoption context.

Recognising illicit practices

14. The Group stressed the importance of raising awareness that illicit practices regrettably still exist, and empowering all actors, including authorities, bodies and (prospective) adoptive parents to recognise and report them. The Group underlined the need to fight the taboos that surround the reporting and acknowledgement of illicit practices.

15. The Group recognised the value of developing and using reporting and complaint mechanisms both in States of origin and receiving States as an important tool to bring illicit practices to light. The Group recommended that States share their experiences regarding the structure and operation of such mechanisms, how to encourage their use and how to ensure that relevant authorities act on the information as appropriate.

16. The Group agreed that States of origin and receiving States have a shared responsibility in verifying that the safeguards of the 1993 Hague Convention have been followed before issuing the Article 17 (c)³ agreement. It asked that the Permanent Bureau give priority to developing the Model Form(s) for Article 17 (c).

³ Article 17: "Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if - [...]
c) the Central Authorities of both States have agreed that the adoption may proceed; [...]"

Effective responses in specific cases and improved responses to victims

17. The Group recommended the development of a **model procedure** to respond to specific cases of illicit practices, taking into account, *e.g.*, the seriousness of the illicit practice and the stage at which it was discovered. The Group agreed that the procedure could also address counselling, remedies and sanctions.

18. The Group stressed the importance of addressing the needs of victims through the provision of appropriate services, which could include counselling and support (with appropriate confidentiality), including through recognition of mistakes and re-establishing contact and / or identity where desired and appropriate.

19. The Group recommended that both States of origin and receiving States develop the necessary **resources to address the need of victims**, in particular in the search for origins in the case of illicit practices. States are encouraged to share with the Permanent Bureau a compilation of links to their resources.

Effective responses to general patterns of illicit practices

20. The Group recommended the development of a **spectrum of responses** to general patterns to be carried out in a co-ordinated fashion, including support to improve policies, legislation and practices through, for example, technical assistance and / or training.

The 1996 Hague Convention

21. The Group recalled the usefulness of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* in view of its relevance in enhancing co-operation to protect the best interests of children in many different situations, including following the breakdown of intercountry adoptions.

Next Steps

22. The Group recommends to the Hague Conference's Council on General Affairs and Policy that the Group's mandate be continued and that a representative subgroup be established, with a view to developing a **toolkit** containing:

- (1) a **list of practical examples** both in receiving States and States of origin of (i) illicit practices and (ii) policies, or lack thereof, that create an environment for illicit practices, and (iii) activities that, while they may not in themselves be illicit, may facilitate or promote illicit practices;⁴
- (2) **fact sheets** on (i) illicit practices, (ii) inadequate policies and (iii) risky activities, which would address how each practice, activity or policy could be prevented and addressed, including examples of promising practices;⁵
- (3) a **model procedure** to respond to specific cases of illicit practices;⁶ and
- (4) a **spectrum of responses** to general patterns to be carried out in a co-ordinated fashion, including support to improve policies, legislation and practices through, for example, technical assistance and / or training.⁷

⁴ See para. 5.

⁵ See para. 11.

⁶ See para. 17.

⁷ See para. 20.

23. The Permanent Bureau will explore the possibility of establishing a **secure portal on the Hague Conference website or a similar web-based tool** where States could share information about, for example, specific procedures, mission reports, sample documents, co-ordinated approaches in some States, alerts of illicit practices and adoption bodies that have lost their accreditation and / or authorisation.⁸ In exploring this, consideration should be given to the financial and human resources required to develop it. If adequate resources are identified, the subgroup would then work on the content and structure of such a mechanism.

24. The subgroup would also develop guidance for States regarding information to be included on the Hague Conference website about their **resources and contact points for victims of illicit practices**.⁹

25. The draft tools prepared by the subgroup would be submitted to the Group for review as they are completed. It is expected that the subgroup would generally work electronically, and if needed, could meet in person. Timing of the next meeting of the full Group would depend upon progress in the subgroup. Tools that are approved by the Working Group would be distributed for comments to all Contracting States to the 1993 Hague Convention, and then submitted to Council for final approval. The Working Group will report again to Council in 2018.

⁸ See para. 9.

⁹ See para. 19.