

**RAPPORT ET CONCLUSIONS DE LA COMMISSION SPÉCIALE  
SUR LE FONCTIONNEMENT PRATIQUE DE LA  
CONVENTION DE LA HAYE DU 29 MAI 1993 SUR LA PROTECTION DES ENFANTS  
ET LA COOPÉRATION EN MATIÈRE D'ADOPTION INTERNATIONALE  
28 NOVEMBRE-1ER DÉCEMBRE 2000**

*établis par le Bureau Permanent*

\* \* \*

**REPORT AND CONCLUSIONS OF THE 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  
28 NOVEMBER-1 DECEMBER 2000**

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**List of participants of the Special Commission meeting**

*La Commission spéciale s'est réunie du 28 novembre au 1er décembre 2000*  
*The Special Commission met from 28 November to 1 December 2000*

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## INTRODUCTION

### *Terms of reference, representation and chairmanship*

**1** The Special Commission to review the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* met at the Peace Palace in The Hague, from 28 November to 1 December 2000, pursuant to the Decision of the Eighteenth Session of the Hague Conference on Private International Law, which appears under Part B, 6 in the Final Act, and which reads as follows:

*"Recalling Article 42 of the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, invites the Secretary General to convene a Special Commission on the operation of that Convention."*

This was the first meeting of the Special Commission to review the practical operation of the 1993 Convention. A Special Commission on the implementation of the Convention had been held from 17 to 21 October 1994.<sup>1</sup>

**2** Of the 58 States represented, 50 were Parties to the Convention of 1993 (16 being non-Members of the Conference), and the other 8 were Member States of the Hague Conference not yet Parties to the Convention. In addition 4 States, which were neither Member States of the Conference nor States Parties to the Convention, attended as observers. Three intergovernmental organisations and ten non-governmental international organisations were present as observers.

**3** The Special Commission was opened by Mr Teun Struycken, Chairman of the Netherlands Standing Committee on Private International Law. He proposed as Chairman, Mrs Alegría Borrás (Spain), who was elected unanimously by the Commission. The Permanent Bureau acted as Reporter.

### *Preliminary Documents and Agenda*

**4** Three Preliminary Documents had been previously circulated to participants. Preliminary Document No 1, Questionnaire on the practical operation of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, drawn up by William Duncan, was sent out to National Organs in July 2000. Preliminary Document No 2, containing the questionnaire responses, was made available on three disks distributed to the delegations. Several copies of the complete set of responses, as well as the documents annexed, were made available for consultation to the participants during the Special Commission. Preliminary Document No 3 contains a Note drawn up by the Permanent Bureau analysing certain aspects of the questionnaire responses. It contains a summary of difficulties experienced by respondents in the implementation and practical operation of the Convention as well as suggestions and examples of "good practice". This document also contains a note on the issue of improper financial gain, a proposal to facilitate the collection of statistics, and a short presentation of the Hague Project for the International Protection of Children.

**5** The Agenda adopted by the Special Commission, reflecting its mandate, concerned the practical operation of the Convention. The discussions concerned successively the

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<sup>1</sup> See Report of the Special Commission on the implementation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (17-21 October 1994).

constitution, role and functioning of Central authorities and Accredited Bodies, some fundamental principles of the Convention, procedural requirements, recognition and effects of an intercountry adoption, post-adoption issues and implementation of the Convention. The Session ended with the consideration and approval of recommendations for the future.

#### **CURRENT STATUS OF THE CONVENTION**

**6** At the commencement of the Special Commission the 1993 Convention had 30 ratifications, 11 accessions and 14 signatures. During the meeting on 30 November 2000, the Ambassador of the People's Republic of China, His Excellency Mr Hua Liming, informed the meeting that he had that day signed the Convention on behalf of his Government. Information was given concerning progress towards ratification or accession by several countries. Legislation to enable ratification by the United States had been signed by President Clinton on 6 October 2000 and ratification by that country was expected to occur within 24 to 36 months. Germany intends to ratify the Convention in the course of 2001. In Switzerland, legislation is in its final stages in Parliament and it is expected that ratification will occur in 2002. Thailand will ratify the Convention in 2001. Ireland expects to ratify the Convention also in 2001. Greece hopes to ratify the Convention. The United Kingdom hopes to ratify the Convention in 2001, with a view to implementation throughout the United Kingdom by 1 January 2002. Hungary hopes to ratify the Convention also in 2001. Turkey would sign the Convention in the near future. Senegal was interested in the Convention since there were many international adoptions from Senegal. Three further Canadian jurisdictions (the Convention already applies in 8 Canadian Provinces and 2 Canadian Territories) were examining how the Convention should be applied, and Newfoundland expects to apply the Convention within the next year.

#### **CENTRAL AUTHORITIES**

**7** The key co-ordinating role played by Central Authorities in the successful operation of the Convention was discussed. The Convention places several non-delegable functions on Central Authorities (Article 7), but many other functions may be delegated to other authorities or accredited bodies (see Articles 8 and 9 and Chapter IV).

**8** There was discussion of the difficulties in certain States of achieving successful co-operation between Central Authorities and the courts. Several Latin American delegations referred to the difficulties they had experienced in moving from a system where intercountry adoption was primarily regulated by the courts, to a Convention system, where there was an administrative Central Authority. These changes had posed problems for the circulation of information between the Central Authority and the courts. The co-existence of the competencies of the courts and the administrative authorities also created problems in the delineation of their respective powers. It was pointed out that Central Authorities were more suited than the courts to assuming responsibilities with regard to international co-ordination, and that there was a need for the courts in some countries to work in closer co-operation with the administrative authorities responsible for the placement of children for intercountry adoption.

**9** The need for clarity in relation to the division of Convention functions between Central Authorities and other authorities or accredited bodies was emphasised. Lack of clarity created uncertainty, for example for adoptive parents in relation to fees and the

waiting period for adoption. It had proved difficult for certain Contracting States to obtain information from others regarding the exact administrative procedures applied under the Convention.

**10** The suggestion was made by the Canadian delegation that (along the lines of Recommendation 1A made in Working Document No 1 submitted by International Social Service), in order to facilitate co-ordination and communication between States, each State should prepare a document giving details of the division of roles between the Central Authority and accredited organisations. During the discussion in which this proposal was supported by several delegations, it was pointed out that the provision of this type of information by each Contracting States was very much in accord with Article 13, that a standard form for the provision of such information might be developed by the Permanent Bureau, and that the information obtained from each Contracting State could be made available on the Hague Conference website. It was emphasised that information was needed, not only on the division of functions between the different authorities, but also on the way in which the different bodies related to one another. The information would also need to be regularly updated. The final recommendation of the Special Commission on this matter was as follows:

**Each Contracting State should provide a description of the manner in which the various responsibilities and tasks under the Convention are divided between Central Authorities, public authorities and accredited bodies, so that the entities responsible to act under particular articles of the Convention are clearly identified, as well as the mechanisms by which they interact with one another. The Permanent Bureau should develop a model chart which would assist States in providing this information. The information should be furnished to the Permanent Bureau and published<sup>2</sup>.**

**11** The Convention (under Article 6, paragraph 2) permits Contracting States, for example federal States, to designate more than one Central Authority, and the Special Commission discussed issues of co-ordination between Central Authorities in this situation. The example was given of Spain which has designated 23 Central Authorities. It was accepted that in some situations there was a need to ensure co-ordination and effective circulation of information, both internally and externally. Experts were reminded that Article 6, paragraph 2, provides in such situations for the designation of a single Central Authority to which all communications should be addressed. One expert emphasised also the desirability of achieving a harmonisation in the practice and policy of different Central Authorities operating within the same State.

**12** The Permanent Bureau, which has assumed the responsibility for maintaining on its website up-to-date information concerning the Central Authorities and other authorities, as well as their contact details, referred to occasional difficulties which they had experienced in obtaining such information from some Contracting States. There was general agreement on the need for co-operation between Contracting States through their Central Authorities and the Permanent Bureau in this matter. A number of detailed recommendations were accepted as follows:

**a) The designation of the Central Authorities, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau not later than the date of the entry into force of the Convention in that State.**

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<sup>2</sup> The Permanent Bureau intends to begin consultations on a draft model chart in May of 2001. Once finalised, the chart will be transmitted to all Central Authorities and posted on the Hague Conference website.

- b) Such communication should, in accordance with Article 13 and paragraph 274 of the Explanatory Report on the Convention by G. Parra-Aranguren (*Proceedings of the Seventeenth Session (1993)*, Tome II, *Adoption – co-operation*, page 591), give notice of any other public authorities (including their contact details) which, under Article 8 or 9 discharge functions assigned to the Central Authorities.
- c) The extent of the functions of the Central Authorities and any such public authorities should be explained.
- d) The designation of accredited bodies, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau at the time of their accreditation.
- e) Where a body accredited in one Contracting State is, in accordance with Article 12, authorised to act in another Contracting State, such authorisation should be communicated to the Permanent Bureau by the competent authorities of both States without delay.
- f) The extent of the functions of accredited bodies should also be explained.
- g) All the information referred to above should be kept up-to-date and the Permanent Bureau informed promptly of any changes, including in particular any withdrawals of accreditation or authorisation to act.
- h) Designations, in accordance with Article 23, of authorities competent to certify an adoption as having been made in accordance with the Convention should also be kept up-to-date.

**13 The need for adequate resources and appropriately trained staff in Central Authorities was accepted, as well as the importance of ensuring a reasonable level of continuity in their operations.** At the same time, it was suggested that a degree of diversity in the bodies designated as Central Authorities was appropriate.

#### **ACCREDITED BODIES AND OTHER AUTHORISED BODIES OR PERSONS**

**14** The 1993 Convention permits much of the preparatory work for intercountry adoption, including all the procedures set out in Chapter IV, to be carried out by accredited bodies. Responses to the Questionnaire (see Prel. Doc. No 2) showed that in practice accredited bodies do play a major role in most receiving States. The Convention itself in Article 11 lays down certain basic requirements for accredited bodies: that they shall pursue only non-profit objectives, that they shall be directed and staffed by persons qualified to work in the field of intercountry adoption and that they shall be subject to supervision as to their composition, operation and financial situation. Responses to the Questionnaire, as well as the Working Documents (especially Work. Docs. Nos 1, 3, 4 and 6) revealed how much work has already been applied to the development of accreditation processes, detailed standards of accreditation, procedures for supervision and review of the work of accredited bodies, as well as complaints procedures in different countries and regions. The responses also indicated some concerns in relation to the large number of bodies accredited in certain States and the potential difficulty in such cases of



maintaining standards and effective systems of control. Once again, the problem of lack of clarity in certain countries over the division of functions between accredited bodies and Central Authorities was raised, as well as problems concerning secondary accreditation.

**15** Four Working Documents containing general recommendations with regard to accreditation systems and standards were discussed by the Special Commission. The first, Working Document No 4, presented by EurAdopt and the Nordic Adoption Council, representing 26 adoption organisations from 13 European States, focused on accredited bodies in receiving States and was to be read in conjunction with the ethical principles established by EurAdopt in 1993. In introducing the document, a representative of EurAdopt and the Nordic Adoption Council emphasised that accredited bodies should be non-profit making organisations, that organisations in the receiving States should be responsible for the costs of adoptions, that co-workers should be employed by and under the control of accredited bodies, that third country adoptions should not be part of the Convention and that there should not be too many accredited bodies from any one State.

**16** Working Document No 3 was submitted by the United Kingdom on behalf of the informal Working Conference of European Contracting States (membership of this group, established in 1993, includes 19 European States which are either Parties to or preparing to become Parties to the Convention). Introducing Working Document No 3, an expert for the United Kingdom suggested that accredited bodies should be established within a legislative framework, that care should be taken to ensure that the same rigorous standards be applied to intercountry adoptions as to national adoptions, that there should be transparency with regard to the finances of accredited bodies and that these standards should apply equally to Central Authorities where they exercise this role. He also underlined the importance of documents emanating from States of origin being transmitted promptly to receiving States. Finally, he stated that the Special Commission should arrive at a set of standards to ensure the effective operation of the Convention.

**17** Working Document No 6, submitted by the International Association of Voluntary Adoption Agencies and NGOs (IAVAAN), contained draft criteria which had been developed over a six year period by voluntary and private entities in the United States for possible use in accreditation. These were to be submitted to assist the United States Central Authority in establishing standards for the accreditation of agencies. The United States implementing legislation mandates a diverse accreditation system but requires all accredited bodies to meet the same standards.

**18** Referring to Working Document No 1, the representative of International Social Service recalled that, while the Convention allowed for the creation of accredited bodies, it did not require their creation. She noted that the fact that an accredited body was recognised in a receiving State did not mean that such a body had to be recognised in a State of origin. She argued that in establishing accreditation criteria, particular emphasis had to be placed on the needs of children and of States of origin. Finally, she stated that the interests of children should be specifically taken into account in any administrative or judicial review of accreditation bodies.

**19** During the general discussion, several comments were made on the question of the numbers of accredited bodies in particular States. It was important that accredited bodies should be subject to an effective system of accreditation and supervision. At the

same time, there may be advantages to having several accredited bodies in a particular State, especially where the children concerned are widely dispersed. Also locally accessible

accredited bodies can help to ensure that parents have easier and more contact with the professionals overseeing the adoption process. It was also noted that Central Authorities were sometimes ill-equipped to give practical help to prospective adopters.

**20** Differing views were expressed on the idea that, in any one State, only one mechanism should be employed to organise adoptions, *i.e.* either directly through the Central Authority or by delegation to accredited bodies. Some experts noted that this was already the case in their countries. In support it was argued that this would avoid inappropriate competition between organisations, prevent abuses and reduce possible injustices for adopters. On the other hand, several experts stated that a dual approach did not give rise to any problems in their countries and was moreover necessary for the successful conduct of adoptions.

**21** Comments were made by several delegations concerning practices relating to accredited bodies within their States, as follows:

- in Italy the adoption process is devolved to accredited bodies at a local level to ensure co-ordination between those bodies and social services;
- in France there are 38 accredited bodies working with 24 Contracting States. These bodies deal with one third of adoption cases, while the French Central Authority deals with the rest. Accreditation has to be carried out by both local and national authorities and is done on a State by State basis;
- in Spain adoptions can either be carried out by accredited bodies or by the Central Authorities in the autonomous regions;
- in Norway 99% of adoptions are managed by accredited bodies;
- as regards Canada, in the Province of Quebec 15 accredited bodies currently manage adoptions in respect of 22 States of origin. Accreditation is given for a temporary period only and is not automatically renewed;
- in Colombia there is some uncertainty among accredited bodies about the role they should play in their own country and in the State of origin;
- in Panama there are no accredited bodies. In future all adoptions will be overseen by the National Adoption Directorate;
- in the Philippines there are no accredited bodies. There are no major problems in working with accredited bodies of receiving States. All such bodies had to be re-accredited according to Philippines standards;
- in Burundi there are no accredited bodies;
- in Venezuela there is a two tier system;
- in Romania adoptions are managed at national and local levels. A new legal framework has been put in place and a government meeting would soon be taking place to examine the practical difficulties which exist in relation to adoption;
- in Costa Rica there is a single Central Authority and no accredited bodies. Problems sometimes arise where foreign accredited bodies fail to provide sufficient psychological and sociological information;
- in Belarus there are no accredited bodies.

**22** There was discussion of the different ways in which the work of accredited bodies could be overseen and assessed. In most States a system of periodic review or re-accreditation operates. This varies between 1 and 4 years. The review or re-accreditation takes account of both financial and other operational matters. The importance of an adequate system for the investigation of complaints against accredited bodies was also raised. The comments of individual experts included the following:

- In the Philippines, all foreign accredited bodies are closely scrutinised before being accredited to work in that country, and accreditation is reviewed in all cases on a regular basis. Follow-up reports must be provided for the first six months after a child's departure. The adoption takes place in the receiving State after six months has elapsed.
- In Costa Rica, detailed follow-up reports on the progress of the child are required for two years. Great weight is placed on the motivations for adoption by parents and accredited bodies.
- In Ecuador, there is a preference for signed agreements with accredited bodies from other Contracting States. Accreditation, which is strictly controlled, is for a limited period only, but is renewable.
- In the United Kingdom, for the purposes of accreditation, bodies have to submit an application to the relevant Government department and undergo a strict examination. There are regular reviews and accredited bodies are subject to random visits.
- In Spain, controls are rigorous and accreditation is regularly reviewed. Central Authorities, which compile registers of complaints, have the responsibility for the withdrawal of accreditation. If problems arise it is also possible to bring proceedings in the ordinary civil courts.
- In Italy, it is possible for authorities from a State of origin to contact the Italian authorities in order that the accreditation of a body be reviewed or withdrawn.
- In France, the Minister of Foreign Affairs has responsibility for the withdrawal of accreditation and any subsequent proceedings may be brought before an administrative tribunal.
- In Germany, following complaints from parents, Central Authorities may request accredited bodies to provide additional information. Ultimately, the Central Authorities may withdraw accreditation from such bodies.

**23** The Special Commission recommended that the following principles should apply to accreditation:

- a) The authority or authorities competent to grant accreditation, to supervise accredited bodies or to give authorisations should be designated pursuant to clear legal authority and should have the legal powers and the personal and material resources necessary to carry out their responsibilities effectively.**
- b) The legal powers should include the power to conduct any necessary enquiries and, in the case of a supervising authority, the power to withdraw, or recommend the withdrawal of, an accreditation or authorisation in accordance with law.**
- c) The criteria of accreditation should be explicit and should be the outcome of a general policy on intercountry adoption.**
- d) Accredited bodies should be required to report annually to the competent authority concerning in particular the activities for which they were accredited.**
- e) Review or the re-accreditation of accredited bodies should be carried out periodically by the competent authority.<sup>3</sup>**

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<sup>3</sup> With regard to financial control, see the recommendations below at paragraph 34.

## FUNDAMENTAL PRINCIPLES

### *The principle of subsidiarity*

**24** The Preamble to the 1993 Convention recognises 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”. This means that the Competent Authorities in the State of origin are obliged, in accordance with Article 4 *b*), to give due consideration to “possibilities for placement of the child within the State of origin” before they consider the option of intercountry adoption. This principle implies that the intercountry adoption system within the country of origin should have the capacity to explore national alternatives for the child. This also suggests the need for the service to be in some way connected to or integrated within the broader national child protection system, including the system of national adoption. It may be that the principle of subsidiarity, which reflects Article 21 *b*) of the *New York Convention on the Rights of the Child*, imposes certain positive obligations with regard to the development of domestic family support and child care services within countries of origin, and that receiving countries also have an obligation to support the development of such services. This idea is reflected in the practice of many agencies involved in intercountry adoption, and is relevant also to the issue of contributions,<sup>4</sup> including financial contributions made for the support of child protection services.

**25** Several experts from States of origin emphasised the importance of their child care policies in preventing the abandonment of children. The aim of such policies was that a child could remain in the family of origin. In many cases, abandonment was the result of poverty, and abandonment could be avoided by a social policy supporting the family.

**26** Experts from a number of countries of origin explained methods by which the principle of subsidiarity is made effective in their countries.

- In the Philippines, the authorities attempt to place a child for adoption at local level. Then, if this is not successful, at an inter-regional level, and lastly at an international level. Also the policy is to allow a birth mother to withdraw her decision to release the child for adoption within a specified period.
- In Paraguay, the mother is also allowed to withdraw her decision. The Central Authority has very broad responsibilities, including an obligation to search for the child’s family. The Central Authority works in co-operation with other child care services, medical and social. It also works with foster families.
- In Colombia, the policy is to work with the family of origin and where possible other family relatives. Efforts are made to allow for placements of children in foster homes and group homes rather than in institutions.
- In Chile, there is emphasis on the importance of family support.
- In Panama, the law requires that consideration be given first to placement of the child within the family or with a relative. Children of indigenous race must be adopted by parents of the same ethnic group.

**27** Several experts from States of origin identified cultural problems which formed obstacles to national adoption. In Paraguay, for example, the institution of adoption was not very well known, and the Central Authority was working to improve this situation. In Chile, the development of a more positive attitude towards adoption had allowed for an increase of 50% in national adoptions. Within the Philippines, by contrast, official

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<sup>4</sup> See below, under “Improper financial gain”.

adoptions were not common. The most common practice was that of simulated birth, where the adoptive mother registered the child as having been born to her. Women who had proceeded with such adoptions in the past were now being encouraged to rectify the false records, but traditional attitudes are difficult to change.

**28** Some general concerns were expressed concerning the application of the subsidiarity principle in some countries of origin. It was suggested that in some countries there was an absence of a real search for domestic solutions. At the same time long delays, sometimes associated with the search for a family for the child, were against the child's best interests.

**29** In some countries children were kept in institutions, with no real effort made to find them a family. It was alleged also that in some States of origin there seemed to be a presumption that if a child was abandoned or given for adoption, the only solution was intercountry adoption. One of the problems was that certain States of origin did not have the infrastructure necessary to find a national solution.

**30** A number of suggestions were made as to how the situation might be improved in certain countries. One suggestion was that, in every State of origin, the search for a family for the child should begin as soon as the child entered an institution. It was also suggested that the prevention of abandonment and the search for an alternative to adoption was better achieved if the adoption process was shared between the administrative authorities and the courts. If the adoption was dealt with by the courts in the early stages, then alternatives to adoption would not be explored. It was therefore preferable for the courts to intervene only at the last moment, when it was certain that the child should be adopted. Attention was also drawn, during the course of the debate, to the importance in this context of the Hague Project for the International Protection of Children, the objective of which was to assist States of origin in the application of the principles of the Convention, including in particular the subsidiarity principle.

**31** It was suggested by one expert that valid reasons should be required for a child from a State that was traditionally a receiving State to be sent for adoption to another receiving State. But it was emphasised that such adoptions may be appropriate in certain cases of children with special needs, or where a mother had links abroad and wished her child to be adopted in another country.

#### *Consents to adoption*

**32** Article 4 c) sets out the basic rules governing the obtaining of consents for adoption, including the principle that such consents must be free, that there should be counselling as necessary and, that the persons giving consent should be duly informed of the effects. Article 4 d) deals with the consent of the child, where such is required, as well as the obligation in any case to give consideration to the child's wishes and opinions. **The importance of the "Model Form for the Statement of Consent" which had been approved by the Special Commission of 1994, and which appears as Annex B of the Report of the Special Commission, which was published in March 1995, was re-emphasised.** Article 17 a) requires in addition that prospective adopters should have agreed to the proposed entrustment, and Article 5 b) requires that they should have been counselled. Some concern was expressed in the responses to the Questionnaire about lack of clarity in procedures regarding agreements given by the applicants.

**33** There was a brief discussion of the problems which sometimes arise in ensuring that the person giving consent, who claims to be the child's mother, is in fact the mother. It was pointed out that some receiving States were now requiring DNA tests of both the mother and the baby, in respect of certain countries of origin, in order to avoid irregularities. The Expert of Paraguay stated that DNA tests should not be necessary if

the work of prevention of abandonment and the search for a family solution were carried out correctly. She added that DNA tests were very expensive and that the money would be better spent in maintaining the child within its birth family. With regard to consents, there were obligations on both the State of origin and the receiving State, and the latter could not discharge its duty merely by performing a DNA test. The need for caution was expressed, since an increase in DNA testing might lead to an increase in the number of children being declared abandoned, in order to avoid DNA testing.

#### *Improper financial and other gain*

**34** Article 8 of the Convention imposes on Central Authorities the obligation to take all appropriate measures to prevent improper financial and other gain in connection with an adoption, and Article 32 states that:

*"(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."*

**35** Responses to the Questionnaire revealed serious concern surrounding some of the costs, charges, contributions and donations involved in the intercountry adoption process. It appears from the figures supplied by respondents to the Questionnaire that there are very wide variations in the costs and charges made to prospective adopters in respect of the adoption process itself. These mainly arise from services provided, usually by accredited agencies, in the receiving State and the State of origin. The variations in costs can sometimes be explained, for example by the need to meet differing procedural requirements in different countries, the different levels of service provided, differing legal or medical costs, or differing levels of State subsidy for the adoption process. Concerns were expressed that the level of costs and charges levied by some agencies, whether in receiving countries or countries of origin, appear sometimes to be excessive in relation to the actual level of service provided.

**36** Discussion during the Special Commission confirmed the level of disquiet surrounding these issues. It was agreed that the subject-matter should be discussed under the two headings of costs and expenses, on the one hand, and donations and contributions to the child protection services, on the other.

- Costs and expenses

**37** The matter of the fees charged, especially lawyers fees, was raised by several experts. Concerns were expressed about the level of fees charged in some States of origin, and more specifically the discrepancies between legal fees charged in neighbouring countries in South America. It was noted that excessive legal fees often arise when the lawyer is the mediator procuring the child, a practice, which in the view of some should be regarded as unethical. (In this respect, it should be noted that, if a Contracting State has not made a declaration under Article 22, paragraph 2, the functions given to its Central Authority under Chapter IV may only be performed by the Central Authority itself or by public or accredited bodies.) It was noted that the costs associated with intercountry adoption did not always correspond to the quality of the

service provided.

**38** A number of experts gave examples of the methods by which controls are currently exercised. More detailed information may be found in Preliminary Document No 2 and Preliminary Document No 3 at paragraphs 18 and 19<sup>5</sup>.

**39** A number of suggestions were made as to how the situation might be improved. One suggestion with respect to lawyers was that consideration should be given by States Parties to the establishment of a list of lawyers qualified to provide advice, and to the establishment of fixed scales of fees. Another suggestion was that costs could be reduced and delays avoided if the judicial adoption process were to take place in the receiving State.

**40** During the closing Session, an expert from the Netherlands introduced a proposal (Work. Doc. No 11) for the establishment of a Working Group to study further the question of comparative costs and fees associated with the intercountry adoption process, to draw up forms concerning costs and fees to be used by Central Authorities for the purpose of making costs and fees known and comparable, and to assist Central Authorities to be clear about which costs and fees can be considered reasonable in their countries. It was emphasised that all Central Authorities would be consulted with respect to the project and that it was intended to include in the Working Group persons from receiving States, sending States, international NGO's and the Permanent Bureau. While there was not time for a full discussion of the proposal and no formal recommendation was made, it was apparent that the suggestion had the support of several States Parties and an expert from the Netherlands indicated his intention to carry the project forward.

**41** The following particular recommendations in relation to costs and expenses were approved unanimously:

**a) Accreditation requirements for agencies providing intercountry adoption services should include evidence of a sound financial basis and an effective internal system of financial control, as well as external auditing. Accredited bodies should be required to maintain accounts, to be submitted to the supervising authority, including an itemised statement of the average costs and charges associated with different categories of adoptions.**

**b) Prospective adopters should be provided in advance with an itemised list of the costs and expenses likely to arise from the adoption process itself. Authorities and agencies in the receiving State and the State of origin should co-operate in ensuring that this information is made available.**

**c) Information concerning the costs and expenses and fees charged for the provision of intercountry adoption services by different agencies should be made available to the public.**

- Donations and contributions to the child protection services

**42** Several experts felt that it was important to make a distinction between donations on the one hand, which might sometimes be "requested" of prospective adopters by, for example, the orphanage from which the child comes, and on the other hand, a charge

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<sup>5</sup> See Preliminary Document No 2 of November 2000 "Responses to the Questionnaire on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption" and Preliminary Document No 3 of November 2000 "The Questionnaire responses – some selected issues" drawn up by the Permanent Bureau.



made as part of the adoption fee representing a contribution to family or child protection

services in the country of origin. With regard to the former, it was clear that this practice was in breach of Article 32 of the Convention. To reaffirm this principle, the Special Commission made the following unanimous recommendation:

**Donations by prospective adopters to bodies concerned in the adoption process must not be sought, offered or made.**

**43** With regard to the propriety of required contributions to family or child protection services in the country of origin there was a division of opinion within the Special Commission. The matter had been raised in the Questionnaire and Preliminary Document No 3 summarised the responses as follows:

*"On the one hand, responses showed understanding of the objectives of such practices and the need for receiving countries to support programmes to improve child protection, and in particular alternative care, services within the countries of origin. This is seen to be in accord with the principle of subsidiarity, which is enshrined within the Convention. On the other hand, many reservations and concerns were expressed about particular contribution systems. There is the concern "that the process is turning children into commodities, where the highest contributors are awarded with the child" (Australia). Direct links between contributions and specific applications may create an unhealthy conflict of interests. There are obvious risks, especially in respect of the principle of subsidiarity, where child protection services, and in particular children's institutions, become dependent on income derived from intercountry adoption. A system for the allocation of children for adoption which is closely linked to contribution levels runs counter to the principle that decisions on placement should be made in the best interests of the child. Concerns were also expressed about lack of clarity and transparency in relation to the use of contributions or donations. Many respondents, however, were prepared to accept systems of donations or contributions subject to a number of safeguards in relation to transparency and accountability. In particular, a preference was expressed by some respondents for systems based on fixed rather than variable contributions or donations."*

**44** Within the Special Commission itself the division of opinion was between those experts who felt that the charging of a contribution which is not related to the specific adoption is contrary to Article 32, and should not in any way be condoned, and those who took the view that such a charge could be regarded as a legitimate element in the cost of providing an adoption service in the country of origin and that it was important that the Special Commission should make a clear statement concerning the parameters of such contributions. Those who favoured the first view argued that it was part of the "spirit" of the Convention that monies not related to actual costs of specific adoptions should be excluded from the intercountry adoption process, and that it would be unwise to condone by recommendation any breach of that principle even though the purpose of such recommendation might be to place safeguards around the practice of requiring such contributions. Those who favoured the second view argued that it was reasonable for countries of origin to require a contribution to the cost of providing a family/child protection service in that country, that this was already being done in some Contracting and non-Contracting States, and that this could be viewed as the charging of a legitimate cost for the purpose of Article 32. They argued, moreover, that there was an urgent need, particularly with respect to the current practices in Romania, to state clearly the conditions under which such charges might be regarded as legitimate.

**45** In order to find a compromise, the Permanent Bureau suggested (Work. Doc. No 10) a formula which would have left open the question of whether contributions of this kind are in principle acceptable, but which would at the same time have stated four limitations to which such contributions, where they are required, would be subject. The four principles were as follows:

- a) the amount of the contribution should be fixed and notified in advance to the prospective adopters;*
- b) the intended use to which the contribution is to be put should be made clear;*
- c) contributions should always be made by a transaction which is recorded and accounted for;*
- d) detailed accounts should be maintained of income derived from contributions of this kind and of the uses to which such income is put."*

**46** The four limitations themselves were not objected to, but there remained disagreement as to whether it would be wise to pass any recommendation. Because the Special Commission operates on a consensus basis, the Chair concluded that no recommendation on this matter was possible.

**47** However, during the course of the debate it became clear that general agreement existed on the importance of receiving countries providing support for the development in countries of origin of family and child protection services, but in a manner which did not compromise the adoption process itself. This led to the unanimous acceptance of the following recommendation:

**Receiving countries are encouraged to support efforts in countries of origin to improve national child protection services, including programmes for the prevention of abandonment. However, this support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process, or creates a dependency on income deriving from intercountry adoption. In addition, decisions concerning the placement of children for intercountry adoption should not be influenced by levels of payment or contribution. These should have no bearing on the possibility of a child being made available, nor on the age, health or any characteristic of the child to be adopted.**

#### **APPLICATION OF CONVENTION PRINCIPLES TO NON-CONVENTION COUNTRIES**

**48** A working document (Work. Doc. No 2) submitted by UNICEF and circulated in advance of the Special Commission meeting, had drawn attention to the situation of intercountry adoptions from Guatemala. In the Working Document there was reference to "the highly disquieting situation", evidenced by the findings in a study by the *Instituto Latinoamericano para la Educacion y la Comunicacion* (ILPEC) published earlier in 2000. Concerns included the very small percentage (2%) of Guatemalan children adopted within the country, the small percentage (12%) of intercountry adoptees coming from orphanages, fraudulent acts and profiteering, the use of an unsupervised extrajudicial mechanism for processing intercountry adoptions in many cases, and the absence of appropriate legislation and State oversight of the process.

**49** Working Document No 2, which was introduced by the representative of UNICEF, put forward a recommendation to the effect that Guatemala should, without delay, take the measures necessary to prepare for accession to the 1993 Hague Convention, including the enactment of appropriate laws and the establishment of a Central Authority, that until that was done, Contracting States should suspend all intercountry adoptions from Guatemala, and that other States preparing to accede to or ratify the 1993 Hague Convention should also consider the suspension of such adoptions.

**50** An information note submitted by Ireland in advance of the Special Commission meeting also drew attention to the situation in Guatemala and asked for discussion of the matter in the Special Commission. The note included a summary of the Report of the United Nations Economic and Social Council [Commission on Human Rights, Rights of the Child] Report of the Special *Rapporteur*, Ofelia Calcetos-Santos, on the mission to Guatemala. The note indicated that a number of European Contracting States, which had met in Luxembourg in October 2000, were anxious to draw the particular attention of the Special Commission to the issue. It was considered that, in relation to the adequacy of safeguards for children, birth parents and adoptive parents in the adoption process, the Special Commission had a key role.

**51** The Secretary General explained that the Ambassador of Guatemala to the Netherlands had been provided with a copy of Working Document No 2 and had been informed that, if Guatemala wished to take part in the Special Commission as an observer, it could make a request to that effect, which the Secretary General would then submit to Member States. No such request had been received. He further stated that while it was open to the experts present to address the issue, there were limits to what the Special Commission could do.

**52** The Special Commission was at first divided as to how to respond to Working Document No 2. Several experts suggested that the issue was outside the competence of the meeting. Others argued that in order to respect the principle of the paramountcy of the rights of the child, action should be taken. It was noted that the problem concerned all States, since it was parents in receiving States who created a market for Guatemalan children. Certain experts stated that, while the Special Commission could not interfere in the internal rules of a State, it could nevertheless express a view criticising the existing situation.

**53** Subsequent to this discussion a working document (Work. Doc. No 8) was presented by the Chair and the Permanent Bureau. Presenting the Working Document, the Secretary General referred to an earlier visit made by a member of the Permanent Bureau to Guatemala, various contacts made by the Permanent Bureau with Government authorities in the past, and to the efforts recently made to involve Guatemala in the discussion at the Special Commission. In the view of the Permanent Bureau, the Special Commission was not the appropriate forum to take specific action regarding Guatemala, neither Member State of the Hague Conference nor Party to the Convention, which after all is a treaty based on co-operation between Contracting States. Working Document No 8 proposed, however, that the Special Commission should adopt a recommendation regarding the application of the principles of the Convention to non-Convention States, and that the Secretary General would write to the Ambassador of Guatemala to the Netherlands, along the lines suggested in Working Document No 8. This would not prevent States from taking on their own behalves such other measures as they judged necessary.

**54** Numerous experts expressed their concern in relation to the situation in Guatemala, and their support for the proposal of the Chair and the Permanent Bureau. Minor drafting amendments to Working Document No 8 were proposed. Experts stressed the importance of informing prospective adoptive parents of the situation in Guatemala. There was a responsibility on all receiving States not to encourage the market for

children

from

Guatemala. Several experts also underlined the importance of measures of technical assistance provided to Guatemala, and expressed their appreciation of the efforts of UNICEF and International Social Service in this regard. In relation to this, the Expert of Paraguay emphasised the important part played by such technical assistance in Paraguay in overcoming the problems of illegal adoptions.

**55** Experts from Argentina, China and the United States of America, while supporting the proposal of the Chair and the Permanent Bureau, expressed the view that it was outside the competence of this Special Commission to consider issues relating to Guatemala.

**56** The recommendation contained in Working Document No 8, regarding the application of Convention principles to non-Convention States, which was accepted unanimously by the Special Commission, is as follows:

**Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are "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", the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention.**

**57** The letter which was subsequently sent by the Secretary General to the Ambassador of Guatemala to the Netherlands is set out in Annex A. In response to that letter, the Ambassador, Dr Luis Alberto Padilla, visited the Secretary General on 8 March 2001. During the course of that meeting the Ambassador indicated that he was aware of the nature of the problem in Guatemala, and that as a former Ambassador to the United Nations in Geneva he shared the concerns which have been expressed by the UN Special *Rapporteur* on Child Pornography, Prostitution and Adoptions, Ofelia Calcetos-Santos in her Report presented to the UN Human Rights Commission in April 2000 in Geneva, and that he has already been informed in Guatemala by both the Ministry of Foreign Affairs and by the President of the Presidential Human Rights Commission (COPREDEH), licenciado Victor Jugo Godoy, that, following the recommendations made by the UN Special *Rapporteur* on that matter, the current situation of the new legislation on adoptions prepared by the executive branch of the government is ready for discussion in the Congress of the Republic (*Congreso de la Republica*) and that the Ministry of Foreign Affairs has already expressed a favourable opinion with regard to accession to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*. The Ambassador agreed to keep the Secretary General informed of further progress regarding this issue.

#### **PROCEDURAL REQUIREMENTS (CHAPTER IV)**

##### *The report on the child (Article 16)*

**58** The Special Commission agreed on the importance, from the point of view of the process of matching and for the information of the adoptive parents and later the child himself or herself, of obtaining a full and accurate medical report on the child. A Danish expert reported the findings of a recent study which showed

that in 25% of cases the actual medical condition of the child had not been as stated in the report supplied by the authorities in the country of origin. One of the main concerns was in obtaining information on psychological aspects of the child's condition. At the same time, it was pointed out that in a number of countries of origin attention was already being paid to these matters. Moreover, in prescribing the scope of the matters to be covered by a medical report on the child, some understanding was needed of the resource limitations in countries of origin. Also there were problems concerning the carrying out of specific medical tests, such as for HIV or Hepatitis B, and there was a need for co-operation on these matters between authorities in the State of origin and the receiving State. **The importance of maintaining confidentiality with respect to the medical report on the child, bearing in mind the right to respect for private life, was also emphasised.**

**59** Working Document No 3, submitted by the United Kingdom on behalf of the informal Working Conference of European Contracting States, contained a "model form" medical report on the child. The introduction to this subject in the working document itself described the medical report as the most important element of information on the child. It should be completed by a registered medical practitioner with specialist knowledge of the diagnosis and treatment of children. It should not be regarded as a means of selecting children who might be suitable to be adopted, but as a source of information to enable the adoptive parents to meet the health needs of the child.

**60** There was general agreement on the need to encourage a more consistent approach towards the preparation of medical reports and to make some movement towards standardisation. **The idea of a rigid model form was not approved. However, it was accepted that the form for the medical report on the child proposed in Working Document No 3 constitutes a useful guide to practice.** The form is set out in Annex B. It was pointed out also that some individual countries, such as the United Kingdom, had developed standard forms of their own which might be useful additional sources of guidance.

**61** With regard to other aspects of the report on the child, one expert emphasised the importance of including detailed information describing the beginnings of the child's history, including for example, the exact time of the birth, the weather on that day, etc. *i.e.* facts which are "precious" to the child.

*The applicants. Counselling and preparation, reports.*

**62 The need for thoroughness in the assessment and preparation of the prospective adopters by authorities in the receiving country** was a theme of the discussion. Among the factors which should be considered when preparing an assessment, the following were highlighted:

- legal capacity, including questions of age and marital status;
- health and fitness, including psychological matters;
- financial status and suitability of accommodation;
- social history and educational background of the applicants;
- motivation for adopting a child from abroad;
- family lifestyle and parenting capacity;
- the type of child considered appropriate for the adopters ("characteristics of the children for whom they would be qualified to adopt", see Article 15);
- family support networks;
- the understanding by prospective adopters of developmental and behavioural issues, issues surrounding the cultural, spiritual or religious needs of the child, the

importance of providing information to the child about his or her background, and issues of racism and its effects.

**63** One expert emphasised the importance of determining the eligibility (the legal capacity) of the adopters before the file is transmitted to the country of origin. Concern was also expressed by the representative of International Social Service that, where appeals are permitted against a finding of unsuitability, the authority determining the appeal should be competent in relation to the protection of the child in adoption. (See Work. Doc. No 1 at paragraph 7 b.)

**64** The view was expressed by several experts that attendance at preparatory classes should be compulsory for prospective adopters. Descriptions were given of preparatory courses in several countries. In some countries, preparatory courses involve an element of self-selection. In the Netherlands, for example, 30 to 40% of prospective adopters withdrew their application after attending information sessions. It was also felt important that social workers involved in assessing the suitability of prospective adoptive parents should not also be involved in their education and preparation.

#### *Transmission of reports*

**65** The responses to the Questionnaire had revealed a number of problems concerning the transmission of reports concerning the child under Article 16 of the Convention. These included cases in which there had been a failure to comply with Article 16, paragraph 2, delays in providing reports, and in some cases reports being sent directly to the applicants and not to the Central Authorities. An expert of Ireland proposed that Central Authorities should always supervise the transmission of reports. There were two bases for this proposal. In the first place, there was a need to respect the privacy of the child and to ensure that documents concerning the child were not seen by more people than was necessary. Secondly, there were concerns in relation to delay in the transmission of reports. The responsibilities of Central Authorities in this area was emphasised by a number of experts, and there was general agreement on the necessity for Central Authorities to retain control over the process.

#### *The decision on entrustment and the operation of Article 17*

**66** There was general agreement that the decision to entrust the child to the prospective adopters constituted a particularly significant step in the adoption process. It is from that moment that the process of bonding between the child and the prospective adopters may begin. It is therefore very important that all the necessary preparatory steps have been taken and the appropriate agreements obtained. This is why the procedure established by Article 17, and in particular the requirement of Article 17 c), that the Central Authorities of both States should have agreed that the adoption may proceed, is so important. Responses to the Questionnaire had revealed certain difficulties in the operation of Article 17, including in some cases lack of clarity with regard to the bodies having competence to give the agreement under Article 17 c), and the occasional breakdown of State-to-State communications with regard to the matching process.

**67** The Special Commission discussed the question of who is entitled to make the agreement under Article 17 c). One view expressed was that the Central Authorities themselves should be involved in the process, to the extent at least that agreements under Article 17 c) should be transmitted to them. It was suggested that this would avoid the problems which arise when agreements are sent directly to the prospective adopters or other agencies. It was not satisfactory that a child should be placed with



adoptive

parents without the knowledge of the Central Authority, and with the Central Authority having no way of preventing the making of an unsuitable placement.

**68** On the other hand, it was pointed out that the practice in some States (including some Nordic countries) is for Article 17 c) agreements to be given by accredited agencies responsible for the practical aspects of the adoption process, and it would not be practical in these countries for Article 17 c) agreements to be given by the Central Authority. Any problems which arise tend to be dealt with by dialogue on a bilateral basis. It was also pointed out that, in accordance with Article 22, Article 17 functions may be delegated to accredited bodies. It was generally agreed that **in those States where agreements under Article 17 c) may be given by bodies other than the Central Authority, the bodies that may perform this function should be specified.**

**69** There was also some discussion of the circumstances which would justify a refusal to give agreement under Article 17 c). An expert of France suggested that a manifest violation of the basic principles of the Convention would justify a refusal (for example the making of an improper payment), and that grounds for refusal should always be stated.

#### **REFUGEE CHILDREN**

**70** The representative of the United Nations High Commissioner for Refugees (UNHCR) raised the problem of the irregular transfer of refugee children between asylum countries and third countries where they become the subject of adoption proceedings. This problem has to be addressed by ensuring that all adoptions of refugee children are carried out in accordance with the provisions of the Recommendation of 21 October 1994 concerning the application to refugee children and other internationally displaced children of *the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*. In accordance with this Recommendation, UNHCR should be given notice of all prospective adoptions involving refugee children; States should ensure and facilitate access by any refugee child to UNHCR; UNHCR should also be invited to participate in adoption proceedings and to provide advice to the competent authorities and UNHCR should be permitted to provide counselling to the child and interested parties and to provide relevant information to appropriate parties concerning principles, legal instruments and guidelines relevant to the protection of refugees and the intercountry adoption of refugee children.

#### **LEGALISATION**

**71** The fact that the Convention of 1993 had no provision dealing with the legalisation of documents was stated to be a source of inconvenience. The Secretary General stated that any problems could be significantly reduced by recourse to the *Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, and he invited those States which had not already ratified or acceded to the Convention to consider doing so. It was noted that the Convention had also been translated into Spanish.

#### **TRANSLATIONS (ARTICLE 34)**

**72** Several States of origin noted that they would prefer to receive documentation in their official language. One expert noted, however, that any translation received would still have to be verified by the authorities in her State.

## RECOGNITION AND EFFECTS OF ADOPTION

### *The certification procedure (Article 23)*

**73** The principle of recognition by operation of law of adoption orders made in accordance with the Convention depends on the efficient functioning of the process of certification provided for in Article 23. Responses to the Questionnaire had revealed a number of operational problems. In some cases certificates had not been issued at all, and in other cases there were serious delays. Certificates were not always complete, and it was not always clear who delivers the certificate and to whom they should be given, the applicants or the Central Authorities.

**74** There was general agreement that **parents should be provided with a certificate before they came to take the child/children.** Several experts stressed that parents should be made aware of the importance of having a certificate and that checks should be made to this effect before parents left the State of origin. **The importance of the Central Authority in the receiving State also being given a copy of the certificate was underlined.**

**75** Several experts stated that certificates should conform to a general standard in both form and substance. **The importance of the recommended "Model Form for the Certificate of Conformity of Intercountry Adoption" which was approved at the Special Commission of October 1994, and which appears in Annex C of the Report of that Special Commission, which was published in March 1995, was re-emphasised.**

**76** **The Special Commission adopted a recommendation drawing attention to the importance of the certificate of conformity provided for by Article 23 of the Convention. The body or bodies competent to issue such certificates should be clearly identified and the certificate should be issued without delay following the making of the adoption.**

### *The conversion procedure (Article 27)*

**77** The procedure set out in Article 27 enables a so-called "simple adoption", that is an adoption not having the effect of terminating a pre-existing parent child relationship, to be converted into a "full adoption", that is one which does have that effect. The procedure is of particular value in those receiving countries which do not know the concept of simple adoption, but it can only be used if the necessary consents, referred to in Article 4 of the Convention, have been given for a full adoption.

**78** Several experts emphasised the importance of obtaining the appropriate consents. It was pointed out that a simple adoption may sometimes be entered into, not because this is the only alternative available, but because the birth parents do not wish to sever all legal ties with the child. Reservations were expressed in respect of any system which treats conversion as an automatic process. Such an approach ran the risk of "disenfranchising" the birth parents, by giving the adoption effects beyond those for which the consent was given. Several experts noted that steps could be taken to forewarn parents and agencies, and to obtain parental consent at the outset for a subsequent conversion of a simple adoption into a full adoption.

**79** There was discussion of the problem which arises where the receiving country recognises a simple adoption, but the family subsequently moves to another Contracting State where such adoptions are not known. There is an obligation on the second State under the Convention to recognise the adoption, but with what effects? One approach

suggested was for the adoption to be recognised in the second State as a full adoption, but subject to exceptions where these are shown to be in the interest of the child (for example, where the child continues to have inheritance rights with respect to the members of the birth family). Another approach is to recognise the minimum effects of the adoption as set out in Article 26 of the Convention, and to recognise specific additional rights for the child. A third approach is to treat the adoption as having the same effects as a full adoption save for the termination of the pre-existing parent child relationship. One expert stated that in her country recourse was had to a rule of private international law which enabled the recognition of both simple and full adoptions. Under this rule, conditions pertaining to the adoption, in particular the issue of consent, were determined under the personal law of the child to be adopted, while the effects of the adoption were determined in accordance with the personal law of the adoptive couple. She specified that where any doubts existed with regard to the issue of consent, the adoption was classified as being a simple adoption.

### *Nationality*

**80** Discussion in the Special Commission revealed **a clear trend in favour of according automatically to the adopted child the nationality of the receiving State.** Several experts described the systems operating in their countries. In many countries the acquisition of the nationality of the receiving State depended on one of the adoptive parents also having that nationality. In one case (Norway) the consent of a child above the age of twelve was needed. The type of adoption involved may also be relevant.

**81** It was also pointed out that the acquisition of the nationality of the receiving State was regarded by certain States of origin (for example, Paraguay and China) as a precondition to intercountry adoption. Indeed, this could cause a problem where the adoptive parents are habitually resident in, but do not have the nationality of, the receiving State. In a case of this kind the country of origin might allow the adoption to proceed if the child obtains the nationality of the prospective adopters. It was pointed out that some systems do allow, in the case of certain categories of parents living abroad, the assumption by the adopted child of the parent's nationality.

**82** Discussion revealed differences as to the actual moment of the acquisition of the new nationality by the child. Either the child was deemed to have acquired the new nationality once the adoption was pronounced in the State of origin, or upon the child arriving in the receiving State.

**83** The question was raised whether the acquisition of the nationality of the receiving State was regarded in the State of origin as ending the child's existing nationality. One expert pointed out that some States of origin would not be concerned with this matter and the child would be left with two nationalities. In such cases conflicts might be resolved by the application of the rule of the effective nationality.

### **POST-ADOPTION REPORTS**

**84** Article 9 of the Convention places a responsibility on Central Authorities to take all appropriate measures to provide each other with general evaluation reports about experience with intercountry adoption. The Convention does not impose an explicit obligation to provide follow-up reports with respect to individual adoptions. However, it is clear that such individual reports are often requested and supplied in practice, and that they are regarded in many countries of origin as an important safeguard.

**85** In the discussion on individual reports, experts stated that a balance had to be struck between protecting the privacy of the adoptive family and answering the legitimate enquiries of the authorities in the State of origin. It was further noted that the transmission of information to the State of origin could also be of benefit to adopted children in their later lives and help ensure that adoptive parents remain aware of the children's cultural and social backgrounds.

**86** Experts indicated that in general their systems provided for such reports, but that there were differences from State to State in relation to the obligatory character of these reports. In certain States, post-adoption reports were only made with the consent and co-operation of the adoptive parents. Also different bodies were involved in assisting with the drawing up of reports, for example child welfare authorities or accredited bodies. Concerns were expressed about the very long period of time during which some countries of origin expected the reports to be made. A number of experts suggested that follow-up reports should only be required for a limited time period.

#### **STATISTICS**

**87** The delegations were thanked for supplying detailed statistical information relating to intercountry and national adoption, which had been supplied in response to the Questionnaire. It was noted, however, that there had been a wide variation in the manner in which statistics had been compiled. In Preliminary Document No 3 (Part IV), the Permanent Bureau had suggested that it might be helpful if a standard form could be agreed upon for the maintenance of certain basic statistics, which could be used for comparative purposes and might help to indicate some general trends occurring in intercountry adoption. The Permanent Bureau would administer the standard form, which would be filled in and returned (in electronic form) by States Parties on an annual basis. The Permanent Bureau had suggested that the standard form should request at least the following data:

- "1 *Number of children adopted under the Convention during the calendar year by adopters habitually resident in the State, and in each case:*
  - (a) *the country of origin of the child;*
  - (b) *the country in which the adoption took place (i.e. receiving country or country of origin), and*
  - (c) *the age of the child at the date of adoption.*
- 2 *Number of children adopted under the Convention during the calendar year who were habitually resident in the State prior to the adoption, and in each case:*
  - (a) *the country of origin of the child;*
  - (b) *the country in which the adoption took place (i.e. receiving country or country of origin), and*
  - (c) *the age of the child at the date of adoption.*
- 3 *The number of non-Convention intercountry adoptions taking place (incoming and outgoing), and in each case the other country involved and the age of the child.*

4 *The number of domestic adoptions completed in the same calendar year and the ages of the children."*

**88** There was general agreement with the proposal of the Permanent Bureau, and a number of additional categories of information were suggested, including for example:

- the sex of the child;
- the origin of the child (institutional care, foster care, the biological family itself, etc.);
- the number of failed adoptions;
- adoptions leading to the separation of siblings;
- the cost of the adoption;
- government subsidies;
- cases of displaced or refugee children; and
- the ratio between domestic and intercountry adoptions in particular countries.

**89** **The Special Commission recommended that the Permanent Bureau should prepare a form for statistics along the lines suggested, taking into account the matters raised during the debate.**<sup>6</sup>

#### **THE KEEPING OF AND ACCESS TO RECORDS (ARTICLE 30)**

**90** Article 30, paragraph 1, of the Convention places an obligation on competent authorities to 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. Two of the practical problems which have arisen in relation to this paragraph have been that of identifying the competent authorities and that of determining the length of time for which files should be retained.

**91** One expert, referring to Working Document No 3, the paper submitted on behalf of the Informal Working Conference of European Contracting States, stressed the importance of ensuring that files are retained securely, in a secure place, free from the risk of fire damage or flood, and retained for a definitive minimum period. In some countries these records are retained for seventy-five years.

**92** Article 30, paragraph 2, obliges the competent authorities to ensure that the child or his or her representative has access to information held by them concerning the child's origin, under appropriate guidance, insofar as is permitted by the law of that State. The issue of access to identifying information remains a sensitive one in several States. Several experts gave details of the systems in place in their States regarding access to information relating to the adoption. In a number of States in which access to information had not been permitted in the past, legislation was now being prepared to allow for access to such information. Certain experts emphasised that this access to information should always be overseen and supervised, and that support and counselling should be available. Experts stressed the risks of a search carried out independently of competent authorities. Experts also expressed concern regarding cases where very young children had sought access to their adoption records, and they emphasised that it was the right of the adopted child, and not of the adoptive parents, to search for the child's origins. One

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<sup>6</sup> The Permanent Bureau intends to develop and pilot a draft form for statistics in June 2001. Once finalised, the form will be transmitted to all Central Authorities and posted on the Hague Conference website.

expert considered that, in the light of the right to respect for private life, information permitting the identification of the birth parents should not be transmitted except where there was mutual agreement to this.

### **SCOPE OF THE CONVENTION (ARTICLES 2 AND 3)**

**93** According to Article 2, the Convention applies to the adoption of a child by spouses or a person "habitually resident in the receiving State". A number of problem cases surrounding the question of habitual residence were raised both in the responses to the Questionnaire and during discussion in the Special Commission, in particular the following:

- Cases where the habitual residence of the prospective adopters changes in the course of the adoption process.
- Cases where the prospective adopters are not considered habitually resident either in the country of their nationality or in the country of their present residence.
- Cases where the prospective adopters are nationals of a Contracting State but are habitually resident in a non-Contracting State, and wish to adopt either from a Contracting State or a non-Contracting State.

**94** With regard to the first case, it was suggested that any problems should be resolved through co-operation between the Central Authorities of the two countries concerned (assuming that both countries are Contracting States), and that a transfer of the complete file from one Central Authority to the other might be contemplated.

**95** With regard to the second case, a real problem was seen to exist which appears to arise from differing approaches to the concept of habitual residence, neither State being prepared to consider that the prospective adopters have a habitual residence in their territory. This, it was suggested, may lead to discrimination against expatriates who might find that they are excluded from the possibility of adopting from abroad by virtue of the requirement of Article 2 that they be habitually resident in the receiving State. One solution proposed was that the two Central Authorities concerned should decide between them, which one should take on the file. However, practical difficulties were raised, as well as the mandatory nature of the rule in Article 2. It was suggested that, in determining whether prospective adopters are habitually resident in a particular Contracting State, the authorities of that State should consider the underlying objectives of the Convention, whether they would be in a position practically to fulfil their obligations under Article 5, and in particular to determine the suitability of the prospective adopters.

**96** With regard to the third case, the authorities of the Contracting State of which the prospective adopters are nationals are sometimes requested to provide certificates that the prospective adopters are entitled to adopt or that the adoption will be recognised. With regard to certification, the general view was that it is not in general for the State of the nationality of the prospective adopters to determine eligibility or suitability to adopt and that the adoption process was a matter for the State of the habitual residence of the prospective adopters and the State of the child's origin.

**97** It was agreed that these issues would probably need to be revisited in a future Special Commission.

### **INTERNATIONAL PLACEMENTS NOT WITHIN THE SCOPE OF THE CONVENTION**

**98** The first situation discussed was that in which a child is placed internationally in circumstances falling short of adoption as defined within the Convention, but where the placement is long-term. The Islamic institution of *kafala* describes one such situation.

With respect to *kafala*, an expert of the United Kingdom indicated that his State was in the course of preparing legislation which would take account of this institution, and that contact had been made with certain of the States of origin concerned. An expert of Spain described the system for regulating an application by a Spanish family that wishes to care for a Moroccan child by way of *kafala*. The Spanish authorities carry out the home study, and placement is decided by the competent authority in Morocco, but only in cases of abandonment.

**99** The second situation discussed was that in which children are transferred from one State to another initially for medical or humanitarian purposes, but for whom adoption is considered some time after the transfer has occurred. Several experts expressed their concern in relation to these medical or humanitarian placements. The greatest problem in these cases was the fact that the receiving family was generally not assessed in the same way as in the case of adoption, and the situation was not under the control of any Central Authority. Experts underlined the need for international co-operation with respect to such placements. The representative of UNICEF referred to the increasing concerns within his organisation in the context of evacuations of children, respite care and medical placements which often resulted in *de facto* adoption situations. He called for the careful regulation of such situations. One expert suggested that a request for adoption, following a medical or humanitarian placement, should be treated in the same way as an intercountry adoption, that is, in co-operation with the authorities of the State of origin of the child. International Social Service in Working Document No 1 at point 17 had suggested that all international adoptions not covered by the Convention should be subject to the same guarantees as those contained in the Convention.

**100** The issue of "vacation children" was raised by a representative of the Nordic Adoption Council. Many thousands of children are now moved each year from Eastern European countries for periods of vacation in Western European countries. It was pointed out that Ireland alone receives approximately 2000 children per annum for periods of rest and recuperation. It was suggested that, while these cases usually involve short-term stays and are usually of great benefit to the children concerned, some evaluation is needed of the families who receive the children. There is a need for co-operation between child care and immigration authorities. It also has to be borne in mind that occasionally these family placements result in requests for adoption.

**101** There was general agreement on the need to consider how best to regulate the different types of international placement falling outside the scope of the Convention. The value in this context of Article 33 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* was recognised, which provides the following:

*"1 If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by kafala or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.*

*2 The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests."*



## **AVOIDANCE OF THE CONVENTION**

**102** There was a brief discussion of cases in which pregnant women travel from one State to another to give birth in the second State with a view to the subsequent adoption of the child in that second State. Because after his or her birth the child is not moved from one Contracting State to another, the situation is outside the scope of the Convention as defined in Article 2. The adoption may therefore proceed as an internal adoption without the safeguards appropriate to an international situation. One expert explained that this situation existed in his country, and that the authorities were powerless to do anything about it.

**103** Another expert indicated that where there were no restrictions on travel between certain States, as for example between Australia and New Zealand, this could present problems. In such a case, there was nothing to prevent a *de facto* international adoption, where a couple brought a child from one country to another. The Chair suggested that this might be another situation in which the Hague Convention of 1996 could be of assistance.

## **BILATERAL AGREEMENTS**

**104** A number of experts reported that their countries had entered into bilateral conventions or agreements in relation to intercountry adoption which in all cases reflected the framework and principles contained within the Hague Convention. Spain for example had entered into bilateral agreements with Colombia, Ecuador, Bolivia and Peru. In some cases, these arrangements were made with Convention countries in an effort to improve the operation of the Convention. For example Greece had entered into an agreement with Romania. In other cases, bilateral arrangements had been made between Convention countries and non-Convention countries. For example France had recently concluded a bilateral agreement with Vietnam.

**105** Some concern was expressed about agreements which seemed to supplant rather than to supplement the Convention. It was emphasised that under Article 39, paragraph 2, Contracting States were entitled to enter into agreements with one or more other Contracting States "with a view to improving the application of the Convention in their mutual relations". It was also stressed that these agreements may derogate only from the provisions of Articles 14-16 and 18-21, and that States which have concluded such agreements should transmit copies to the Depository of the Convention.

**106** One expert noted that certain States of origin, Parties to the Convention, did not allow intercountry adoptions in co-operation with receiving States which had not yet ratified the Convention. He suggested that this position should be modified, at least regarding States that have signed although not yet ratified the Convention.

## **FUTURE WORK TO IMPROVE THE OPERATION OF THE CONVENTION**

### *Special Commissions*

**107** All the experts acknowledged the value of Special Commissions in facilitating an exchange of information and experiences about the operation of the Convention and in contributing to the spread of best practices. There was general agreement among the experts that it would be beneficial to have a Special Commission more often than at six year intervals. Many experts argued in favour of a four year cycle. Certain experts

suggested that the Special Commission cycle should be synchronised with the number of new ratifications and accessions. It was pointed out that, given the increasing pressures on the resources of the Permanent Bureau, unless there was a change in the situation, it was unlikely that there could be another Special Commission before 2006.

#### *Regional meetings*

**108** There was general support for the holding of regional meetings, and it was noted that the recent meeting in Santiago de Chile had been a great success in terms of contributing to the improved operation of the Convention in the South American region.

#### *Meetings between Central Authorities*

**109** Under Article 7, Central Authorities have a direct responsibility to co-operate with each other to achieve the objects of the Convention. In particular they are obliged to take directly all appropriate measures to keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacle to its application. Within the spirit of this Article, two meetings had been organised between the Central Authority for Romania and Central Authorities in a number of other European States with a view to discussing and resolving a number of problems associated with intercountry adoptions from Romania. These meetings had been facilitated by the Permanent Bureau and had taken place in the Hague at the premises of the Permanent Bureau. The meetings illustrate one mechanism which Central Authorities may use to overcome difficulties in relation to the operation of the Convention. In addition, the regular meetings held by Central Authorities from a number of European Contracting States provide an example of a method of improving practice within a regional area.

#### *The role of the Permanent Bureau*

**110** It was pointed out that the role of the Permanent Bureau included the maintenance of up-to-date information on Central and other Authorities in each Contracting State, responding to requests for help with regard to the interpretation and implementation of the Convention, the monitoring of the Convention, attending meetings, conferences and working groups, and facilitating meetings between Central Authorities. In addition, the Permanent Bureau takes a number of measures to increase awareness of Hague Conventions, including the Adoption Convention, and the process of awareness raising has now extended to African States. This is being assisted by the Organisation of Francophone States as well as the Commonwealth Secretariat.

#### *The Hague Project for the International Protection of Children*

**111** The Hague Project for the International Protection of Children is described in detail in Part V of Preliminary Document No 3. The Hague Project includes a programme, which has been developed by International Social Service in co-operation with the Permanent Bureau, designed to provide information, advice and training to support the effective implementation of the Convention in Contracting States, and particularly to provide support in those Contracting States having few resources available for this purpose. The Permanent Bureau will be involved in the planning and supervision of the programme but will not be heavily involved in its actual delivery. A management committee, with members from different States, will help to ensure that the training is conducted in accordance with objective standards. It was explained that the envisaged costs of the full programme amounted to 1.2 million US dollars (1.4 million Euros). The representative of International Social Service stated that the programme responded to a real need to provide more structured technical assistance particularly to States of origin. Funding is being sought for the project.



*International Social Service*

**112** The representative of International Social Service drew to the attention of the meeting the work of the International Center for the Protection of Children in Adoption in the exchange of information. She invited experts and observers present to co-operate in the exchange of information and documents. She explained that International Social Service had been approached by a number of countries to provide technical assistance.

**GENERAL STATEMENTS**

**113** During the course of the Special Commission meeting, certain experts made general statements concerning the efforts being made in their countries to overcome difficulties in, and to improve the operation of, the intercountry adoption system. An expert from Paraguay referred to the difficult situation faced by her country as a new democracy, and the continuing problems of corruption and the use of false identities for children. Although the new Paraguayan adoption law prepared with the assistance of the Hague Conference and International Social Service had improved the situation, some problems remained.

**114** The Expert of Romania informed the Special Commission that his Government had recently amended legislation dealing with adoptions. He specified that under the new law, which would enter into force when published in the official journal, an entirely new adoption system would be put in place ending the previous points system. He explained that this would be based around co-operation agreements entered into by accredited bodies, with the National Agency for the Protection of Children's Rights and the relevant district council. To acquire accreditation, bodies would have to show that they are developing programmes to further children's rights. This would include taking measures aimed at preventing the abandonment of children, preventing child abuse and helping to bring about the re-integration of children. Failure to comply with these aims would result in accreditation being withdrawn. The expert concluded by noting that Contracting States could contact his Government for further information.

**SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS***Division of responsibilities under the Convention*

**1 Each Contracting State should provide a description of the manner in which the various responsibilities and tasks under the Convention are divided between Central Authorities, public authorities and accredited bodies, so that the entities responsible to act under particular articles of the Convention are clearly identified, as well as the mechanisms by which they interact with one another. The Permanent Bureau should develop a model chart which would assist States in providing this information. The information should be furnished to the Permanent Bureau and published. (para. 10)**

*Information concerning the operation of the Convention in Contracting States*

**2 The following recommendations are designed to improve communication under the Convention, as well as understanding of how the Convention operates in the different Contracting States:**

**a) The designation of the Central Authorities, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau not later than the date of the entry into force of the Convention in that State.**

**b) Such communication should, in accordance with Article 13 and paragraph 274 of the Explanatory Report on the Convention by G. Parra-Aranguren (*Proceedings of the Seventeenth Session (1993)*, Tome II, *Adoption – co-operation*, page 591), give notice of any other public authorities (including their contact details) which, under Article 8 or 9 discharge functions assigned to the Central Authorities.**

**c) The extent of the functions of the Central Authorities and any such public authorities should be explained.**

**d) The designation of accredited bodies, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau at the time of their accreditation.**

**e) Where a body accredited in one Contracting State is, in accordance with Article 12, authorised to act in another Contracting State, such authorisation should be communicated to the Permanent Bureau by the competent authorities of both States without delay.**

**f) The extent of the functions of accredited bodies should also be explained.**

**g) All the information referred to above should be kept up-to-date and the Permanent Bureau informed promptly of any changes, including in particular any withdrawals of accreditation or authorisation to act.**

**h) Designations, in accordance with Article 23, of authorities competent to certify an adoption as having been made in accordance with the Convention should also be kept up-to-date. (para. 12) (And see below, No 17)**

### *Central Authorities*

**3 The need for adequate resources and appropriately trained staff in Central Authorities was accepted, as well as the importance of ensuring a reasonable level of continuity in their operations. (para. 13)**

### *Accreditation*

**4 The following principles should apply to the process by which accreditation is granted under Article 10, to the supervision of accredited bodies provided for in Article 11 c), and to the process of authorisation provided for in Article 12.**

**a) The authority or authorities competent to grant accreditation, to supervise accredited bodies or to give authorisations should be designated pursuant to clear legal authority and should have the legal powers and the personal and material resources necessary to carry out their responsibilities effectively.**

**b) The legal powers should include the power to conduct any necessary enquiries and, in the case of a supervising authority, the power to withdraw, or recommend the withdrawal of, an accreditation or authorisation in accordance with law.**

**c) The criteria of accreditation should be explicit and should be the outcome of a general policy on intercountry adoption.**

**d) Accredited bodies should be required to report annually to the competent authority concerning in particular the activities for which they were accredited.**

**e) Review or the re-accreditation of accredited bodies should be carried out periodically by the competent authority. (para. 23)**

### *Consents*

**5 The importance of the "Model Form for the Statement of Consent" which had been approved by the Special Commission of 1994, and which appears as Annex B of the Report of the Special Commission, which was published in March 1995, was re-emphasised. (para. 32) (Note: See also below, No 6)**

### *Improper financial gain, costs and expenses. Donations and contributions.*

**6 Accreditation requirements for agencies providing intercountry adoption services should include evidence of a sound financial basis and an effective internal system of financial control, as well as external auditing. Accredited bodies should be required to maintain accounts, to be submitted to the supervising authority, including an itemised statement of the average costs and charges associated with different categories of adoptions. (para. 41)**

**7 Prospective adopters should be provided in advance with an itemised list of the costs and expenses likely to arise from the adoption process itself. Authorities and agencies in the receiving State and the State of origin**

**should co-operate in ensuring that this information is made available.**  
(para. 41)

**8 Information concerning the costs and expenses and fees charged for the provision of intercountry adoption services by different agencies should be made available to the public.** (para. 41)

**9 Donations by prospective adopters to bodies concerned in the adoption process must not be sought, offered or made.** (para. 42)

**10 Receiving countries are encouraged to support efforts in countries of origin to improve national child protection services, including programmes for the prevention of abandonment. However, this support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process, or creates a dependency on income deriving from intercountry adoption. In addition, decisions concerning the placement of children for intercountry adoption should not be influenced by levels of payment or contribution. These should have no bearing on the possibility of a child being made available, nor on the age, health or any characteristic of the child to be adopted.** (para. 47)

*Application of Convention principles to non-Convention countries*

**11 Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are "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", the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention.** (para. 56)

*The report on the child*

**12 The Special Commission agreed on the importance, from the point of view of the process of matching, and for the information of the adoptive parents and later the child himself or herself, of obtaining a full and accurate medical report on the child. The importance of maintaining confidentiality with respect to the medical report on the child, bearing in mind the right to respect for private life, was also emphasised.** (para. 58)

**13 The idea of a rigid model form was not approved. However, it was accepted that the form for the medical report on the child which appears in Appendix B constitutes a useful aid in improving the quality of, and standardising, reports on the child drawn up in accordance with Article 16, paragraph 1, of the Convention.** (para. 60)

*The applicants*

**14** Emphasis was placed on the need for thoroughness and objectivity by authorities in the receiving country in the assessment and preparation of the prospective adopters, and in drawing up the report on the applicants in accordance with Article 15. (para. 62)

*Article 17*

**15** The importance within the adoption process of the requirements of Article 17 were re-emphasised.

**16** In those States where agreements under Article 17 c) may be given by bodies other than the Central Authority, the bodies that may perform this function should be specified. (para. 68)

*The certificate of conformity under Article 23*

**17** Attention was drawn to the importance of the certificate of conformity provided for by Article 23 of the Convention. The body or bodies competent to issue such certificates should be clearly identified and the certificate should be issued without delay following the making of the adoption. (para. 76)

**18** Parents should be provided with a certificate before they came to take the child/children. The Central Authority in the receiving State should also be given a copy of the certificate. (para. 74)

**19** The importance of the recommended "Model Form for the Certificate of Conformity of Intercountry Adoption" which was approved at the Special Commission of October 1994, and which appears in Annex C of the Report of that Special Commission, which was published in March 1995, was re-emphasised. (para. 75)

*Nationality*

**20** Discussion in the Special Commission revealed a clear trend in favour of according automatically to the adopted child the nationality of the receiving State. (para. 80)

*Statistics*

**21** The Special Commission recommended that the Permanent Bureau should prepare a form for statistics along the lines suggested, taking into account the matters raised during the debate. (para. 88)

*International placements outside the scope of the Convention*

**22** There was general agreement on the need to consider how best to regulate the different types of international placement falling outside the scope of the Convention. The value in this context of Article 33 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* was recognised (para. 101)



**ANNEXE / ANNEX A**

## HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

*The Secretary General*

His Excellency  
 The Ambassador of Guatemala  
 Embassy of Guatemala  
 Van Speykstraat 31a  
 2518 EV THE HAGUE

THE HAGUE, 8 January 2001

No 12961(01)VL/SA

Dear Mr Ambassador,

- With reference to my previous contacts with the Embassy of Guatemala in Brussels, in particular to my telephone conversation of 9 November 2000 with former Ambassador Martini-Herrera, my letter of 10 November 2000 informing him about the Special Commission on the practical operation of the *Convention of 29 May 1993 on Protection of Children and Co-operation*
- ./.
- ./.
- in Respect of Intercountry Adoption*, and my fax letter to him of 15 November 2000, I have the honour to bring the following to Your attention.

The Special Commission discussed a variety of issues concerning the practical operation of the Convention and adopted several Recommendations. I will send You, for Your information, the Report of the Special Commission as soon as this is available.

The following Recommendation will be of interest to Guatemala, as indeed to other States of origin of internationally adopted children, as it seeks to ensure the application of the basic standards and safeguards of the Convention beyond the circle of Contracting States:

“Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are *“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”* (Preamble, paragraph 4), the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. They should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention.”

2/...

It was in this context that the issue of international adoption of children from Guatemala taking place without the protection which the 1993 Hague Convention offers was raised before the Special Commission at its meetings of 29 November (afternoon) and again 30 November (morning). The Special Commission recognised the serious concerns expressed by a number of the fifty-seven States represented at the Special Commission regarding the international adoption process in Guatemala, and in particular in the light of the fundamental principles embodied in the 1993 Convention. The sense of the Special Commission was that Guatemala would have great interest in taking urgently all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable It to accede to the Convention.

I would be grateful if You would be kind enough to transmit this letter to the Government of Your Country and keep me informed of any action Your Government may choose to take upon it. I should add that the Permanent Bureau is at all times at Your full disposal, as well as of that of the authorities in Guatemala, to assist Your Government in its efforts to accede to the 1993 Convention. Similarly, the Permanent Bureau is at Your disposal to transmit to Member States of the Hague Conference on Private International Law, as well as States Parties to the 1993 Convention, any request from Guatemala for assistance in developing administrative and legal structures needed in order to be able to accede to the Convention.

I avail myself of this opportunity to renew to You, Mr Ambassador, assurances of my highest consideration and esteem.

Yours sincerely,

Hans van Loon

./. Enclosures mentioned.

**ANNEXE / ANNEX B**

**FORMULAIRE MODELE**

**\* \* \***

**MODEL FORM**

**MODEL FORM****MEDICAL REPORT ON THE CHILD**

For Contracting States within the scope of the Hague Convention on intercountry adoption

**A duly licensed physician should complete this report.**

Please decide on **each** heading.

If the information in question is not available please state "unknown".

Name of the child:			
Date and year of birth:			
Sex:			
Place of birth:			
Nationality:			
Name of the mother:			
Date and year of her birth:			
Name of the father:			
Date and year of his birth:			
Name of the present institution:		placed since:	
Weight at birth:	kg.	At admission:	kg.
Length at birth:	cm.	At admission:	cm.
Was the pregnancy and delivery normal?			
† Yes † No † Do not know			
Where has the child been staying?			
† with his/her mother	from	to	
† with relatives	from	to	
† in private care	from	to	
† in institution or hospital	from	to	

(please state below the name of the institution or institutions concerned)

Has the child had any diseases during the past time?

(If yes, please indicate the age of the child in respect to each disease, as well as any complication)

Yes  No  Do not know

If yes:

Ordinary children's diseases (whooping cough, measles, chicken-pox, rubella, mumps)?

Tuberculosis?

Convulsions (incl. Febrile convulsions)?

Any other disease?

Exposition to contagious disease?

Has the child been vaccinated against any of the following diseases:

Yes  No  Do not know

If yes:

Tuberculosis(B.C.G.)?      Date of injection:

Diphtheria?      Date of injection:

Tetanus?      Date of injection:

Whooping cough?      Date of injection:

Poliomyelitis?      Date of injection:      Date of oral vaccinations:

Hepatitis A?      Date of injection:

Hepatitis B?      Date of injection:

Other immunisations?      Date of injection:

Has the child been treated in hospital?

Yes  No  Do not know

If yes state hospital, age of child, diagnosis, and treatment:

Give if possible a description of the mental development, behaviour and skills of the child.

Visual ‡ unknown	When was the child able to fix?
Aural ‡ unknown	When was the child able to turn its head after sounds?
Motor ‡ unknown	When was the child able to sit by itself?  Stand by support?  Walk without support?
Language ‡ unknown	When did the child start to prattle?  Say single words?  Say sentences?

<p>Contact</p> <p>† unknown</p>	<p>When did the child start to smile?</p> <p>How does it react towards strangers?</p> <p>How does it communicate with adults and other children?</p>	
<p>Emotional</p> <p>† unknown</p>	<p>How does the child show emotions (anger, uneasiness, disappointment, joy)?</p>	
<b>Medical examination of the child</b>		
Date of the medical examination:		
1. THE CHILD	<p>WEIGHT:        KG        DATE:</p> <p>HEIGHT:        CM        DATE:</p> <p>Head circumference cm        date:</p>	
Colour of hair:	Colour of eyes:	Colour of skin:
<p>Through my complete clinical examination of the child I have observed the following evidence of disease, impairment or abnormalities of:</p> <p>Date of the examination:</p>		
Head (form of skull, hydrocephalus, craniotabes)		

Mouth and pharynx (harelip or cleft palate, teeth)
Eyes (vision, strabismus, infections)
Ears (infections, discharge, reduced hearing, deformity)
Organs of the chest (heart, lungs)
Lymphatic glands (adenitis)
Abdomen (hernia, liver, spleen)
Genitals (hypospadias, testis, retention)
Spinal column (kyphosis, scoliosis)
Extremities (pes equinus, valgus, varus, pes calcaneovarus, flexation of the hip, spasticity, paresis)
Skin (eczema, infections, parasites)
Other diseases?
Are there any symptoms of syphilis in the child? Result of syphilis reaction made (date and year): ‡ Positive ‡ Negative ‡ Not done
Any symptoms of tuberculosis? Result of tuberculin test made (date and year): ‡ Positive ‡ Negative ‡ Not done
Any symptoms of Hepatitis A? Result of tests for hepatitis A made (date and year): ‡ Positive ‡ Negative ‡ Not done



<p>Any symptoms of Hepatitis B?</p> <p>Result of tests for HBsAg (date and year):</p> <p><input type="checkbox"/> Positive                      <input type="checkbox"/> Negative                      <input type="checkbox"/> Not done</p> <p>Result of tests for anti-HBs (date and year):</p> <p><input type="checkbox"/> Positive                      <input type="checkbox"/> Negative                      <input type="checkbox"/> Not done</p> <p>Result of tests for HBeAg (date and year):</p> <p><input type="checkbox"/> Positive                      <input type="checkbox"/> Negative                      <input type="checkbox"/> Not done</p> <p>Result of tests for anti-HBe (date and year):</p> <p><input type="checkbox"/> Positive                      <input type="checkbox"/> Negative                      <input type="checkbox"/> Not done</p>
<p>Any symptoms of AIDS?</p> <p>Result of tests for HIV made (date and year):</p> <p><input type="checkbox"/> Positive                      <input type="checkbox"/> Negative                      <input type="checkbox"/> Not done</p>
<p>Symptoms of any other infections disease?</p>
<p>Does the urine contain?</p> <p>Sugar?</p> <p>Albumen?</p> <p>Phenylketone?</p>
<p>Stools (diarrhoea, constipation):</p> <p>Examination for parasites:</p> <p><input type="checkbox"/> Positive (species):                      <input type="checkbox"/> Negative                      <input type="checkbox"/> Not done</p>
<p>Is there any mental disease or retardation of the child?</p>
<p>Give a description of the mental development, behaviour and skills of the child. This is of particular value for advising the prospective parents.</p>

Any additional comments?

\_\_\_\_\_  
Signature and stamp of the examining physician

\_\_\_\_\_  
Date