

**QUESTIONS FOR DISCUSSION
ON DAY 1 OF THE SPECIAL COMMISSION MEETING (8 JUNE 2015)**

Round Table 1

***How has the principle of subsidiarity been implemented in the past 20 years:
achievements and challenges***

1. Twenty years after the entry into force of the Convention, how is the subsidiarity principle being implemented and applied in States of origin today? In particular:
 - a. What strategies have been developed to promote and support measures seeking family preservation and reunification and, where this is not possible, *in-country* alternative permanent family care for children, including domestic adoption?
 - b. What are the primary obstacles and challenges in relation to the implementation of subsidiarity for States of origin?

2. What is the role of receiving States, if any, in relation to the application of the subsidiarity principle? For example:
 - a. In practice today, do receiving States seek information as to whether the subsidiarity principle is being applied in a particular State of origin either in general and / or in each individual case and, if so, how is this done?
 - b. If so, is there room for a broader role for receiving States, beyond the seeking of information? Indeed, do receiving States have a “co-responsibility” to ensure the application of the principle in States of origin?

3. The effective implementation and operation of the subsidiarity principle requires a development of strategies, as well as an investment of resources, both at the national level (to ensure the necessary foundational child protection system exists and functions¹), as well as in each individual case (to ensure that the principle is applied appropriately to each child). In light of this:
 - a. How can States of origin with limited resources effectively apply this principle?
 - b. How can these States be supported to apply the principle and what lessons can be learnt from the experience of the past twenty years in this regard? In particular, can there be a more effective co-ordination of support efforts and more consistent approaches by those providing support?

Further reading

All documents mentioned below are available at < www.hcch.net > in the specialised “Intercountry Adoption Section”

- Responses of States to [Questionnaire No 2](#): questions 31 to 35.
- Responses of States to the [2014 Country Profile](#): questions 11 (States of origin) and 10 (receiving States)
- [Reports and “Conclusions and Recommendations” of previous Special Commission meetings](#): 2000 (Report paras 24 to 31; C&R No. 10) and 2010 (Report paras 29 to 31, 69 to 71; C&R Nos 6, 7, 14, 32 and 33)
- [Guide to Good Practice No 1](#): Chapters 2.1.1 and 6

¹ *E.g.*, such that measures exist in the State to promote family preservation and reunification, as well as in-country permanent alternative family care options for children in need.

Round Table 2

Ensuring that Convention procedures do not cause unnecessary delays contrary to the best interests of children

"The passing of time is not perceived in the same way by children and adults. Delays in or prolonged decision-making have particularly adverse effects on children as they evolve. It is therefore advisable that procedures or processes regarding or impacting children be prioritized and completed in the shortest time possible."²

1. What practical steps can be taken by Contracting States to ensure that intercountry adoptions fully comply with the Convention's safeguards but also its requirement for expeditious action (Art. 35)?

For example:

- How can it be ensured that the legal and psychosocial adoptability of each child is determined properly, in accordance with the Convention's safeguards and best practices, whilst also ensuring that decisions are taken without unnecessary delay contrary to children's best interests?
- How can it be ensured that the subsidiarity principle is properly implemented and applied in each case, whilst also ensuring that such efforts do not unintentionally harm children by delaying unduly a permanent solution?
- How can increased paperwork and bureaucracy which does not add to the protection of the child be minimised in intercountry adoption?
- Demand and pressure were stated in some Questionnaire No 1 responses to be possible causes of delay in intercountry adoption (e.g., because some States of origin are overwhelmed with applications and do not have the capacity to manage the workload, thus slowing down processing times). How can States more effectively control and minimise this demand and pressure?

Further reading

All documents mentioned below are available at < www.hcch.net > in the specialised "Intercountry Adoption Section"

- [Chapter 3.3 of Prel. Doc. No 3 of May 2015](#) - "20 years of the 1993 Hague Convention"
- Responses of States to [Questionnaire No 1](#): question 5
- Responses of States to the [2014 Country Profile](#): questions 28 (States of origin) and 19 c) (receiving States)
- [Reports and "Conclusions and Recommendations" of previous Special Commission meetings](#): 2005 (Report paras 100 to 101; C&R Nos 14 and 16)
- [Guide to Good Practice No 1](#): Chapters 3.5 and 7.1.2

² UN Committee on the Rights of the Child, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, at para. 93.

Round Table 3

Addressing the challenges resulting from the changing landscape of intercountry adoption: how do actors respond?

1. In view of the changed landscape of intercountry adoption today (*i.e.*, the declining global number of ICAs being undertaken, the changed profile of children being intercountry adopted, and the increased duration and expense of some intercountry adoption procedures), what practices in States need to change or develop in future to ensure that intercountry adoptions are always made in the best interests of children and with respect for their fundamental rights?
2. In particular, how can States respond most effectively to the needs of the children more frequently intercountry adopted today (*i.e.*, older children, siblings and children with special medical needs)?
3. How can adoption accredited bodies best respond to the changed landscape of intercountry adoption and how can their sustainability for the future be ensured?

Further reading

All documents mentioned below are available at < www.hcch.net > in the specialised "Intercountry Adoption Section"

- [Prel. Doc. No 3 of May 2015](#) - "20 years of the 1993 Hague Convention": in particular, Chapter 3
- Responses of States to [Questionnaire No 1](#) in general
- [Fact Sheet No 1](#) - "The People at the Heart of Adoption"
- Responses of States of [Questionnaire No 2](#): *e.g.*, questions 1 to 23
- [Reports and "Conclusions and Recommendations" of previous Special Commission meetings](#) in general
- [Guide to Good Practice No 2](#)