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CONCLUSIONS ET RECOMMANDATIONS ET RAPPORT DE LA COMMISSION SPÉCIALE SUR LE FONCTIONNEMENT PRATIQUE DE LA CONVENTION DE LA HAYE DE 1993 SUR L'ADOPTION INTERNATIONALE (17 – 25 JUIN 2010)

établies par le Bureau Permanent

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CONCLUSIONS AND RECOMMENDATIONS AND REPORT OF THE SPECIAL COMMISSION ON THE PRACTICAL OPERATION OF THE 1993 HAGUE INTERCOUNTRY ADOPTION CONVENTION (17-25 JUNE 2010)

drawn up by the Permanent Bureau

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TABLE OF CONTENTS

CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE SPECIAL COMMISSION 5

REPORT OF THE THIRD MEETING 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 11

AGENDA 28

LIST OF PARTICIPANTS 37

CONCLUSIONS ET RECOMMANDATIONS / CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE SPECIAL COMMISSION

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 co-operate 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.

RAPPORT DE LA TROISIÈME RÉUNION 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 (17 AU 25 JUIN 2010)

établi par Jennifer Degeling, Secrétaire au Bureau Permanent
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REPORT OF THE THIRD MEETING 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 (17-25 JUNE 2010)

drawn up by Jennifer Degeling, Secretary at the Permanent Bureau
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REPORT OF THE THIRD MEETING 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

INTRODUCTION

Terms of reference, chairmanship and representation

1. The Third Meeting 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* (1993 Hague Convention) took place in The Hague from 17 to 25 June 2010, pursuant to the Secretary General's powers under Article 42 to convene the meeting to review the practical operation of the Convention. The proposal to convene the meeting was endorsed by the Council on General Affairs and Policy of the Conference held from 7 to 9 April 2010.

2. The meeting was opened by Mr A.V.M. Struycken, President of the Netherlands Standing Government Committee on Private International Law. He proposed as Chair Ms Marie Riendeau, expert from Canada, who was elected by consensus. The Special Commission elected five Vice-Chairs: Mr Stephansen (Norway), Ms Sloth-Neilson (South Africa), Ms Morales Ibáñez (Chile), Ms Abejo (Philippines) and Ms Bond (United States of America).

3. It was the largest meeting ever organised by the Hague Conference on Private International Law. Over 250 experts from 86 States and 13 organisations participated in the Special Commission. In accordance with the established practice, invitations to the meeting were extended to Member States of the Hague Conference, Contracting States to the 1993 Hague Convention, non-Member States which participated in the Convention negotiations, as well as certain non-Member States which have demonstrated a keen interest in the Convention. Of the 86 States represented at the Special Commission, 66 were Parties to the 1993 Hague Convention (19 of which were not Members of the Hague Conference), and seven were Members of the Hague Conference but not Party to the 1993 Hague Convention. A further 13 States that were neither Members of the Hague Conference on Private International Law nor States Parties to the 1993 Hague Convention were represented as observers.

   - Ten Contracting States participated for the first time: Armenia, Cape Verde, Georgia, Guinea, Latvia, Mali, Mauritius, Peru, San Marino and Togo.
   - Nine States participated as observers for the first time: Angola, the Democratic Republic of Congo, Ghana, Ivory Coast, Malawi, Namibia, Nicaragua, Swaziland and Uganda.
   - Two intergovernmental organisations attended for the first time: the United Nations Committee on the Rights of the Child and the International Commission on Civil Status.
   - Two international non-governmental organisations also attended for the first time: the Asia Pacific International Adoption Forum and the *Asociacion Americana de Derecho International Privado.*

4. For the first time, four independent experts were invited to speak at the Special Commission on various items on the agenda. These experts were Mr Joseph Aguettant, Dr Benyam Mezmur, Professor Peter Selman and Professor David Smolin.

5. Two important international organisations were represented at a very high level: UNICEF was represented by its Deputy Executive Director, Mr Saad Houry; and the Committee on the Rights of the Child was represented by its Chair, Ms Yanghee Lee.

Preliminary Documents and agenda

6. Five Preliminary Documents drawn up by the Permanent Bureau were sent to participants prior to the meeting of the Special Commission:

   - a "Questionnaire on Accredited Bodies in the Framework of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption*", distributed in August 2009 (Prel. Doc. No 1);
   - the draft Guide to Good Practice No 2, "Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice", distributed in May 2010 (Prel. Doc. No 2);
   - a "Country Profile" drawn up by the Permanent Bureau distributed in March 2010 (Prel. Doc. No 3). This Preliminary Document is divided into two parts: one for the attention of States of origin (3 A) and the other for receiving States (3 B);
   - a "Questionnaire on the abduction, sale of, or traffic in children and some aspects of the practical operation of the 1993 Hague Convention", distributed in April 2010 (Prel. Doc. No 4);
   - "Annual Adoption Statistics Forms", distributed in April 2010 (Prel. Doc. No 5).

7. The agenda was divided in three distinct parts. Exceptionally, the first day was devoted to the abduction, sale of, or traffic in children in the context of intercountry adoption, the aim of which was to discuss abuses in adoption procedures which lead to illicit procurement of children for adoption purposes. The second and third days were devoted to reviewing the draft Guide to Good Practice No 2 on Accreditation and Adoption Accredited Bodies (Prel. Doc. No 2), with a view to achieving consensus on the main elements of the Guide to Good Practice No 2. From the fourth to the eighth day, the Special Commission reviewed issues relating to the practical operation of the Convention as well as its challenges. It was essential to discuss and review the practical operation of the Convention. The responses to the various Preliminary Documents showed that some issues such as essential safeguards, co-operation, issues concerning Convention procedures and post-adoption services, required a more detailed analysis during the Special Commission.

8. The Special Commission ended with the consideration and approval of recommendations for the future (Annex 1).

Brief history of the Convention

9. In his opening remarks, the President of the Netherlands Standing Government Committee on Private International Law gave experts a brief history of the Convention. He also noted that this was the fourth meeting (but the third on the practical operation of the Convention), and stressed the importance of and the interest in adoption.

10. Five years after the start of negotiations, the 1993 Hague Convention entered into force on 1 May 1995. What is remarkable is that it has, from the beginning, attracted States of origin and receiving States in equal numbers. This is a convincing indication that the 1993 Hague Convention has managed to strike the right balance between the concerns of the States of origin and the receiving States – a prerequisite for the confidence needed for its successful operation.

11. The previous Special Commissions on the practical operation of the Convention were held in November / December 2000 (41 States Parties) and in September 2005 (67 States Parties).[1] By June 2010, there were 81 States Parties to the 1993 Hague Convention.

Importance of the Convention

12. During his speech, Mr Saad Houry, UNICEF Deputy Executive Director, was keen to stress the importance of the 1993 Hague Convention. He noted that the Convention is the major instrument in the field of intercountry adoptions, which are currently subject to numerous risks. He underlined that the Convention was not only important for adopted children, biological parents and adoptive parents but also for States, given that its implementation enacted standards and provided rules to prevent unethical practices, such as the illicit procurement of children, and to apply the principles of the best interest of the child and subsidiarity, thus representing a safety net for both States of origin and receiving States.

CURRENT STATUS OF THE CONVENTION

13. At the commencement of the Special Commission, the 1993 Hague Convention had 51 ratifications, 30 accessions and three signatures.

14. With Kazakhstan's accession on 15 July 2010, Ireland's ratification on 28 July 2010, and Vietnam's signature on 7 December 2010, the Convention now has 83 Contracting States and four signatures. The most recent signature was by Haiti on 2 March 2011.

15. A number of States which attended expect to join the Convention in the near future, for example, Ghana, Namibia, Swaziland and Uganda. Many States also reported on their efforts to implement the Convention.

GUIDE TO GOOD PRACTICE ON ACCREDITATION AND ACCREDITED BODIES

16. The Guide to Good Practice No 2, "Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice" is a project of post-Convention support. The Convention requires that all bodies or agencies who wish to be involved in intercountry adoption be accredited and supervised by a competent authority (see Arts 6-13). Although the Convention imposes basic standards, in practice the lack of standards and the divergent practices on accreditation and supervision of accredited bodies are not conducive to the proper implementation of the Convention and do not always serve the best interests of the child. Many concerns had been expressed by States and international organisations, and following the discussions at the 2005 Special Commission, the majority of stakeholders in international adoption expressed their wish for a common and uniform approach.[2] The Guide to Good Practice No 1 on the implementation and operation of the Convention gave only a general explanation of the rules concerning accreditation and accredited bodies. A more detailed analysis was needed for this subject. With this objective in mind, and following the responses of the States to the questionnaire on accreditation (Prel. Doc. No 1), the Permanent Bureau drew up a first draft of the Guide.

[1] The First meeting of the Special Commission was held from 17 to 21 October 1994.
[2] See Recommendation No 4.

17. One key element of intercountry adoption is the role the accredited bodies play as intermediaries between the prospective adoptive parents, the various authorities of the receiving States and States of origin, and the children to be adopted. This Guide recognises and highlights the fundamental role played by accredited bodies. Moreover, given that accreditation practices differ widely and that the understanding of the Convention's obligations and terminology vary greatly, it is essential to reach a common or shared understanding of this aspect of intercountry adoption.

18. The Special Commission gave its general endorsement to the draft Guide to Good Practice and agreed upon certain revisions to be made by the Permanent Bureau in consultation with the Chair and the Vice-Chairs of the Special Commission and the Working Group which assisted the Permanent Bureau in preparing the draft Guide. In particular, revisions will focus on Chapter 9 (The cost of intercountry adoption: transparency and accountability of accredited bodies) and 10 (Operational challenges in States of origin) of the draft Guide. After further consultation with States, the final version will then be prepared for publication by the Permanent Bureau.[3]

19. Following the discussions on Chapter 9 of the Guide on costs and for the sake of transparency, the Special Commission recommended that the Permanent Bureau examine the feasibility of posting the costs associated with intercountry adoption for each Contracting State on the Hague Conference website.[4]

ABDUCTION, SALE OF, AND TRAFFIC IN CHILDREN

20. Recalling that one of the objects of the 1993 Hague Convention is to prevent the abduction, sale of, and traffic in children,[5] the Special Commission meeting of June 2010 allowed for a full day of presentations and discussions to consider the extent of this problem at the present time. This special day was made possible by a generous grant from the Government of Australia.

21. The analysis of the States' responses to the questionnaire on the subject (Prel. Doc. No 4) identified good practices and recommendations but also some serious problems. It was noted that the majority of States which responded to this questionnaire were European States, thus the responses and the analysis thereof are not necessarily representative of the global situation. Among the serious problems when trafficking is suspected, the most notable were the lack of communication between States, the lack of resources in States of origin to deal with problem cases and the difficulty of obtaining clear and informed consent. Nevertheless, good practices were identified, such as the prohibition on private adoptions, the implementation of measures to obtain valid consent and training of personnel.

22. During this day, two independent experts spoke on the subject:

- Professor David Smolin gave a global perspective on trafficking.[6] First, he maintained that traffic in children was widespread due to the inadequate implementation of the Convention, stressing that all receiving States were involved in one way or another. Then, he identified three ways in which children could be adopted illegally, while noting that in this situation, both poor children and poor families were exploited. He also described the pressure exerted by receiving States, which could lead to circumventing the principles of the Convention. He then made several recommendations to ensure a better

[3] See Recommendation No 3.
[4] See Recommendation No 4.
[5] Art. 1.
[6] See Info. Doc. No 1, available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section".

implementation of the Convention including, *inter alia*, the need to establish strict limits on fees and donations as well as the recognition by receiving States that they cannot be satisfied simply to outsource their own obligations, such as that of ensuring the adoptability of the child. He emphasised the need for intercountry adoption agencies to be held accountable when child laundering and other malpractices occur, especially when there was a lack of supervision of their agents in States of origin. Finally, he concluded by stating that the 1993 Hague Convention did not fully address all problems of abduction, sale and trafficking and that it therefore needed to be applied in conjunction with other international standards.

- Dr Benyam Mezmur gave an African perspective on child trafficking.[7] He explained that although the *African Charter on the Rights and Welfare of the Child* set up a regional framework to combat child trafficking, many African States have outdated national laws that are not suited to the realities of the 21st Century, such as child trafficking and the different cultural definitions of consent. He also described a number of good examples from recent legislation such as the obligation to counsel the biological parents and the children before the adoption, to prohibit contact between the children and the prospective adoptive parents prior to the matching process, and to limit the number of agencies. Finally, he made several recommendations including the need for legal reform, the importance of co-operation between States to combat child trafficking and the need to consider the best interests of the child as paramount.

23. Following these presentations and recommendations, many States responded by sharing their experiences. In general, it was concluded that co-operation at all levels was one of the most important elements in the fight against child trafficking.

24. As part of the special day, a film on adoption in Nepal was shown. Prior to the viewing, Mr Aguettant, Terres des hommes Nepal, emphasised that the practices shown in the film were not limited to Nepal. This film showed the effects that abuses in intercountry adoption could have on children, as well as on adoptive and biological parents. Mr Aguettant considered that such abuses could be eliminated by providing better support to biological parents and their community, an approach which is generally ignored by policy makers.

25. Finally, the International Social Service provided an overview of its research on the grey zones of intercountry adoption.[8] The premise of this study was to recognise that the majority of adoptions are still non-Convention adoptions. Furthermore if the abuses usually occur within the internal procedures of a State which is not governed by the Convention, they may also affect contracting States where implementation measures of the Convention are insufficient. Moreover, the problems that emerged in this study are at different levels:

- difficulties in applying the concept of "trafficking" in intercountry adoption;

[7] See Info. Doc. No 2, available on the website of the Hague Conference, *ibid*.
[8] See Info. Doc. No 6, available on the website of the Hague Conference, *ibid*.

- the insufficient connection between criminal law and adoption law in combating malpractice;
- the lack of a legal framework protecting biological parents when consenting to the adoption;
- the lack of a common position amongst all States regarding intercountry adoption in the wake of humanitarian crises;
- the difficulties posed by child laundering;
- the adverse effects of competition among receiving States and accredited bodies on adoption practices.

In conclusion, Mr Hervé Boéchat (Representative of the International Social Service) commended the progress achieved through the Convention, and acknowledged that work still needed to be done to eliminate abuses. He suggested that this would only be possible by identifying and addressing the needs of different players in intercountry adoption and by promoting greater co-operation and coordination within and amongst States.

26. Following these different presentations, the States discussed how to eliminate abuses. The Special Commission agreed on certain elements of a well-regulated system to eliminate abuses and adopted a recommendation in this regard.[9]

27. In addition, two separate proposals were made, one by Australia and the other by the Netherlands. Australia proposed establishing a working group to develop recommendations for guiding principles and good practice in handling abuses in the context of intercountry adoption (Work. Doc. No 5). The establishment of the working group was supported by the Special Commission.[10] The Netherlands proposed the creation of an international monitoring or supervising body for the Convention but this was not supported.

APPLYING THE SAFEGUARDS OF THE CONVENTION

28. The establishment of a system of safeguards is the first object of the Convention.[11] The meeting focused on some of the procedures required to maintain a comprehensive system of safeguards, in particular: applying the principle of subsidiarity,[12] establishing whether a child is genuinely adoptable,[13] obtaining informed consents to the adoption,[14] careful selection and preparation of prospective adoptive parents,[15] review of documents and procedures before agreements are given under Article 17, and control of the financial aspects of intercountry adoption.[16] Some of these procedures need to be applied in the State of origin, and some in the receiving State. Recommendation No 1 mentioned above refers to these safeguards as some of the essential features of a well-regulated adoption system.

Subsidiarity

29. The subsidiarity principle is a cornerstone of the 1989 *United Nations Convention on the Rights of the Child*[17] and the 1993 Hague Convention. It requires that States Parties to the Convention recognise that a child should be raised by his or her

[9] See Recommendation No 1.
[10] See Recommendation No 2.
[11] See Art. 1.
[12] Art. 4 *b)*.
[13] Art. 4 *a)*.
[14] Art. 4 *c)* and *d).*
[15] Arts 5 *a)*, 5 *b)*, 9 *c)*, 15(1), 16(1) *d)*, 17 *d)*.
[16] Arts 8, 11 and 32.
[17] See Art. 21 of the *United Nations Convention on the Rights of the Child*

biological family or extended family whenever possible. If that is not possible, other forms of permanent family care in the State 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.

30. Debates during the Special Commission highlighted different issues including the possibility of having separate authorities responsible for examining alternative care options for the child and for adoption. Additionally, practices encouraging the birth family and community to find local solutions, better co-ordination between national authorities, and attentiveness to the needs of the child with respect to time (a child's perception of time differs from that of an adult) are important in applying the principle of subsidiarity.

31. The best interest of the child is the overriding principle of the Convention. It should be the ultimate safeguard for the person making the final adoption decision. That person has the possibility to refuse any adoption that is not in a child's best interests, including an adoption in which the essential safeguards were not followed.

Establishing whether a child is adoptable

32. During the first day of the Special Commission, the issue of possible abuses when determining the adoptability was raised and the Special Commission recommended that procedures be transparent and independent in order to avoid these abuses.[18]

33. The establishment of criteria for adoptability and of procedural requirements to be respected will promote a transparent process. The Special Commission noted that despite the fact that a very small number of countries applied detailed criteria, good practices for determining the adoptability could be found in the Country Profiles completed by Contracting States.[19] In addition, several experts emphasised the importance of involving the child in the decision and the shared responsibility of States in this matter.

34. In order to assure an independent process and avoid conflicts of interest, several States decided that the declaration of adoptability should be made by an independent and professional body, in most cases, a court.

Consent to the adoption

35. Obtaining and verifying consent is an additional safeguard under the 1993 Hague Convention against the abduction, sale of, and traffic in children. The internal procedure of States can be found in the Country Profiles completed by the Contracting States.[20] Moreover, some concerns were raised by some receiving States in their responses to Prel. Doc. No 4 in respect of procedures in certain States of origin, and some receiving States have taken active measures against abuse.

36. Obtaining consent was widely discussed by all experts present during the Special Commission. The majority of experts agreed on the following:

[18] See Recommendation No 2 b).
[19] See Prel. Doc. No 3 B – Country Profile (State of origin), Question No 2.1.
[20] See Prel. Doc. No 3 – Country Profile, Question No 2.3.

- the birth mother should not be able to consent to adoption until the expiration of a period of time beginning at the birth of the child. In addition, an expert referred to the *2008 European Convention on the Adoption of Children (Revised)* which prescribes a period of six weeks and suggested this period as a minimum standard for intercountry adoption within the States Parties to the instrument;
- the need to obtain the free and informed consent from the birth mother. Better counselling is essential to achieve this aim. However, several experts noted the diversity in the interpretation of the concept of free and informed consent;
- harmonisation of the concept of consent can be achieved by establishing common minimum standards. Without a common approach or common minimum standards, recognition of adoption decisions might be refused for reasons of public policy;[21]
- conflicts can potentially occur when third-party consent is required due to the absence or legal incapacity of the birth mother. The experts focused their discussions on situations where the mother is a minor and her parents or guardians are asked to give their consent. One expert suggested addressing such conflicts by reducing the age of consent;
- the need for adequate training for those involved in the process of obtaining consent;
- the importance of documenting consent and its circumstances in order to allow competent authorities to verify its validity.

Selection, counselling and preparation of the prospective adoptive parents

37. The Permanent Bureau highlighted the importance for receiving States to select adoptive parents who meet the legal requirements of the State of origin and who also have the capacity to meet the needs of adoptable children in the State of origin. The receiving States must also manage the expectations of prospective adoptive parents. Given the importance of this subject, it was suggested that the development of a third Guide to Good Practice may be a possibility.[22]

38. During the discussions, many experts noted that in practice it is sometimes difficult to meet the requirements of the States of origin and managing the expectations of the prospective adoptive parents. For example, when the adoptive parents have to wait several years after their initial evaluation and approval to adopt before they are matched or able to bring the child to the receiving State. In this case, the Special Commission agreed that it is important that States of origin and receiving States share updated information during this "waiting period". Some States of origin recommended to receiving States to ensure that the reports not be older than two years and to provide the States of origin with any changes in the personal information of the prospective adoptive parents. For their part, States of origin should share information about adoptable children with receiving States, consisting mainly of characteristics and needs of children to adopt, so that this information can contribute to the preparation of parents.[23]

[21] Art. 24.
[22] See Recommendation No 10.
[23] See Recommendation No 8.

39. Country specific preparation,[24] raising public awareness on intercountry adoption and training of professionals working with prospective adoptive parents, were addressed, providing some States with the opportunity to share their good practices.

40. The Latin American Central Authorities of Chile, Colombia, the Dominican Republic, Ecuador, Guatemala, Mexico and Uruguay, made several proposals. Some of these proposals are reflected in the Recommendations of the Special Commission.[25]

Agreements given under Article 17

41. The Permanent Bureau recalled that the agreements given under Article 17 are an important procedural safeguard. They are essential steps for the future issuing Article 23 certificate of conformity.

CO-OPERATION ISSUES

Co-operation, communication and networking between Central Authorities

42. The Special Commission discussed the importance of co-operation between States of origin and receiving States, highlighting issues such as improving the exchange of information, co-operation to achieve good practices especially with respect to dealing with pressure on States of origin from receiving States, and the need to break the link between co-operation projects and intercountry adoption.

43. The Special Commission agreed on the need for co-operation through various channels, and on the value of reversing the flow of files,[26] particularly in cases involving special needs children. The Special Commission also stressed the importance of post-adoption reports and specialist adoption services to help reintegrate children into families. As for "failed" adoptions, the Special Commission noted the need to define the term, understand its causes and share information.

Intercountry adoption in the context of globalisation and international mobility

44. The Deputy Secretary General recalled the importance of co-operation between States and stressed that the 1993 Hague Convention was sometimes not applied in relevant cases. Article 2 of the Convention defines its scope, and the relevance of habitual residence of the parties.[27] There are two main categories of intercountry adoptions to which the Convention should be applied and often is not: "intra-family" or "relative" adoptions; and adoptions by persons who are nationals of the State of origin but habitual residents in another Contracting State.

45. There are also cases of adoption by persons who are temporarily residents in a State of origin which are treated as national adoptions when they should be intercountry adoptions. Some prospective adoptive parents may attempt to obtain a national adoption in a State of origin when they have not been approved to adopt by their own State.

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[24] See Recommendation No 9.
[25] See Work. Doc. No 1
[26] "Reversing the flow of files" means that the State of origin initiates the search for adoptive parents in a receiving State.
[27] Art. 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."

46. The responses in Prel. Doc. No 4 and the experts' contributions highlighted several difficult cases, for example, cases where the prospective adoptive parents made a valid application but changed their place of residence during the adoption procedure; adoption by persons who are habitually resident in, but not nationals of, the State of origin (and national adoption by foreigners is not permitted); adoption by persons who are residents in, but not nationals of, the receiving State, and the nationality of the receiving State is a requirement to adopt; adoption by persons who are nationals of a third State (neither the State of origin nor the receiving State). A recommendation was made concerning cases where habitual residence is uncertain.[28] Failure to apply Convention procedures and safeguards to cases coming within the scope of the Convention carries risks for the child and the biological family. For the prospective adoptive parents, the practical and legal problems are also important as some receiving States will not permit the child to enter the country because the Convention procedures were not followed.

Co-operation (development aid) projects: setting the limits of ethical activity

47. The subject of development aid was discussed during the review of Chapter 12 of the draft Guide to Good Practice No 2. The Special Commission noted that a clear separation between co-operation (development aid) projects and intercountry adoption is difficult but still emphasised the necessity of establishing it.[29] It nevertheless stressed the need to monitor humanitarian projects, ensuring their transparency and independence from intercountry adoptions.

ISSUES CONCERNING CONVENTION PROCEDURES

Certificate of conformity under Article 23

48. A number of procedural problems were discussed by the Special Commission. The Article 23 certificate must be issued to allow automatic recognition of adoptions made in accordance with the Convention. However, some Contracting States have not designated an authority pursuant to Article 23(2) of the 1993 Hague Convention to issue the certificate;[30] sometimes an Article 23 certificate is difficult or impossible to obtain; some certificates are not in conformity with the Convention, and are incomplete or incorrect; Article 23 certificates have been issued for adoptions which were not made in accordance with the Convention; in some States the legislation does not refer to an Article 23 certificate and no certificate is issued.

49. The Special Commission emphasised the obligatory nature of issuing an Article 23 certificate, and the importance of all Contracting States fulfilling this obligation in order to allow the adoption to be completed and to guarantee its automatic recognition.[31] It also recalled the importance of co-operation between States when the certificate is incomplete or incorrect.[32]

[28] See Recommendation No 13.
[29] See Recommendation No 14.
[30] See Recommendation No 15.
[31] See Recommendation No 16.
[32] See Recommendation No 17.

50. Finally, some experts wondered which authority was competent to issue the certificate of conformity under Article 23. The Convention speaking only of authority, the Permanent Bureau stated that it was usually a "governmental authority".

Recognition and effects of adoption (Arts 23 and 24)

51. During the Special Commission, several questions were raised on issues concerning recognition and effects of adoption. Faced with divergent practices regarding recognition, experts were reminded that the simplified system of recognition by operation of law under Article 23 fulfils one of the principal objects of the Convention.[33] Contracting States are not permitted to add steps (such as registering) as a condition of recognition.[34] Although a system of registering adoption orders made abroad may have practical advantages, it cannot be used as a condition for recognition.

52. The question of not issuing a certificate, or issuing a defective certificate, was raised by many experts. In this regard, the Permanent Bureau explained that when flawed procedures leading to the issue of a certificate under Article 23 are noticed, the Central Authorities must co-operate and assist in guaranteeing that the situation will be rectified where possible. However, when the certificate is issued, the refusal to recognise the adoption is possible only if it is manifestly contrary to the public policy of the State recognising the adoption, taking into account the best interests of the child. It was stressed that non-recognition is very rarely in the best interests of the child but may be justified in cases where human rights violations occur.

53. The non-recognition of an adoption because the Article 23 certificate is not accepted has a very significant negative impact on the status and nationality of the child. Some experts agreed that co-operation between authorities of both States is essential and that information about the problem must be shared as soon as possible. Furthermore, they highlighted the importance of equality before the law and the principle of non-discrimination for adopted children as well as for biological children. An expert referred particularly to the first proposal in Work. Doc. No 1 from the Latin American States which recommended that the receiving States guarantee the child's citizenship. Some experts also stated that in cases of failed adoption, the child must benefit from child protection services in the receiving State.

54. Regarding the issue of nationality, the Special Commission reaffirmed that nationality should be granted automatically to the adopted child, and called on the Central Authorities to co-operate to achieve this objective.[35]

Private and independent adoptions

55. This topic has already been dealt with many times and in particular in the Guide to Good Practice No 1. However such practices persist and encourage abuses. The Special Commission emphasised that these adoptions are not compatible with the Convention.[36]

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[33] See Art. 1 *c).*
[34] See Recommendation No 18.
[35] See Recommendations Nos 19-21.
[36] See Recommendations Nos 22 and 23.

56. Many experts agreed that private and independent adoptions should be banned.[37] In addition, a UNICEF representative highlighted the necessity to ban or at least limit independent adoptions to prevent the illicit procurement of children. To justify his statement, the expert provided an example which showed a significant drop in adoptions of children younger than three months where independent adoptions were restricted, thus demonstrating greater respect for the principle of subsidiarity.

57. Some national laws still allow these adoptions and it is the responsibility of States of origin and receiving States to ban such adoptions whether in their legislation or in practice. Increased co-operation and awareness are very important. When private or independent adoptions have occurred, people turn to the authorities and present the adoption as a *fait accompli*. Several good practices have been put forward to manage this situation. For example, some Central Authorities have strict verification procedures to ensure that the requirements of the Convention have been applied, and others require a subsequent "home study". In some cases the child is refused permission to enter the receiving country.

58. For these reasons, the Special Commission recommended that training be provided on abuses and difficulties linked to private and independent adoptions for all persons working in the field of intercountry adoption.[38]

International surrogacy and intercountry adoption: connection and concerns

59. In light of the States' responses in Preliminary Document No 4, international surrogacy arrangements raised a wide variety of issues. International surrogacy is an aspect of the international mobility issue. In addition, surrogacy can easily be arranged via the Internet. This is now becoming a problem because it is being used as an alternative to intercountry adoption, but without the same safeguards. Intending parents can therefore avoid having to get authorisation to adopt and also avoid long waiting lists. On the other hand, there have been attempts to use the Convention to resolve problems arising from surrogacy arrangements.

60. For several reasons, the 1993 Hague Convention is not the appropriate instrument to address problems with surrogacy: many of the safeguards of the Convention procedure cannot be applied; the surrogacy arrangements are usually private contracts where the birth mother is acting for financial remuneration; the intending parents are not assessed in any way. A serious concern is that there are often conflicting rules about the status of the child which may render him stateless: the State of the intending parents may regard the child as the legal child of the birth mother, while the State where the child is born may consider the child as the legal child of the intending parents.[39]

61. The Special Commission recommended that the Permanent Bureau carry out further research in this area.[40]

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[37] A Finnish justice ministry working group proposed that the government should propose legislation to ban independent intercountry adoptions. Document available at < http://www.childout.org/archivio/241-finland-set-to-ban-independent-adoptions.html>, last consulted on 15 March 2011.
[38] See Recommendation No 24.
[39] See Recommendation No 25.
[40] See Recommendation No 26.

LEARNING FROM EXPERIENCE

Post-adoption issues

62. Given that the subject of post-adoption issues had been widely discussed during previous Special Commissions and during consideration of the draft Guide to Good Practice, the Special Commission focussed on the perspective of adult adoptees and biological parents. During the discussions, the importance of involving adult adoptees in the intercountry adoption process, both in the field and in policy development, was highlighted by the representatives of international associations of adoptees. Indeed, with their unique perspective on the issues surrounding adoption, adult adoptees are able to help in the preparation of prospective adoptive parents and to help adopted children find their identity.

63. Many experts stressed the importance for the adoptees to be able to maintain cultural and linguistic ties to their communities of origin. To this end, the need for systems to be put in place was emphasised. Efforts undertaken by several States were mentioned, such as birth country visits, and the establishment of centralised databases to facilitate subsequent access to relevant information about origins. Other areas in which improvements must be made, such as preserving records, were also discussed.[41]

64. The need to prepare both the adoptive parents and the biological parents for the possibility that the adopted child will want to research his/her origins was also discussed. The reunion between the adoptee and the biological family should also be subject to preparation and support. Several experts pointed out that some adoption agencies were actively involved in organising such reunions.[42]

65. Regarding post-adoption reports, the Special Commission encouraged States to respect the requirements of the States of origin, reaffirming Recommendation No 18 of 2005.[43]

Statistics

66. During the Special Commission, the importance and the relevance of the collection of statistics was illustrated by the presentation of an expert, Professor Peter Selman. This presentation identified the main receiving States (United States of America, Italy, France and Spain) in 2009 and the main States of origin (China, the Russian Federation, Guatemala and Ethiopia) in 2008. The statistical analysis also identified certain trends such as the decline in the number of intercountry adoptions since 2004 and the fact that most adoptions are still from States not Party to the Convention.

67. The Permanent Bureau informed the Special Commission of its role in the collection of statistical data and described in detail the use of standard forms and particularly the "Annual Adoption Statistics Forms" (Prel. Doc. No 5).[44] In addition, several challenges concerning centralised statistical data collection, particularly the inclusion of non-Party States and the limits of data comparison, were mentioned. Finally, four alternatives for future statistics collection were identified: maintain the

[41] See Recommendation No 28.
[42] See Recommendation No 29.
[43] See Recommendation No 27.
[44] See Recommendation No 30.

status quo and use the current forms, thus continuing to involve the Permanent Bureau; ask States to provide links to data they collect; use an electronic database; or end the involvement of the Permanent Bureau.[45] An information paper describing these options has been prepared for circulation to the experts.

Monitoring of the Convention

68. The Permanent Bureau recalled its role and noted that Special Commissions are an important aspect of monitoring and a great deal of information can be collected from State responses to questionnaires. It highlighted the fact that given the limited resources of the Permanent Bureau, co-operation with organisations such as UNICEF, International Social Service and Terre des hommes is indispensable. Further support from States to help with monitoring and technical assistance programs is thus requested.

Technical assistance programme and other training programmes

69. The Permanent Bureau presented information about its technical assistance programme, its contributions to legislative reforms and the training undertaken. The Permanent Bureau took the opportunity to thank some States and organisations for their generous support. In all programmes, co-operation was essential, particularly between the Central Authorities in the State of origin.[46] The Permanent Bureau noted that substantial assistance has been given to some States upon their request: Cambodia, Guatemala, Mexico, Nepal and Namibia. Shorter assistance missions have been made to a considerable number of other States. More and more training is required for all stakeholders in the adoption process, which in turn requires additional funding.

70. The Special Commission noted the important role played by the Permanent Bureau in providing technical assistance, and the benefits of horizontal co-operation (assistance to a State of origin by another), of co-ordinated approaches and sharing the expertise of adoption stakeholders such as accredited bodies, regional organisation and judges.[47]

71. The Special Commission recognised the importance of these programmes and their positive impact on the proper functioning of the Convention.[48]

Dealing with non-Convention countries (for example, States of origin): a co-ordinated approach by the Convention State and the role of bilateral agreements

72. Before the discussions on this subject began, the Permanent Bureau recalled the Recommendations of the 2000 and 2005 Special Commissions which required that States Parties shall, as far as possible, apply the basic principles of the Convention in their relations with non-Party States.[49] It provided several examples where co-ordinated approaches have been established and also discussed challenges and the basic rules of bilateral agreements. Finally, some good practices were mentioned for dealing with transition or "pipeline" cases when a non-contracting State become a party to the Convention.

73. Some experts were of the opinion that the bilateral agreements between Convention and non-Convention States were useful and underlined the importance

[45] See Recommendation No 31.
[46] See Recommendations Nos 33 and 34.
[47] See Recommendation No 32.
[48] See Recommendation No 35.
[49] See Recommendations Nos 36 and 37.

for States Parties to ensure they meet the basic principles and safeguards of the Convention, which are essential in their co-operation with non-Party States. However, this is not always the case in practice. The opportunity to address issues that are not covered by the Convention, to promote transparency of internal procedures and to participate in the preparation of prospective adoptive parents, are among the benefits of bilateral agreements, even between Contracting States. Some experts expressed their concern about agreements that were not always consistent with the Convention.

74. Some experts stressed the need for a common approach between the receiving States in their relations with States experiencing systemic problems. A UNICEF representative emphasised that disagreements between the receiving States on how to handle problematic situations in States of origin not Party to the Convention tended to show that some receiving States were perhaps not applying the basic principles of the Convention with those States as recommended in 2000 and 2005.

Response to disaster situations: a common approach

75. The earthquake in Haiti on 12 January 2010 caused the deaths of over 200,000 people. The loss of life is comparable to the Asian tsunami of 26 December 2004. In both situations there was interest, mainly from receiving States, in adopting children affected by these disasters. However, according to Professor Selman, there were no intercountry adoptions from affected countries following the Asian tsunami.[50]

76. At the Special Commission, an expert from the Republic of Haiti recalled the situation on the ground after the earthquake of 12 January 2010, in particular the difficulties of reuniting children and their parents, and to find alternative placements in accordance with the best interests of the child. The Expert also took this opportunity to thank those who came to Haiti's aid.

77. The discussion was based on the fact that the diverse and contrasting responses of the receiving States had sent mixed messages to adoptive parents and other States of origin. In fact, this created confusion for adoptive parents with regard to the ethical approach to adoption and undermined efforts to build acceptance of the principle of shared responsibility among receiving States. In this regard, the Chair of the Special Commission referred experts to statements made in the wake of these disasters by the Permanent Bureau, UNICEF and the International Social Service.

78. Following the discussions, the Special Commission acknowledged that the statements of the Permanent Bureau and other international organisations have been of great assistance to States in developing their intercountry adoption policy.[51] The need for a common approach on the part of receiving States was also recognised.[52]

The 1996 Hague Convention on Protection of Children

79. During the discussions, the Permanent Bureau recalled Article 2 *b)* of the 1993 Hague Convention and noted that this Convention did not apply to other forms of child protection such as *kafala*, foster families or institutional care. The experts were invited to describe the measures taken in their States on the cross-border aspects of these alternative forms of protection. Moreover, it was

[50] Statement made by Profesor Selman at Special Commission June 2010, Presentation "Setting the scene – current trends and statistics in intercountry adoption".
[51] See Recommendations Nos 38 and 39.
[52] See Recommendation No 40.

emphasised that States could apply the principles underlying the 1996 Hague Convention on Protection of Children to intercountry adoptions (*e.g.,* the provisions of Chapter II on jurisdiction could be used in determining responsibility in cases of failed adoptions).

80. Some experts shared information on the formal procedures that their State implemented to address cross-border *kafala*. Some were based partly on those in Chapter IV of the 1993 Hague Convention. During the discussions it was pointed out that some States do not recognise *kafala* and others allow for *kafala* to be "converted" into full adoptions.

81. The majority of experts expressed support for the 1996 Hague Convention. Indeed, the importance of this Convention was recognised by the Special Commission and a number of experts encouraged States to ratify or accede to this Convention to make it more effective.[53]

The 1961 Hague Apostille Convention

82. The Permanent Bureau emphasised the usefulness of linking the application of the 1993 Hague Convention to the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents* (the Apostille Convention). Apostilles are issued by States party to the Apostille Convention for public documents that may well be produced as part of an adoption procedure under the 1993 Hague Convention. By joining the Apostille Convention and subsequently issuing and recognising Apostilles States involved in intercountry adoption could therefore reduce formalities associated with the adoption procedure.[54]

Future work priorities

83. The various recommendations made by the Special Commission contain a considerable work programme; however priority will be given to :

1) revise the Guide to Good Practice No 2 in order to incorporate the comments made during the meeting. A revised document will be submitted for comments to the Contracting States, to Members and to those States which attended the meeting;

2) examine the feasibility of publishing on the Hague Conference website the costs for intercountry adoption in each contracting State;

3) undertake research with a view to developing a third Guide to Good Practice on the selection, counselling and preparation of prospective adoptive parents;

4) continue the work done by the Permanent Bureau on statistics by consultation on options for the future collection of statistical data;

5) participate in the informal group co-ordinated by the Australian Central Authority to develop recommendations for guiding principles and good practice in handling abuses in the context of intercountry adoption;

6) undertake legal research on the connections between international surrogacy and intercountry adoption.

[53] See Recommendation No 41.
[54] See Recommendation No 42

ORDRE DU JOUR / AGENDA

AGENDA

Meeting of the Special Commission of 17 to 25 June 2010

Note

This agenda is a draft agenda. It will be treated with some flexibility and may need to be modified in the light of continuing discussions in the Special Commission. Furthermore, it does not contain a comprehensive list of issues arising under the Convention, but attempts to draw attention to those issues needing most discussion.

The objective of the Special Commission is to review the practical operation of the 1993 Convention and to achieve consensus on the main elements of a Guide to Good Practice on Accreditation and Adoption Accredited Bodies. The one day discussion on the abduction, sale and traffic in children in the context of intercountry adoption on the first day, 17 June 2010, does not, however, follow the usual format of a Special Commission review, as some independent experts have been invited to speak on this subject. There will be a period of discussion after the presentations, one aim being to find common ground in responding to such cases.

In relation to the draft Guide to Good Practice on Accreditation and Adoption Accredited Bodies, the discussion will take place on Friday and Saturday morning, 18-19 June. It is not intended that the Special Commission should engage in detailed drafting for the Guide but rather consider its contents from the point of view of Convention obligations, general principles and possible good practices and make suggestions for further improvements.

It is proposed that the sessions will last from **9.30 a.m. to 1.00 p.m**. and **2.30 to 6.00 p.m.**, with lunch breaks from 1.00 to 2.30 pm and breaks for coffee / tea normally from 11.00 to 11.15 a.m. and 4.00 to 4.15 p.m.

THURSDAY 17 JUNE 2010	**ABDUCTION, SALE AND TRAFFIC IN CHILDREN IN THE CONTEXT OF INTERCOUNTRY ADOPTION**
8.30-9.30 a.m.	Registration of participants
Morning session 9.30 a.m.- 1.00 p.m	Opening of the Special Commission by Mr Teun Struycken, President of the Netherlands Standing Government Committee on Private International Law
	Election of the Chair of the Special Commission
	Words of welcome by Mr Hans van Loon, Secretary General of the Hague Conference on Private International Law
	Introduction to draft agenda and documentation by Ms Jennifer Degeling, Secretary at the Permanent Bureau
	Adoption of the agenda
	A brief analysis of Questionnaire responses on abduction, sale and trafficking by the Permanent Bureau
	Presentation: A global perspective on trafficking: Professor David Smolin, United States of America (approx. 30 mins)
	Presentation: An African perspective on trafficking: Dr Benyam Mezmur, Ethiopia (approx. 20 mins)

	Plenary discussion
1.00-2.30 p.m.	***Lunch break***
Afternoon session 2.30-6.00 p.m.	Documentary film: Paper orphans Introduction by Mr Joseph Aguettant, Terre des hommes Foundation in Nepal (approx. 20 mins) Showing of documentary Presentation: Investigating the grey zones of intercountry adoption: Mr Hervé Boéchat, International Social Service (approx. 20 mins) Plenary discussion and discussion of possible conclusions for this day
6.00-7.30 p.m.	***Welcome reception offered by the Permanent Bureau, to be held at the Academy Building***

FRIDAY 18 JUNE 2010	**DRAFT GUIDE TO GOOD PRACTICE ON ACCREDITATION**
Morning session 9.30 a.m.-1.00 p.m	Introduction by the Permanent Bureau General statements or comments by experts on the draft Guide as a whole Chapter by chapter review of the draft Guide
1.00-2.30 p.m.	***Lunch break***
Afternoon session 2.30-6.00 p.m.	Chapter by chapter review of the draft Guide (cont.)

SATURDAY 19 JUNE 2010	**DRAFT GUIDE TO GOOD PRACTICE ON ACCREDITATION**
Morning session only 9.30 a.m.-1.00 p.m	Chapter by chapter review of the draft Guide (cont.)

MONDAY 21 JUNE TO FRIDAY 25 JUNE 2010	**REVIEW OF THE PRACTICAL OPERATION OF THE CONVENTION**

MONDAY 21 JUNE 2010	**GENERAL INTRODUCTION; APPLYING THE SAFEGUARDS OF THE CONVENTION**
Morning session 9.30 a.m.-1.00 p.m	Opening statements by experts on developments of particular interest in their States Presentation: Setting the scene – current trends and statistics in intercountry adoption: Professor Peter Selman, United Kingdom
	Applying the safeguards of the Convention

1. **Subsidiarity (Art. 4 *b)*)**
   a) the experience of States of origin with limited solutions for children in need of families
   b) adoption of babies – should there be a minimum age?
   c) the role of birth mothers in the selection of prospective adoptive parents

2. **Establishing whether a child is adoptable (Art. 4 *a)*)**
   a) clear criteria
   b) a transparent procedure
   c) decision taken by an independent and professional person or body

3. **Consents to the adoption (Art. 4 *c)* and 4 *d)*)**
   a) informed consents
   b) counselling of birth parents
   c) abuses regarding consents

1.00-2.30 p.m. ***Lunch break***

Afternoon session 2.30-6.00 p.m.

4. **Selection, counselling and preparation of the prospective adoptive parents (Arts 5 *a)*, 5 *b)*, 9 *c)*, 15(1), 16(1) *d)*, 17 *d)*)**
   a) issues arising from responses to Preliminary Document No 3: Country Profiles
   b) responding to State of origin requirements for the selection and approval of the prospective adoptive parents
   c) managing the expectations of prospective adoptive parents

5. **Agreements given under Article 17**
   a) the importance of this requirement
   b) importance of Article 17 *c)* and its connection with Article 23
   c) importance of ensuring child's right of entry into receiving State before entrustment of child to adoptive parents

6. **Financial aspects of intercountry adoption:** issues not covered in discussion of draft Guide to Good Practice on Accreditation (days 2 and 3)

TUESDAY 22 JUNE 2010 CO-OPERATION ISSUES

Morning session 9.30 a.m.- 1.00 p.m

7. **Co-operation, communication and networking between Central Authorities**
   a) obstacles to good communication and co-operation
   b) resource problems for some Central Authorities
   c) communication problems for countries which have multiple Central Authorities
   d) problems when proposals for child placement are sent directly to the adoption applicants

e) responding to State of origin requirements for the family reports and the follow-up reports
f) good practices to be followed in case of failed adoptions
g) sharing of responsibilities between receiving States and States of origin

1.00-2.30 p.m. ***Lunch break***

Afternoon session 2.30-6.00 p.m.

8. Intercountry adoption in the context of globalisation and international mobility

a) Article 2 and the scope of the Convention, and the meaning of habitual residence
b) application of the Convention to "intra-family" or "relative" adoptions
c) adoption by persons who are nationals of the State of origin but habitually resident in another Convention State
d) adoption by persons who are temporarily resident in a State of origin
e) adoption by persons who are resident in, but not nationals of, the receiving State, and the nationality of the receiving State is a requirement to adopt
f) adoption by persons who are habitually resident in, but not nationals of, the State of origin
g) adoption by persons who are nationals of a third State (neither the State of origin nor the receiving State); what role does the State of nationality play?
h) cases when the prospective adoptive parents change their place of residence during the adoption procedure

9. Co-operation (development aid) projects: setting the limits of ethical activity (issues not covered in discussion of draft Guide to Good Practice on Accreditation (days 2 and 3))

8.00 p.m. ***Dinner at the Kurhaus Hotel, Scheveningen, offered by the* Commissione per le Adozioni Internazionali *to celebrate the tenth anniversary of the establishment of the* Commissione**

WEDNESDAY 23 JUNE 2010 ISSUES CONCERNING CONVENTION PROCEDURES

Morning session 9.30 a.m.- 1.00 p.m

10. Certificate of conformity under Article 23

a) the Article 23 certificate is essential to allow automatic recognition of adoptions made in accordance with the Convention
b) some Contracting States have not designated an authority pursuant to Article 23(2) of the 1993 Hague Intercountry Adoption Convention
c) sometimes an Article 23 certificate is difficult or impossible to obtain
d) some certificates are not in conformity with the Convention, and are incomplete or incorrect

e) Article 23 certificates have been issued for adoptions which were not made in accordance with the Convention

f) in some countries the legislation does not refer to an Article 23 certificate and no certificate is issued

g) how can the use of the recommended form be improved?

11. Recognition and effects of adoption (Arts 23 and 24)

a) "recognition by operation of law" (Art. 23) means automatic recognition, therefore no additional procedure is required in a Convention country

b) if a certificate is not issued in a State of origin, or is defective, what do receiving States do about it?

c) some adoptions are commenced between two Convention States, but there is a defect in the procedure and the adoptions are finalised as non-Convention adoptions

d) issues of citizenship for the adopted child in the receiving State

1.00-2.30 p.m. ***Lunch break***

Afternoon session 2.30-6.00 p.m.

12. Private and independent adoptions

a) what is allowed under the Convention and what is not?

b) in what circumstances are these types of adoptions occurring?

c) lack of awareness by some judges, lawyers and officials of the Convention rules and of basic principles and procedures of the child protection system

d) in some Convention countries, private adoptions are still permitted under domestic law and are part of the daily practice

13. International surrogacy and intercountry adoption: connection and concerns

a) examples of situations which have caused problems

b) surrogate mother and intending parents living in different countries; uncertainty on the status of the child

c) the relevance of the 1993 Hague Intercountry Adoption Convention

THURSDAY 24 JUNE 2010 LEARNING FROM EXPERIENCE

Morning session 9.30 a.m.-1.00 p.m

14. Post-adoption issues

a) how the views of adult adoptees might assist with improvements to procedures

b) how the views of birth mothers might assist with improvements to procedures

c) post-adoption support for adoptive parents – helping to prevent the breakdown of the adoption

d) access to and preservation of adoption records; origin searching

15. Statistics: the role of the Permanent Bureau in their collection

a) report on responses to Preliminary Document No 5 from States

b) challenges for a centralised collection of statistics

c) alternative approaches

16. Monitoring of the Convention

a) the role of the Permanent Bureau

b) responses to problem situations

1.00-2.30 p.m. ***Lunch break***

Afternoon session 2.30-6.00 p.m.

17. Technical assistance programme and other training programmes

a) countries join the Convention without the necessary preparation: essential safeguards and Convention procedures are not in place

b) examples of assistance provided and improvements achieved

c) more training needed for all actors in the adoption procedure (including judges, police, diplomatic staff in Embassies)

d) insufficient knowledge of the Convention in non-Contracting States

18. Dealing with non-Convention countries (*i.e.*, States of origin): a co-ordinated approach by Convention States; the role of bilateral agreements

a) Recommendation No 11 of the 2000 Special Commission and No 19 of the 2005 Special Commission

b) examples of a co-ordinated approach taken by receiving States

c) current challenges with bilateral agreements

d) minimum standards for bilateral agreements

e) good practices for transition or pipeline cases (cases pending prior to the entry into force of the convention, or cases pending prior to a suspension of adoptions)

19. Response to disaster situations: a common approach

a) the example of Haiti and the Asian tsunami

b) different responses from States, organisations, or groups

c) the measures to be taken for children in situations of natural disaster

d) the 1994 Recommendations on Refugee Children (see also Hague Conference statements on Haiti and the tsunami)

20. The 1996 Hague Convention on Protection of Children

a) the relevance of the 1996 Child Protection Convention for situations not covered by the 1993 Hague Intercountry Adoption Convention

b) international foster care, international institutional care or kafala

21. Any other matters

22. Future work priorities

a) future parts of the Guide to Good Practice (see Recommendation No 2 of the 2005 Special Commission)

b) Model or Recommended Forms: completion of work on model forms for Article 4 consent of child; Article 15 report on prospective adoptive parents; Article 16 report on the child (following Recommendation No 7 of the 2005 Special Commission, the Permanent Bureau has not had the resources to develop these forms)

FRIDAY 25 JUNE 2010	**CONCLUSIONS AND RECOMMENDATIONS**
Morning session only 9.30 a.m.-1.00 p.m	Conclusions and Recommendations of the Special Commission: discussion and agreement
1.00 p.m.	End of meeting

Note on procedures

Delegations to the Special Commission may, before or during the course of the meeting, wish to submit for circulation short written proposals, comments or documents containing information relevant to the proceedings. This may be done by providing the Permanent Bureau with a typed or clearly written copy of the proposal **as a Working Document or Information Document** in English or French (preferably both). Translations into Spanish are also welcome. This should clearly indicate which delegations are associated with the proposal / document. The Permanent Bureau staff will give assistance by setting up the documents in a standard form and distributing them as working documents or informational notes. The Permanent Bureau is unfortunately not in a position to provide translation of documents into English, French or Spanish.

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