



The 1993 Hague Convention on Protection of Children
and Co-operation in Respect of Intercountry Adoption

Information Brochure



Drawings by adoptable and adopted children in different States of origin and receiving States.

Cover picture by:

Pauline Birtele, adopted in Burkina Faso by an Italian family

Back cover picture by:

Raju d'Angelo, adopted in India by an Italian family



Emily Waller, adopted in South Africa by a Swedish family

March 2017

Table of contents

- 1 Outline of the 1993 Hague Convention 5
- 2 Advantages of becoming a party to the 1993 Hague Convention 10
- 3 Tools to assist with the implementation of the 1993 Hague Convention 12
- 4 The Intercountry Adoption Technical Assistance Programme (ICATAP) 14
- 5 Diagram of the pathway to signature and ratification / accession 16
- 6 Text of the 1993 Hague Convention 17
- 7 Conclusions and Recommendations adopted by the Special Commission on the practical operation of the 1993 Hague Convention (17-25 June 2010) 34
- 8 Conclusions and Recommendations adopted by the Special Commission on the practical operation of the 1993 Hague Convention (8-12 June 2015) 44
- 9 Intercountry Adoption Section on the Hague Conference website 58

1 Outline of the 1993 Hague Convention

Introduction

Intercountry adoption is a relatively recent phenomenon. It expanded slowly after World War II, until the 1970s, when the numbers increased considerably. By the 1980s, it was recognised that this phenomenon was creating serious and complex human and legal problems and the absence of existing domestic and international legal instruments indicated the need for a multilateral approach.¹

It was in this context that the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* ("1993 Hague Convention" or "Convention") was developed to establish safeguards which ensure that intercountry adoptions take place in the best interest of the child and with respect for the child's fundamental rights.

The Convention recognises that growing up in a family is of primary importance and is essential for the happiness and healthy development of the child. It also recognises that intercountry adoption may offer the advantage of permanent family to a child for whom a suitable family cannot be found in his or her country of origin.

By setting out clear procedures and prohibiting improper financial gain, the Convention provides greater security, predictability and transparency for all parties to the adoption, including prospective adoptive parents.

¹ See G. Parra-Aranguren, "Explanatory Report on the 1993 Hague Intercountry Adoption Convention, in *Proceedings of the Seventeenth Session (1993)*, Tome II, *Adoption – co-operation*, The Hague, SDU, 1994, para. 6, pp. 543 and 545. Available on the Hague Conference website, < www.hcch.net > under "Intercountry Adoption Section" then "Explanatory Documents".

The Convention also establishes a system of co-operation between authorities in countries of origin and receiving countries, designed to ensure that intercountry adoption takes place under conditions which help to guarantee the best adoption practices and elimination of abuses.

The 1993 Hague Convention gives effect to Article 21 of the *United Nations Convention on the Rights of the Child*² by adding substantive safeguards and procedures to the broad principles and norms laid down in the Convention on the Rights of the Child. The 1993 Convention establishes minimum standards, but does not intend to serve as a uniform law of adoption. While making the rights and interests of the child paramount, it also respects and protects the rights of families of origin and adoptive families.

The Convention makes clear that receiving States and States of origin must share the burdens and benefits of regulating intercountry adoptions. It sets out clearly which functions within the adoption process are to be performed by each State.

Principal features of the Convention

The best interests of the child are paramount

The Convention contains certain rules to ensure that adoptions take place in the best interests of the child and with respect for his or her fundamental rights. For example, States, must: consider national solutions first (implement the principle of subsidiarity); ensure the child is adoptable; preserve information about the child and his/her parents; evaluate thoroughly the prospective adoptive parents; match the child with a suitable family; impose additional safeguards where needed.

² *United Nations Convention on the Rights of the Child*, G.A. Res. 44/25, UN GAOR, 61st Plenary Meeting, Annex. Available at < www.ohchr.org >.

This fundamental principle of the child's best interests should guide the development of an integrated national child care and protection system, of which one part is an ethical, child-centred approach to intercountry adoption.

Subsidiarity principle

'Subsidiarity' in the Convention means that Contracting States recognise that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent care in the country of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interests. As a general rule, institutional care should be considered as a last resort for a child in need of a family.

Safeguards to protect children from abduction, sale and trafficking

States should establish safeguards to prevent abduction, sale and trafficking in children for adoption by: protecting birth families from exploitation and undue pressure; ensuring only children in need of a family are adoptable and adopted; preventing improper financial gain and corruption; regulating agencies and individuals involved in adoptions by accrediting them in accordance with Convention standards.

Co-operation between States and within States

The Convention envisages a system in which all Contracting States work together to ensure the protection of children. Co-operation between Contracting States is essential to ensure the effectiveness of any safeguards put in place (Art. 1(b)).

In practice, this principle is implemented first through international co-operation between Central Authorities, and between other public authorities and accredited bodies performing the functions of Central Authorities (Art. 7); second, through intra-State co-operation between authorities and agencies regarding Convention procedures (Art. 7(1)); and third, through co-operation to prevent abuses and avoidance of the Convention (Art. 33).

Automatic recognition of adoption decisions

The 1993 Hague Convention achieved a major breakthrough in establishing a system of automatic recognition of adoptions made in accordance with the Convention. Every adoption, whether a simple or full adoption, which is certified to be made in accordance with Convention procedures, is recognised "by operation of law" in all other Contracting States (Art. 23). In other words, the Convention gives immediate certainty to the status of the child, and eliminates the need for a procedure for recognition of orders, or re-adoption, in the receiving country.

Competent authorities, Central Authorities and Accredited Bodies

The Convention requires that only competent authorities should perform Convention functions. Competent authorities may be Central Authorities, public authorities including judicial or administrative authorities, and accredited bodies.

The Convention provides for a system of Central Authorities in all Contracting States and imposes certain general obligations on them, such as: co-operation with one another through the exchange of general information concerning intercountry adoption; the elimination of any obstacles to the application of the Convention (Art. 7(2)(b)); and a responsibility to deter all practices contrary to the objects of the Convention (Art. 8). Central Authorities also have specific obligations in Chapter IV in respect of individual adoptions.

Accredited Bodies may perform some of the functions of Central Authorities. The process of accreditation of bodies is one of the Convention's safeguards to protect children in adoption. Any private adoption body or agency must be accountable to a supervising or accrediting authority (see Arts 6-13). They must play an effective role in upholding the principles of the Convention and preventing illegal and improper practices in adoption. If accredited bodies are to be used, the Convention sets out a regulatory framework of minimum standards for their operation in Articles 10, 11 and 32. Additional standards may be imposed by Contracting States.

2 Advantages of becoming a party to the 1993 Hague Convention

The 1993 Hague Convention is now accepted as the international legal framework to regulate intercountry adoption and the protection of children who are subject to an intercountry adoption. It is in force in almost 100 States. Moreover, all the main receiving States are now parties to the Convention.

The 1993 Hague Convention establishes at an international level norms and procedures to protect children and families before and during the adoption process, such as:

- establishing safeguards to prevent the abduction, the sale of, or traffic in adoptable children;
- ensuring that the child is truly adoptable and that the adoption (simple or full depending on the situation and the best interests of each child) is the best solution for him or her;
- ensuring that the biological parents have freely given their consent to the adoption after having been counseled and properly informed about the consequences of their decision, and without having received any payment or compensation of any kind;
- preserving information relating to the child and his or her parents;
- evaluating the prospective adoptive parents according to the standards of the 1993 Hague Convention;
- matching the child with a suitable family;
- processing adoptions only through competent authorities such as Central Authorities public authorities, including judicial and administrative authorities and accredited bodies;

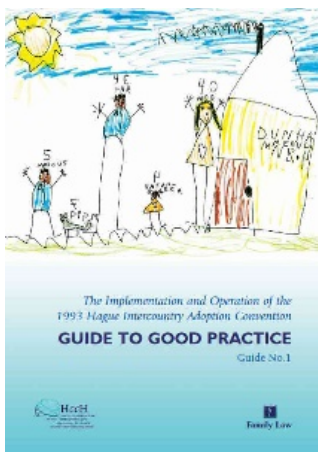
- working with accredited adoption bodies authorised according to the rules of the 1993 Hague Convention;
- establishing procedures to prevent improper financial gain.

In addition, the 1993 Hague Convention allows:

- imposing higher standards or requirements to its partner Convention parties;
- maintaining control over the number of adoption by deciding to work only with a limited number of States and accredited bodies, determined according to the true number of children in need of adoption, to prevent pressures on States of origin;
- choosing to suspend adoptions if a receiving State does not respect the rules of the Convention or the requirements of a State of origin.

3 Tools to assist with the implementation of the 1993 Hague Convention

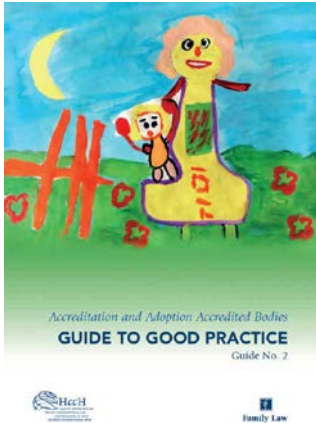
Guide to Good Practice No 1 – The implementation and operation of the 1993 Hague Intercountry Adoption Convention



This Guide identifies important matters related to planning, establishing and operating the legal and administrative framework to implement the Convention. It assists policy makers involved in short term and long term planning to implement the Convention in their country, as well as judges, lawyers, administrators, caseworkers, accredited bodies and other professionals needing guidance on some practical or legal aspects of implementing the Convention.

An outline of the procedure for a Convention adoption is found in the Guide at Chapter 7.1.

Guide to Good Practice No 2 – Accreditation and Adoption Accredited Bodies



This second Guide:

- emphasises that the principles and obligations of the Convention apply to all actors in Hague Convention intercountry adoptions;
- clarifies the Convention obligations and standards for the establishment and operation of accredited bodies;
- encourages acceptance of higher standards than the minimum standards of the Convention;
- identifies good practices to implement those obligations and standards; and
- proposes a set of model accreditation criteria which will assist Contracting States to achieve greater consistency in the professional standards and practices of their accredited bodies.

Both Guides are available on the Hague Conference website at < www.hcch.net > under "Intercountry Adoption Section".

4 The Intercountry Adoption Technical Assistance Programme (ICATAP)

The Permanent Bureau has, for many years, undertaken the review and monitoring of the 1993 Hague Convention's practical operation including promotional activities, and has also regularly provided advice and support to requesting countries on a wide range of issues related to general implementation and operation of the Convention.

In order for the Convention to operate successfully, the initial steps necessary for its effective implementation in each Contracting State must be carefully planned. The Convention places heavy burdens of responsibility on States, and implementation and technical assistance may be particularly vital in some countries that have few resources available for this purpose. Therefore, more recently, the Permanent Bureau has provided, on request, more extensive technical assistance to targeted States specifically related to the implementation and application of the Convention.

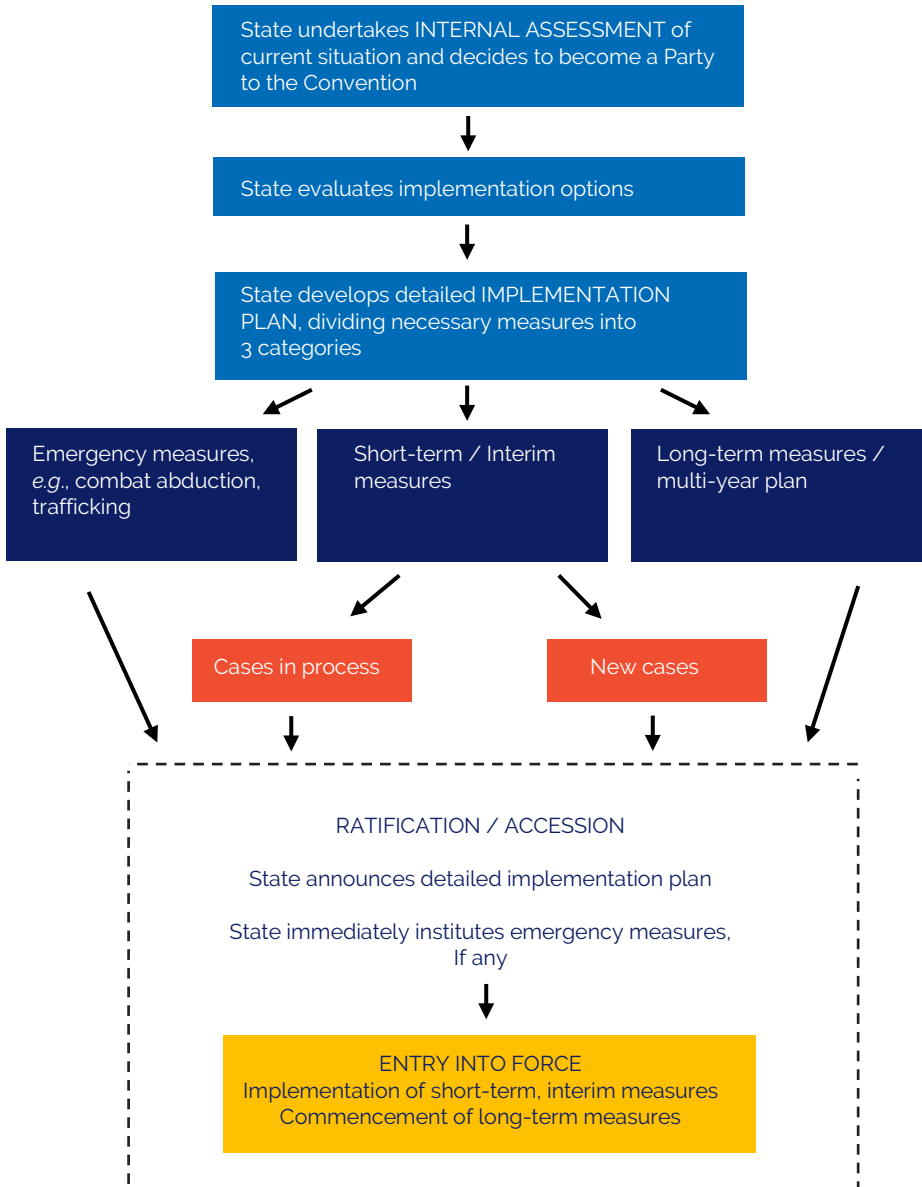
ICATAP was designed to provide assistance directly to the governments of certain States which are planning ratification of, or accession to, the Convention, or which have ratified or acceded but are experiencing difficulties with implementation of the Convention.

Subject to the availability of funding, ICATAP is operated directly by the Permanent Bureau, as well as in cooperation with international consultants and experts, and international organisations such as UNICEF. The Hague approach takes full account of the need to integrate the intercountry adoption process within the broader child care and protection system.

Technical assistance may include:

- assistance in developing and in reviewing implementation legislation and regulations;
- providing advice on the creation and functions of Central Authorities and other Competent Authorities;
- providing training and other operational assistance to Authorities and other relevant actors;
- help in developing the tools to achieve the above activities, by means of diagnostic visits, the use of external consultants, partnerships with other organisations, etc;
- providing judges with relevant training, information and opportunities for informal exchanges; and
- providing information and advice to States considering ratification or accession to assist their decision making and other factors relevant to effective implementation.

5 Diagram of the pathway to signature and ratification / accession



6 Text of the 1993 Hague Convention

Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

(concluded 29 May 1993)

The States signatory to the present Convention,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognising 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,

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,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the *United Nations Convention on the Rights of the Child*, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions –

Chapter I – Scope of the Convention

Article 1

The objects of the present Convention are –

- a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;
- b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

- 1 The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.
- 2 The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

Chapter II – Requirements for intercountry adoptions

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin –

- a) have established that the child is adoptable;
- b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- c) have ensured that
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- d) have ensured, having regard to the age and degree of maturity of the child, that
 - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child's wishes and opinions,
 - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State –

- a) have determined that the prospective adoptive parents are eligible and suited to adopt;
- b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- c) have determined that the child is or will be authorised to enter and reside permanently in that State.

Chapter III – Central Authorities and Accredited Bodies

Article 6

- (1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

- (1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
- (2) They shall take directly all appropriate measures to –
 - a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
 - b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to –

- a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- c) promote the development of adoption counselling and post-adoption services in their States;
- d) provide each other with general evaluation reports about experience with intercountry adoption;
- e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall –

- a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

- c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

Chapter IV – Procedural requirements in intercountry adoptions

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

- (1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.
- (2) It shall transmit the report to the Central Authority of the State of origin.

Article 16

- (1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall –
 - a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
 - b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
 - c) ensure that consents have been obtained in accordance with Article 4; and
 - d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.
- (2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if –

- a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c) the Central Authorities of both States have agreed that the adoption may proceed; and
- d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

- (1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
- (2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
- (3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

- (1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular –
 - a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
 - b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

- c) as a last resort, to arrange the return of the child, if his or her interests so require.
- (2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

- (1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
- (2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who
 - a) meet the requirements of integrity, professional competence, experience and accountability of that State; and
 - b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
- (3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.
- (4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.
- (5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

Chapter V – Recognition and effects of the adoption

Article 23

- (1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c), were given.
- (2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

- (1) The recognition of an adoption includes recognition of
 - a) the legal parent-child relationship between the child and his or her adoptive parents;
 - b) parental responsibility of the adoptive parents for the child;
 - c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

- (2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.
- (3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

Article 27

- (1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect –
 - a) if the law of the receiving State so permits; and
 - b) if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.
- (2) Article 23 applies to the decision converting the adoption.

Chapter VI – General provisions

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a) to c), and Article 5, sub-paragraph a), have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

- (1) The competent authorities of a Contracting State shall 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.
- (2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

- (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.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units –

- a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;
- d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

- (1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.
- (2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

Chapter VII – Final clauses

Article 43

- (1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

- (2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

- (1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.
- (2) The instrument of accession shall be deposited with the depositary.
- (3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
- (2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- (3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

- (1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

- (2) Thereafter the Convention shall enter into force –
 - a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

- (1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.
- (2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following –

- a) the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b) the accessions and objections raised to accessions referred to in Article 44;
- c) the date on which the Convention enters into force in accordance with Article 46;
- d) the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e) the agreements referred to in Article 39;
- f) the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

7 Conclusions and Recommendations adopted by the Special Commission on the practical operation of the 1993 Hague Convention (17-25 June 2010)

Abduction, sale and traffic in children and their illicit procurement in the context of intercountry adoption

- 1 Concerned to prevent, in the context of intercountry adoption, the abduction, sale and traffic in children and their illicit procurement, the Special Commission draws the attention of States to the following as essential features of a well regulated system:
 - a) effective application of Hague Convention procedures and safeguards including, as far as practicable, in relation to non-Convention adoptions;
 - b) independent and transparent procedures for determining adoptability and for making decisions on the placement of a child for adoption;
 - c) strict adherence to the requirements of free and informed consent to adoption;
 - d) strict accreditation and authorisation of agencies, and in accordance with criteria focussing on child protection;
 - e) adequate penalties and effective prosecution, through the appropriate public authorities, to suppress illegal activities;
 - f) properly trained judges, officials and other relevant actors;
 - g) prohibition on private and independent adoptions;

- h) clear separation of intercountry adoption from contributions, donations and development aid;
 - i) regulated, reasonable and transparent fees and charges;
 - j) effective co-operation and communication between relevant authorities both nationally and internationally;
 - k) implementation of other relevant international instruments to which States are parties;
 - l) public awareness of the issues.
- 2 The Special Commission acknowledged the generous contribution of the Government of Australia for making possible the special day on the abduction, sale and traffic in children and their illicit procurement, which raised awareness of the nature and extent of the problem. An informal group co-ordinated by the Australian Central Authority with the participation of the Permanent Bureau will consider the development of more effective and practical forms of co-operation between States to prevent and address specific instances of abuse. The result of this work will be circulated by the Permanent Bureau for consideration by Contracting States.

Draft guide to good practice on accreditation

- 3 The Special Commission gave its general endorsement to the draft Guide to Good Practice No 2 entitled *Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice* (hereinafter the draft Guide to Good Practice No 2) prepared by the Permanent Bureau. The Special Commission requested the Permanent Bureau to make revisions to the text, in particular Chapters 9 and 10, in the light of discussions within the Special Commission. This will include revision of the summaries of each chapter, some re-ordering of material (e.g., to avoid repetition), a check on correspondence between English and French texts as well as on the Spanish text, and the drawing up, on the basis of the text, of accreditation criteria. This work will be carried out in consultation with the Chair and Vice-Chairs of the Special Commission and the Working Group which assisted the Permanent Bureau in preparing the draft Guide. The revised text will be circulated to all Contracting States, Members of the Hague Conference and States and organisations represented at the Special Commission for their

comments. The final version will then be prepared for publication by the Permanent Bureau.

- 4 The Special Commission recommended that the Permanent Bureau examine the feasibility of posting on the Hague Conference website tables indicating for each Contracting State the costs associated with intercountry adoption and the charges imposed on prospective adoptive parents (see table 1 and table 2 of Annex 9B of the draft Guide to Good Practice No 2).

Review of the practical operation of the convention

Guide to Good Practice No 1

- 5 The Special Commission underlined the value of the Guide to Good Practice No 1 entitled *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention* to existing and future Contracting States.

Mutual support and assistance in applying the safeguards of the Convention

- 6 Receiving States are encouraged to consider ways in which to assist and support States of origin in the performance of their functions and in the application of safeguards under the Convention, including by means of capacity-building and other programmes.
- 7 States of origin and receiving States are encouraged to provide each other with a full description of the manner in which they apply the safeguards under Articles 4 and 5 respectively. This information should also be included in their Country Profile posted on the website of the Hague Conference. States are encouraged to update this information regularly.

Selection, counselling and preparation of the prospective adoptive parents

- 8 States of origin may assist receiving States in establishing their criteria for the selection of prospective adoptive parents by providing information about the characteristics and needs of adoptable children. This information will also contribute to the development of preparation materials on intercountry adoption directed to prospective adoptive parents, and to the management of their expectations.
- 9 The Special Commission emphasised the need for country specific preparation and for prospective adoptive parents to have some knowledge of the culture of the child and his or her language in order to communicate with the child from the matching stage.
- 10 The Special Commission recommended that the Permanent Bureau, in consultation with Contracting States and non-governmental organisations, collect information on the selection, counselling and preparation of prospective adoptive parents, with a view to the possible development of the Guide to Good Practice No 3. This may include a discussion on good practices in dealing with failed adoptions and the period of validity of the "home study" report.

Scope of the Convention

- 11 The Special Commission emphasised that all intercountry adoptions falling within the scope of the Convention under Article 2(1), including in-family adoptions and adoptions by nationals of the State of origin, are subject to Convention procedures and safeguards.
- 12 Where an adoption falling within the scope of the Convention has been processed in a Contracting State as a non-Convention adoption, the Central Authorities concerned are strongly recommended to cooperate in efforts to address the situation in a manner which respects Convention procedures and safeguards, and to prevent these situations from recurring.

Co-operation issues

Intercountry adoption in the context of globalisation and international mobility

- 13 Where the habitual residence of the prospective adoptive parents is uncertain the concerned Central Authority should provide advice on their particular situation before they proceed with an adoption application.

Co-operation (development aid) projects

- 14 The Special Commission emphasised the need to establish, in all cases, a clear separation of intercountry adoption from contributions, donations and development aid.

Issues concerning Convention procedures

Certificate of conformity under Article 23

- 15 The Special Commission noted with concern the high number of States that have not designated a competent authority for the purpose of issuing a certificate of conformity under Article 23.
- 16 The Article 23 certificate is essential to allow the automatic recognition of adoptions made under the Convention and should be issued promptly where the requirements of the Convention have been met.
- 17 Where a certificate under Article 23 is incomplete or defective, States should co-operate to regularise the situation.

Recognition and effects of adoption (Arts 23 and 24)

- 18 The Special Commission underlined that no additional procedure may be imposed as a condition of recognition.

- 19 The Special Commission reaffirmed Recommendation No 17 of the Meeting of the Special Commission of September 2005:

"17. The Special Commission recommends that the child be accorded automatically the nationality of one of the adoptive parents or of the receiving State, without the need to rely on any action of the adoptive parents. Where this is not possible, the receiving States are encouraged to provide the necessary assistance to ensure the child obtains such citizenship. The policy of Contracting States regarding the nationality of the child should be guided by the overriding importance of avoiding a situation in which an adopted child is stateless."

- 20 Central Authorities should co-operate in the completion of any formalities necessary for the acquisition by the child of the nationality, where appropriate, either of the receiving State or of an adoptive parent.
- 21 The question of whether nationality will be granted to the child may, where appropriate, be a relevant factor when a State of origin is considering co-operation with a particular receiving State.

Private and independent adoptions

- 22 Adoptions which are arranged directly between birth parents and adoptive parents (*i.e.*, private adoptions) are not compatible with the Convention.
- 23 Independent adoptions, in which the adoptive parent is approved to adopt in the receiving State and, in the State of origin, locates a child without the intervention of a Central Authority or accredited body in the State of origin, are also not compatible with the Convention.
- 24 It was strongly recommended that training be provided for judges and other authorities or persons exercising functions under the Convention. This training should address in particular the problems surrounding private and independent adoptions, as well as other possible ways in which the procedures and safeguards of the Convention are circumvented.

International surrogacy and intercountry adoption

- 25 The Special Commission noted that the number of international surrogacy arrangements is increasing rapidly. It expressed concern over the uncertainty surrounding the status of many of the children who are born as a result of these arrangements. It viewed as inappropriate the use of the Convention in cases of international surrogacy.
- 26 The Special Commission recommended that the Hague Conference should carry out further study of the legal, especially private international law, issues surrounding international surrogacy.

Learning from experience

Post-adoption issues

- 27 The Special Commission reaffirmed Recommendation No 18 of the Meeting of the Special Commission of September 2005:

“18. The Special Commission recommends to receiving States to encourage compliance with post-adoption reporting requirements of States of origin; a model form might be developed for this purpose. Similarly, the Special Commission recommends to States of origin to limit the period in which they require post-adoption reporting in recognition of the mutual confidence which provides the framework for co-operation under the Convention.”
- 28 It was recommended that receiving States and States of origin preserve adoption records in perpetuity. The record must contain the information referred to in Article 16 and, to the extent possible, any other information or personal items relating to the child or his or her birth family.

- 29 It was recommended that receiving States and States of origin provide different forms of assistance and counselling for different stages of the child's development to adulthood, including preparation for origin searches and reunions of the adoptees with members of their biological families.

Statistics

- 30 The Special Commission underlined the importance for States Parties of submitting general statistics on an annual basis to the Permanent Bureau using the forms contained in Preliminary Document No 5 of April 2010.
- 31 It was recommended that consultations should continue on options for the future collection of statistical data by the Permanent Bureau.

Technical assistance programme and other training programmes

- 32 The Special Commission recognised the great value of the Intercountry Adoption Technical Assistance Programme (ICATAP), which has already provided technical assistance and training for several States.
- 33 The Special Commission acknowledged the limited resources available to the Permanent Bureau to maintain ICATAP and urged all States to consider making financial and / or in-kind contributions to secure the continuity of the programme.
- 34 Contributions of some States and international organisations, such as UNICEF, have been crucial to the success of ICATAP. In this regard, the horizontal co-operation between States of origin is particularly beneficial.

- 35 The work undertaken to support the effective implementation of the Convention under the aegis of the International Centre for Judicial Studies and Technical Assistance should be regarded as essential for the proper functioning of the Convention.

Dealing with non-Convention countries

- 36 The Special Commission reiterated the recommendation that Contracting States, in their relations with non-Contracting States, should apply as far as practicable the standards and safeguards of the Convention.
- 37 For this purpose attention is drawn in particular to:
- a Articles 4, 5 and 17;
 - b the requirements of Chapter III of the Convention;
 - c the guarantees concerning recognition;
 - d the child's right to enter and reside in the receiving State; and,
 - e the requirements concerning the suppression of improper financial or other gain.

Response to disaster situations

- 38 The Special Commission recognised that, in a disaster situation, efforts to reunite a displaced child with his or her parents or family members must take priority. Premature and unregulated attempts to organise the adoption of such a child abroad should be avoided and resisted.
- 39 No new adoption applications should be considered in the period after the disaster or before the authorities in that State are in a position to apply the necessary safeguards.

- 40 The Special Commission also recognised the need for a common approach on the part of Central Authorities in dealing with such situations and for Central Authorities to discuss and review actions taken in response to, and lessons learned from, disaster situations.

The 1996 Convention on Protection of Children

- 41 The Special Commission reiterated the value of the 1996 Convention on the International Protection of Children in the context of cross-border placement of children as well as other international child protection situations.

The 1961 Apostille Convention

- 42 The Special Commission stressed the usefulness of linking the application of the Hague Adoption Convention of 1993 to the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (the Apostille Convention). In the light of the high number of public documents included in a typical adoption procedure, the Special Commission recommended that States Parties to the Adoption Convention but not to the Apostille Convention consider the possibility of becoming a party to the latter.

8 Conclusions and Recommendations adopted by the Special Commission on the practical operation of the 1993 Hague Convention (8-12 June 2015)

The fourth meeting of 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* (hereinafter, "the Convention") met in The Hague from 8 to 12 June 2015.

The Special Commission (SC) was attended by 255 participants from 74 States and 19 inter-governmental and international non-governmental organisations, including representatives from Members of the Hague Conference on Private International Law, Contracting States to the Convention, non-Contracting States that are actively exploring the possibility of joining the Convention, and interested international organisations. The first day of the meeting was dedicated to discussing "20 years of the 1993 Hague Convention".

Participants unanimously approved the following Conclusions and Recommendations (C&Rs) developed in furtherance of prior C&Rs of the Special Commission meetings in 2000, 2005 and 2010.

20 years of the 1993 Hague Convention

- 1 Twenty years after the entry into force of the Convention, the SC:
 - a affirmed the continued relevance and fundamental importance of the Convention and welcomed its broad acceptance as the international benchmark for intercountry adoption today;

- b recognised the significant, positive impact which the Convention has had on laws and practices relating to intercountry adoption over the last 20 years, transforming an area that was previously largely unregulated into a regulated, rule-based system which strives "to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights";
 - c acknowledged that the landscape of intercountry adoption has changed over the past 20 years, and encouraged Contracting States to ensure that their laws and practices adequately respond to the current reality of intercountry adoption;
 - d encouraged non-Contracting States to consider becoming party to the Convention, bearing in mind the need for preparation prior to any ratification or accession;
 - e emphasised the great value of the Intercountry Adoption Technical Assistance Programme ("ICATAP") of the Hague Conference and the important support it has provided to States in the implementation and operation of the Convention;
 - f recognised the increase in domestic adoption as one of the positive factors impacting the changed landscape of intercountry adoption.
- 2 The SC reaffirmed the importance of subsidiarity as a foundational principle of the Convention. It underlined that implementation of the subsidiarity principle is central to the success of the Convention, and to determining that an intercountry adoption takes place "in the best interests of the child and with respect for his or her fundamental rights".
- 3 To further promote the principle of subsidiarity, States are encouraged to strengthen their domestic child protection systems, including the establishment and promotion of measures which support family preservation and reunification, as well as in-country alternative permanent family care, such as domestic adoption and other traditional forms of alternative care.

- 4 The SC recognized that a lack of resources in some States remains one of the most serious challenges to the implementation of the subsidiarity principle, and encouraged States to provide support to other States to improve their domestic child protection systems. Any such support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process, such as creating a dependency on income deriving from intercountry adoption.
- 5 The SC recalled that implementation of the principle of subsidiarity should not "unintentionally harm children by delaying unduly a permanent solution through intercountry adoption".
- 6 Recalling Article 35 of the Convention, the SC reminded Contracting States to do their utmost to prevent unnecessary delays at all stages of the intercountry adoption process, while respecting the safeguards of the Convention. Wherever possible, the use of modern methods of communication is encouraged to facilitate expeditious action.
- 7 The benefits of becoming a party to the Hague Convention of 5 October 1961 Abolishing the Requirements of Legalisation for Foreign Public Documents (Apostille Convention) were reaffirmed by the SC in order to avoid unnecessary delays in intercountry adoption.
- 8 States of origin are encouraged to specify through their Central Authority any limits in relation to the number and type of applications for intercountry adoption which they will accept, in light of the number and profile of intercountry adoptable children in the State. Receiving States should respect any limits. Moreover, even where no such limits have been specified, the number and type of applications sent to States of origin should be appropriate in view of the number and profile of intercountry adoptable children in that State.

- 9 The SC recognised the importance of the role of adoption accredited bodies in the intercountry adoption process in many Contracting States, and the challenges that these bodies face in light of the changed landscape of intercountry adoption.

Intercountry adoption of children with special needs

- 10 The SC recognised that an increasing number of children being adopted intercountry today have special needs and it is essential to address the resulting challenges.
- 11 The SC recommended that:
- a the subsidiarity principle of the Convention should be equally applied to children with special needs and, as a priority, measures should be promoted which support biological families in caring for children with such needs;
 - b children with special needs determined to be in need of alternative family care should be evaluated on a systematic and regular basis to ensure that their legal, medical and psycho-social adoptability can be assessed and kept under regular review. The assessment of their psycho-social and medical adoptability is particularly important.
- 12 In relation to children with special needs, the SC strongly emphasised the need for:
- a an individualised assessment of the child's specific needs which is particularly vital for the process of matching;
 - b counselling and preparation of the child, which should be adapted to his or her age, degree of maturity and needs;
 - c specific selection, mandatory preparation and counselling of prospective adoptive parents, including informing them of the post-adoption support available;

- d a full, accurate and up-to-date report on the child and on the prospective adoptive parents. The report on the prospective adoptive parents should clearly identify "the characteristics of the children for whom they would be qualified to care", as well as the preparation and counselling they have undertaken;
 - e a professionalised matching process involving a multi-disciplinary group of professionals; and
 - f professional assistance to be provided to prospective adoptive parents when deciding on a child proposal, as well as in the post-adoption phase.
- 13 The SC warmly endorsed the work of International Social Service in relation to children with special needs, including the possibility of using life books for such children.
- 14 The SC recommended that adoption accredited bodies should acquire and/or have access to professional expertise on the intercountry adoption of children with special needs.

Model forms

- 15 The SC welcomed the work undertaken on the draft model forms contained at Annexes 1 to 4 of Preliminary Document No 5 as providing useful guidance in terms of the recommended content of the Article 15 and 16 reports, the post-adoption report and the statement of consent of the child to the intercountry adoption. It recommended that work continue and, to this end, invited Contracting States, Members of the Hague Conference, and States and organisations represented at the Special Commission to submit written comments on the current drafts. In light of the comments received, the Permanent Bureau will assess whether a working group should be established to finalise the work.

- 16 The SC invited the Permanent Bureau to develop model forms on:
 - a the agreements provided in accordance with Article 17(c);
 - b the certificate of conformity which must be issued after the conversion of an adoption in accordance with Article 27. A draft of these model forms will also be submitted to those mentioned in paragraph 15 above for their written comments and, if a working group is established, the forms will be finalised by the working group if necessary.
- 17 Where necessary to ensure consistency and coherence with any new model forms, the SC invited the Permanent Bureau to update the existing model forms in consultation with those mentioned in paragraph 15 above and, if necessary, the working group.

Post-adoption matters

- 18 The SC recognised that post-adoption services are essential and should take into account the life-long nature of adoption. States are encouraged to develop specialised post-adoption services, in addition to the general services already in place.
- 19 The SC recognized that appropriate evaluations, preparation, reports, matching and post-adoption support, in relation to both the child and prospective adoptive parents, will reduce the risk of the breakdown of intercountry adoptions.

- 20 The SC encouraged States to consider ratification of, or accession to, 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 (hereinafter, "the 1996 Hague Convention") in view of its relevance in enhancing co-operation to protect children in many different situations, including following the breakdown of intercountry adoptions.
- 21 The SC recommended that the possibility of a child searching for his or her origins be included in the counselling and preparation of the prospective adoptive parents. When an adopted child or an adult adoptee undertakes such a search, professional support at all stages is recommended.

Globalisation and international mobility: habitual residence and the scope of the Convention.

- 22 In order to ensure that the Convention is applied to all adoptions falling within its scope, the SC recognized that there is a need to:
 - a promote consistent determinations, in the light of the Convention's objectives, of "habitual residence" in Contracting States, including developing a common understanding of the factors which might be considered when determining habitual residence;
 - b promote education of the relevant judicial and administrative authorities or bodies in Contracting States in relation to determinations of habitual residence and the scope of the Convention;
 - c raise awareness with the public of what qualifies as an intercountry adoption under the Convention.

- 23 In cases where the habitual residence of the prospective adoptive parents is uncertain, the SC reaffirmed 2010 SC C&R No 13 and further recommended that the concerned Central Authority expeditiously consult with the Central Authorities of any other relevant Contracting States before providing advice or communicating its decision to the prospective adoptive parents.
- 24 The SC noted with concern reports of persons moving to, or moving children from, Contracting States in order to undertake a domestic adoption in another Contracting State in an effort to deliberately circumvent the Convention. The SC invited Contracting States, when considering prospective adoptive parents' applications to adopt domestically, to consider carefully the circumstances of the prospective adoptive parents' and/or the child's presence in that State.
- 25 The SC welcomed Preliminary Document No 4 of April 2015 on "Globalisation and international mobility: habitual residence and the scope of the 1993 Convention" as providing useful further guidance on the scope of the Convention and determinations of habitual residence. It recommended that the document be revised by the Permanent Bureau in light of: (1) the discussions at the SC meeting; and (2) any written comments submitted by Contracting States, Members of the Hague Conference, and States and organisations represented at the Special Commission. The SC further recommended that the finalised document be published subsequently on the website of the Hague Conference.

Specific issues of co-operation

- 26 The SC recognised the importance of the continuation and expansion of co-operation and assistance between States in relation to the implementation and operation of the Convention. It welcomed the positive results reported by States which have benefitted from such co-operation.

- 27 The SC applauded the increased horizontal co-operation reported between States of origin, as well as regional and multilateral co-operation, to enhance the effective operation of the Convention.
- 28 Recalling the great value of ICATAP to the successful implementation and operation of the Convention, the SC urged States to continue to support the programme.
- 29 To support States considering becoming party to the Convention, the SC recommended that the Permanent Bureau develop a tool to provide practical guidance to assist them with their legal framework for adoption.

Kafala and adoption

- 30 The SC recommended that kafala, as a child protection measure, be discussed at the next SC on the practical operation of the 1996 Hague Convention. The SC recommended that consideration be given to the inclusion of the subject on the agenda for the fourth "Malta Judicial Conference on Cross-Frontier Family Law Issues" (part of the "Malta Process").

Openness in adoption

- 31 The SC noted that, where not prohibited by domestic legislation, and after professional matching, contact between the adoptee and biological family in intercountry adoption may be beneficial in some cases. In order to maximise the benefits and minimise the risks of such contact, professional support should be offered to prepare the parties, as well as to assist them during and after contact. The adopted child's best interests should guide the nature of this contact, taking into account his or her wishes.

In-family adoption (“relative adoption”)

- 32 In relation to in-family adoption, the SC:
- a recalled that in-family adoptions fall within the scope of the Convention;
 - b recalled the need to respect the safeguards of the Convention, in particular to counsel and prepare the prospective adoptive parents;
 - c recognised that the matching process might be adapted to the specific features of in -family adoptions;
 - d recommended that the motivations of all parties should be examined to determine whether the child is genuinely in need of adoption;
 - e recognised that it is necessary to undertake an individualised assessment of each child's situation and it should not be automatically assumed that either an in-country or in-family placement is in a child's best interests.

Specific issues of procedure

- 33 The SC took note of the Study undertaken by Sweden entitled, “Commission Concerning Bilateral Agreements on Inter-country Adoption Report to the Government”.
- 34 The SC requested that the Permanent Bureau monitor the practice relating to agreements concluded under Article 39(2) of the Convention and other arrangements established between Contracting States on matters of procedure, co-operation or administration. To that effect, it encouraged Contracting States to send to the Permanent Bureau examples of any such agreements or arrangements.
- 35 The SC noted the risk that the multiplication of bilateral agreements with non-Contracting States could deter these non-Contracting States from becoming party to the Convention.

- 36 In relation to Article 23 of the Convention, the SC emphasised the importance of:
- a clearly designating the authorities competent to issue Article 23 certificates and keeping this information updated;
 - b automatically issuing such certificates following an adoption decision made in accordance with the Convention wherever possible;
 - c providing adoptive parents with the original of the Article 23 certificate without delay and, at the same time, sending a copy of the certificate to the Central Authorities of both Contracting States;
 - d using the "Model Form for the Certificate of Conformity of Intercountry Adoption" to promote consistent practice; and
 - e where an Article 23 certificate is incomplete or defective, co-operating to regularise the situation.
- 37 The SC reminded Contracting States that no additional procedure may be imposed as a condition of recognition.

Modern technologies, including social media

- 38 The SC recognized that the use of modern technologies:
- a has improved the intercountry adoption process, in particular by making communication easier amongst the various actors and making the process more expeditious. It recommended that Contracting States consider the possibility of scanning and sending documents by e-mail, transferring the paper documents by conventional methods thereafter if required;
 - b may be a helpful tool in the matching process (*e.g.*, the use of short videos of children); and
 - c may facilitate contact between the prospective adoptive parents and the child after the matching, noting the need for appropriate support.

- 39 The SC acknowledged the need to raise awareness of the risks associated with the use of modern technologies, including social media, and encouraged the training of professionals and the education of families.
- 40 The SC expressed concern regarding the disclosure of sensitive personal data through the use of modern technologies, particularly concerning children. It recommended that Contracting States take appropriate measures to protect personal data and reminded them of Article 31 of the Convention in this regard.

The financial aspects of intercountry adoption

- 41 The SC welcomed the tools developed thus far by the Experts' Group on the Financial Aspects of Intercountry Adoption (the Harmonised Terminology, the Note, the Summary List of Good Practices and the Tables on Costs) and recognised their practical value.
- 42 The SC urged Contracting States to:
 - a complete the Tables on Costs as soon as possible;
 - b publish the Tables on the website of their Central Authority; and
 - c provide the Permanent Bureau with the link for publication on the Hague Conference website.

In addition or alternatively, if a Contracting State so wishes, it may ask the Permanent Bureau to publish its Tables in full on the Hague Conference website.

- 43 The SC recommended that the Experts' Group on the Financial Aspects of Intercountry Adoption continue its work in relation to the "Draft Survey for Adoptive Parents on the Financial Aspects of Intercountry Adoption".

Preventing and addressing illicit practices

- 44 The SC welcomed the frank and open dialogue which took place on preventing and addressing illicit practices, and the sharing of good practices in this regard. It noted that co-operation and coordination between States is key to preventing illicit practices.
- 45 The SC recommended that the Working Group on Preventing and Addressing Illicit Practices resume its work. It noted that the United States of America has offered to co-ordinate the work of the Group and invited States to notify the Permanent Bureau of their interest in joining the Group.
- 46 Recalling 2010 SC C&R Nos 22 and 23 and the fact that private and independent adoptions are not compatible with the Convention, the SC encouraged Contracting States to move towards the elimination of private and independent adoptions.
- 47 The SC recalled paragraph 20 above, and noted the relevance of the 1996 Hague Convention to enhancing co-operation to protect children, including trafficked children.

The provision of information, including statistics

- 48 All Contracting States that have not yet completed the revised (2014) version of the Country Profile (for receiving States and/or States of origin, as appropriate) are strongly encouraged to do so as soon as possible.
- 49 On an annual basis, Contracting States are urged to:
 - a submit their intercountry adoption statistics to the Permanent Bureau, using the forms on the website of the Hague Conference;

- b ensure that their Country Profile remains up to date and accurate and, where required, submit a revised version to the Permanent Bureau. The Permanent Bureau will continue to send an annual reminder to Contracting States in this regard.

Declaration submitted by the delegations of Africa present at the meeting

- 50 The SC warmly welcomed the “Declaration on the need to develop a harmonised framework for the adoption of children in Africa” submitted by the delegations of Africa present at the SC meeting. The Declaration highlights the challenges that States in Africa face in relation to intercountry adoption, affirms the need for a harmonised framework for brainstorming, taking action, sharing experiences and conducting follow-up work on the adoption process in Africa and encourages the pursuit of work in this regard. It also emphasises the benefit that States in Africa have derived from the support of Contracting States to the Convention and other technical and financial partners.

Ceremony for new Contracting States and Members

- 51 Furthermore, the SC witnessed and welcomed:
- a the deposit of the instrument of acceptance of the Statute of the Hague Conference by the Principality of Andorra which thus became the 80th Member of the Hague Conference;
 - b the deposit by Zambia and Côte d'Ivoire of their respective instruments of accession to the Convention, which now counts 95 Contracting States;
 - c the European Union's signature and deposit of the instrument of approval of the Hague Convention of 30 June 2005 on Choice of Court Agreements which thus will enter into force on 1 October 2015; and
 - d the signature by Argentina of the 1996 Hague Convention.

9 Intercountry Adoption Section on the Hague Conference website

www.hcch.net

The website contains the latest information about the 1993 Hague Convention, such as:

<ul style="list-style-type: none">➤ Text of the Convention➤ Contracting States➤ Central and other Authorities➤ Explanatory documents➤ Recommended Model Forms➤ Guides to Good Practice➤ Country profiles➤ Special Commissions➤ Questionnaires and responses	<ul style="list-style-type: none">➤ Expert Group on the Financial Aspects of Intercountry Adoption➤ Working Group to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases➤ The Intercountry Adoption Technical Assistance Programme (ICATAP)➤ Seminars➤ Statistics➤ Related documents and links
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The World Organisation for Cross-border Co-operation in Civil and Commercial Matters

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- Pakistan Hague Convention Enters into Force... 02-Mar-2017
- Cuba joins the 1996 Hague Child Protection Convention... 20-Feb-2017
- Belgium signs the 2000 Hague Protection of Adults Convention... 08-Feb-2017
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- Securities
- Trusts

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- Rehabilitation outside marriage
- Family agreements involving children
- Judgments
- Parentage/Surrogacy
- Protection Orders
- Protection of assets
- Pooh Convention Projects

- Upcoming meetings
- Special Commission on the Judgments Project
- Council on General Affairs and Policy

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ADOPTION SECTION

Home - Instruments - Conventions, Protocols and Principles - Specialised Sections

The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) protects children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. This Convention, which operates through a system of national Central Authorities, reinforces the UN Convention on the Rights of the Child (Art. 21) and seeks to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights. It also seeks to prevent the abduction, the sale of, or traffic in children. For further information, see the Outline of the Convention or the more detailed "Information Brochure" on the Convention.

Please note that the Permanent Bureau of the Hague Conference has no mandate to assist in individual adoption cases. If you have a question relating to intercountry adoption and your country is a Party to the 1993 Adoption Convention, please contact the Central Authority designated by your country.

Text of the Convention Translations Central and other Authorities	Contracting States (status table) States which participated in the XVIII th Session (see Art. 48(1))
Explanatory documents	<ul style="list-style-type: none"> Explanatory Report; Information Brochure Preparatory work (History of the Convention) Hague Recommendation on Refugee Children (adopted on 21 October 1994)
Information for new Contracting States	<ul style="list-style-type: none"> Checklist of notifications and declarations to be made by States Parties Checklist of questions for new Contracting States
Recommended Model Forms	<ul style="list-style-type: none"> Statement of consent to the adoption Certificate of conformity of intercountry adoption Medical Report on the Child Supplementary Medical Report Form - very young children
Guides to Good Practice	<ul style="list-style-type: none"> The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice No 1 Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2

Specialised Section

- Full text
- Status table
- Authorities
- Country Profiles
- Special Commission meetings
- Experts Groups
- Working Groups
- Questionnaires & Responses
- Seminars
- HCCH Publications
- Translations
- Statistics
- Bibliography
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- Latest updates

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