

**WORK IN THE ADOPTION AREA FOLLOWING THE SPECIAL COMMISSION MEETING OF
JUNE 2015**

drawn up by the Permanent Bureau

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**TRAVAUX DANS LE DOMAINE DE L'ADOPTION PAR SUITE DE LA RÉUNION DE LA
COMMISSION SPÉCIALE DE JUIN 2015**

établi par le Bureau Permanent

*Preliminary Document No 4A of February 2016 for the attention
of the Council of March 2016 on General Affairs and Policy of the Conference*

*Document préliminaire No 4A de février 2016 à l'attention
du Conseil de mars 2016 sur les affaires générales et la politique de la Conférence*

1. IMPLEMENTATION OF THE CONCLUSIONS AND RECOMMENDATIONS OF THE 2015 SPECIAL COMMISSION MEETING

1. 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 1993 Hague Intercountry Adoption Convention") met in The Hague from 8 to 12 June 2015. In order to implement the Conclusions and Recommendations (C&Rs) unanimously approved by participants of the meeting, the Permanent Bureau informs the Council on General Affairs and Policy ("Council") of the Hague Conference of the following next steps (presented in order of priority), and where appropriate it seeks the approval of Council for convening in-person meetings:

Experts' Group on the Financial Aspects of Intercountry Adoption (C&Rs Nos 41 to 43)

2. The Special Commission meeting 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". A separate Preliminary Document will present the work carried out by this group.¹

Working Group on Preventing and Addressing Illicit Practices (C&Rs Nos 44 to 47)

3. The Special Commission meeting recommended that the Working Group on Preventing and Addressing Illicit Practices resume its work. A number of States and organisations have expressed interest in participating in the Working Group. The Permanent Bureau has received input from some States regarding topics that the Working Group might consider.

4. *The Permanent Bureau proposes to have an in-person meeting of the Working Group in 2016.*² *The Permanent Bureau recommends that Council endorses this proposal.*

Globalisation and international mobility (C&Rs Nos 22 to 25)

5. The Special Commission meeting welcomed Preliminary Document No 4 of April 2015 on "Globalisation and international mobility: habitual residence and the scope of the 1993 Hague Convention" and recommended that the document be revised by the Permanent Bureau in light of (a) the discussions at the Special Commission meeting, and (b) written comments submitted by Contracting States, Members of the Hague Conference, and States and organisations represented at the Special Commission (hereinafter "concerned States and organisations"). The finalised document will be transmitted to National and Contact Organs and made available on the Hague Conference website. The Permanent Bureau is currently revising the document and will circulate the revised version to concerned States and organisations for final approval in due course.

Draft model forms (C&Rs Nos 15 to 17)

6. The Special Commission meeting requested that concerned States and organisations submit comments on the draft model forms that the Permanent Bureau has developed on (a) the consent of the child to adoption, (b) the report on the child, (c) the report on the prospective adoptive parents, and (d) the post-adoption report. The Permanent Bureau is currently reviewing the drafts in light of the observations received with a view to circulating revised versions to concerned States and organisations for additional comments. On that basis it will be determined whether a working group should be established to finalise the work.

7. The Special Commission also invited the Permanent Bureau to develop model forms on (a) the agreements provided in accordance with Article 17(c), and (b) the certificate of conformity which must be issued after the conversion of an adoption in accordance with

¹ "Experts' Group on the Financial Aspects of Intercountry Adoption – way forward", Prel. Doc. No 4B of February 2016 for the attention of the Council of March 2016 on General Affairs and Policy of the Conference.

² If a meeting of the Experts' Group on Financial Aspects is also to be held in 2016 (see Prel. Doc. No 4B), and assuming that many experts would participate in both meetings, the Permanent Bureau proposes to schedule these meetings back-to-back.

Article 27. The Permanent Bureau expects to develop drafts of these model forms in due course, and will circulate them to concerned States and organisations for comment.

8. In addition, the Special Commission meeting invited the Permanent Bureau, where necessary to ensure consistency and coherence with any new model forms, to update the existing model forms (see Guide to Good Practice No 1, "The implementation and operation of the 1993 Intercountry Adoption Convention") in consultation with concerned States and organisations. This work will be carried out once the other model forms are finalised.

9. *The Permanent Bureau proposes to continue working with the experts involved in this project via e-mail for the moment. However, if necessary and after consultation with the concerned States, a Working Group may be convened to finalise the work on (some of) the model forms. The Permanent Bureau recommends that Council endorse this proposal.*

Tool to provide practical guidance on becoming a Party to the Convention (C&R No 29)

10. To support States considering becoming a Party to the Convention, the Special Commission meeting recommended that the Permanent Bureau develop a tool to assist States with developing or modifying their legal framework for adoption in order to ensure that it is consistent with the 1993 Hague Intercountry Adoption Convention. The Permanent Bureau expects to develop such a tool as resources permit.

Article 39(2) agreements (C&Rs Nos 33 to 37)

11. The Special Commission meeting requested that the Permanent Bureau monitor the practice relating to agreements concluded under Article 39(2) of the 1993 Hague Intercountry Adoption Convention and other arrangements established between Contracting States on matters of procedure, co-operation or administration. It encouraged Contracting States to send to the Permanent Bureau examples of any such agreements or arrangements.

2. RECOGNITION OF DOMESTIC ADOPTIONS IN OTHER STATES

The issue

12. While the recognition abroad of adoptions of children habitually resident in one State by parents habitually resident in another State is, among its Contracting States, ensured by the 1993 Hague Intercountry Adoption Convention, no global instrument deals with the recognition abroad of adoptions made in *domestic* situations (*i.e.*, when the child and the prospective adoptive parents are habitually resident in the *same* State). When such children and / or their parents cross borders some time after the adoption was granted, the adoption may not automatically be recognised under regional or national provisions. Therefore, a number of issues may arise:

- adoptive parents may need to go to court in their new State of habitual residence to seek recognition of the adoption order or follow an *exequatur* procedure (there are States that require an *exequatur* to obtain recognition of the adoption order). There may also be problems in obtaining authorisation for the child to enter and reside in another State. This can result in long, costly and complicated procedures which may put the family in a difficult situation;
- if a child is not recognised in another State as the adopted child of the adoptive parents, the whole family may be left in a situation of legal uncertainty and conflicts in family status may arise. The results may include problems regarding parental responsibility and very practical issues in terms of school registration, medical care, etc. The non-recognition of an adoption may also create disputes in relation to inheritance rights.

13. In an increasingly mobile global environment, such problems are growing. It is therefore not surprising that they have recently attracted the attention of Members of the Hague Conference and of other international organisations.

Work done up to now by other international organisations

14. The issue of the recognition, and non-recognition, of domestic adoptions has been reported by different Member States of the European Union (EU) and the International Commission on Civil Status (ICCS). In order to address the problem, both international organisations have taken the following action.

15. The European Parliament organised a workshop on “Adoption: Cross-border Legal Issues” in December 2015 to which the Permanent Bureau was invited. In summarising the discussions and proposing some avenues for the future, the possibility was mentioned that EU Member States might choose to engage in the development of a global instrument to address the issue on a wider scale, since globalisation entails the movement of individuals that goes beyond intra-EU mobility. This would make it possible to benefit from the experience acquired in the development and operation of the 1993 Hague Intercountry Adoption Convention, and to find global solutions to issues which are not strictly European.³

16. The ICCS adopted “Recommendation (No 11) relating to the recognition of certain adoption decisions taken or recognised in a member State of the International Commission on Civil Status” in Strasbourg on 17 September 2015. The aim of this Recommendation is to facilitate, among others things, the recognition abroad of domestic adoptions.⁴

Identifying the magnitude of the issue at the global level

17. *The Permanent Bureau proposes to undertake, resources permitting, some preliminary work in this area. This would involve attempting to identify the depth and extent of the issue at the global level by asking National Organs and Central Authorities about their experiences.*

³ See < www.europarl.europa.eu/committees/en/juri/events-workshops.html?id=20151201CHE00181 > and < [www.europarl.europa.eu/RegData/etudes/BRIE/2015/536480/IPOL_BRI\(2015\)536480_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/536480/IPOL_BRI(2015)536480_EN.pdf) >.

⁴ See < www.ciec1.org > under “Instruments” and then “Recommendations”.