

ADOPTION

August / août 2006



**RAPPORT ET CONCLUSIONS DE LA DEUXIÈME 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
(17-23 septembre 2005)**

établis par le Bureau Permanent

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**REPORT AND CONCLUSIONS OF THE SECOND 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
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INTRODUCTION

Terms of reference, chairmanship and representation.

1. The second 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* took place in The Hague from 17-23 September 2005, pursuant to the Secretary-General's powers under Article 42 to convene a meeting to review the practical operation of the Convention. The proposal to convene the meeting was endorsed by the Special Commission on General Affairs and Policy held From 6-8 April 2004.

2. The *meeting* was opened by Mr Struycken, President of the Netherlands Standing Government Committee on Private International Law. He expressed his regrets regarding the absence due to illness of Mr Duncan, Deputy Secretary General. He proposed as Chairman Mrs Alegría Borrás, expert from Spain, who was elected by consensus. The Special Commission elected two Vice-Chairpersons: Ms Lamego de Teixeira Soares (Brazil) and Mr Stephansen (Norway). Mrs Borrás also chaired the first Special Commission meeting to review the practical operation of the Convention held from 28 November – 1 December 2000.

3. *Approximately* 250 experts from 66 countries 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 Convention, non-Member States which participated in the Convention negotiations, as well as certain non-Member States which have shown a serious interest in the Convention. Of the 66 States represented, 50 were Parties to the Convention of 1993 (12 being non-Members of the Conference), and 8 were Member States of the Hague Conference not yet Parties to the Convention. In addition 8 States, which were neither Member States of the Conference nor States Parties to the Convention, attended as observers. Five intergovernmental organisations and ten non-governmental international organisations were present as observers. Three Contracting States participated for the first time: Azerbadjan, Guatemala, Moldova. Three States participated as observers for the first time: Cambodia, Kazakhstan and the Dominican Republic. Two non-governmental international organisations attended for first-time: ChildONEurope and the International Korean Adoptee Associations.

Preliminary Documents and agenda

4. Three Preliminary Documents had been previously circulated to participants. Preliminary Document No 1, circulated in April 2005 consisted of a *Questionnaire on the practical operation of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, together with a draft chart of organisational responsibilities (Organigram) within each State, and draft Statistical Forms. Preliminary Document No 2, was the draft *Guide to Good Practice under the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption: Implementation* prepared by the Permanent Bureau. Preliminary Document No 3 was *A Discussion Paper On Accreditation Issues* drawn up by Jennifer Degeling, Principal Legal Officer, with the assistance of Carlotta Alloero, Intern, and which referred extensively to information provided in Questionnaire responses. Prel. Doc 3 provided the basis for the discussion of issues related to accreditation and accredited bodies which took place on the first day of the Special Commission.

5. The Agenda adopted by the Special Commission was organised with the principal objective of achieving consensus on the main elements of the Guide to Good Practice on Implementation of the Convention (Prel. Doc. No 2). At the same time it was essential to discuss and review the practical operation of the Convention. As accreditation was identified in the Questionnaire responses as an important topic for discussion, and as it

was not covered extensively in the first volume of the Guide to Good Practice, a separate day (the first day) was devoted to accreditation issues. The Accreditation Agenda covered issues of national policy and structures for accreditation, accreditation criteria including supervision and review of accredited bodies, and co-operation between countries on these matters.

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

Brief history of the Convention

7. In his introductory remarks, the Secretary General gave experts a brief history of the Convention. The Secretary General reminded experts that although the Convention only entered into force in 1995, the project to develop the Convention began 10 years before that, making the project at least 20 years old.

8. Five years after the negotiations had started, the Convention entered into force on 1 May 1995. What is remarkable is that it has, from the beginning, attracted countries of origin and receiving countries in equal numbers. This is a convincing indication that the 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.

9. In November / December 2000, the first Special Commission on the practical operation of the Convention was held.¹ At that time, there were 41 States Parties. As at September 2005, with 67 States Parties, there has been a 60% increase in the number of Contracting States in a 5 year period.

CURRENT STATUS OF THE CONVENTION

10. At the commencement of the Special Commission the 1993 Hague Convention had 48 ratifications, 19 accessions and 3 signatures. With Belize's accession on 20 December 2005 and Mali's accession on 2 May 2006, the Convention now has 69 Contracting States.

11. During the meeting an expert from China confirmed that on 16 September 2005, the People's Republic of China deposited its instrument of ratification of the 1993 Hague Convention with the Netherlands Ministry of Foreign Affairs. The Chinese Ministry of Civil Affairs is designated as the Central Authority and the functions under Articles 15 to 21 of the Convention are delegated to the China Centre of Adoption Affairs. Adoptions of children habitually resident in China may only take place if the functions of Central Authorities of receiving States are performed by public authorities of those States or by competent accredited bodies. The provincial organs for civil affairs are the competent authorities to issue an adoption certificate. China declared that it is not bound under the Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2. The Convention applies to the Hong Kong Special Administrative Region and the Macao Special Administrative Region, each having a Central Authority as well as a competent authority that issues adoption certificates.

12. A number of countries which attended expect to join the Convention in the near future: Cambodia, Kenya, United States of America, Vietnam.

¹ See *Report And Conclusions Of The Special Commission On The Practical Operation Of The Hague Convention Of 29 May 1993 On Protection Of Children And Co-Operation In Respect Of Inter-country Adoption* 28 November-1 December 2000, drawn up by the Permanent Bureau in April 2001. A Special Commission on the implementation of the Convention had been held from 17 to 21 October 1994.

GUIDE TO GOOD PRACTICE

13. The Guide to Good practice is a project of post-Convention support initiated by the Permanent Bureau, and developed with the assistance of a group of experts who met in The Hague in September 2004. It is the first such Guide for the 1993 Convention², and it aims to identify important matters related to planning, establishing and operating the legal and administrative framework to implement the Convention. It does not claim to be a guide for best practices because practices are necessarily different in different Contracting States. The differences in resources and skills must also be recognized, as well as the fact that each Contracting State has its own strengths and challenges. Although the situation is not the same for every State, the relevant factor for all practices is whether they achieve the overall objects of the Convention. Most of the matters identified in the Guide need to be considered prior to ratification or accession. For this purpose the Guide is aimed at policy makers involved in short term and long term planning to implement the Convention in their country, as well as lawyers, administrators, caseworkers and other professionals needing guidance on some practical or legal aspects of implementing the Convention.

14. A guide on implementation issues cannot hope to cover all the operational and procedural matters that arise in intercountry adoptions, even though these are an integral part of practical implementation. These matters could be covered by future parts of the Guide on particular aspects of intercountry adoption practice.

15. In respect of the methodology for developing the Guide, the starting point was the obligations and procedures in the Convention. These are mandatory requirements for Contracting States. In addition, the recommendations of previous Special Commissions have been relied upon. These recommendations have been agreed to in the past by countries represented at Special Commissions. As such, they should be viewed as internationally agreed good practice guidelines for the Convention. Other good practices came from the 2005 and 2000 Questionnaires as well as from information provided by Central Authorities, accredited bodies and experienced non-government organizations. The Guide is intended to be a practical and hands on guide – one that would give practical advice and authentic examples from the current national practices to assist countries to prepare for implementation and to actually perform their obligations and procedures after ratification or accession. In respect of the structure of the Guide, it was divided into 3 parts. Part I, “The Framework of the Convention”, deals with the principles and structures needed for the implementation of the Convention. Part II, “The Framework for Protection of Children”, deals with the implementation of procedural aspects of intercountry adoption, as well as legal issues and post-adoption services. Part III contains the Annexes. By reviewing first the broader framework of Convention principles and structures, followed by a review of the framework for protection of children through good practices and procedures to apply in individual cases, the Guide aims to provide the overview necessary to assist all those responsible for the policy and practice of implementing the Convention, whether at the international, national or local level.

16. For both established and developing Central Authorities, the implementation of the Convention should be seen as a continuing, progressive or incremental process of improvement. The Permanent Bureau supports the concept of progressive implementation as it takes account of the differences in the available resources and skills of some Contracting States. This concept recognises that some Contracting States, particularly those with limited economic resources, can at the outset, only fulfil their Convention obligations at a basic level, but with time and assistance they can plan for and achieve higher standards in their intercountry adoption practices. The Guide is

² There are now 3 Guides to Good Practice for the 1980 Child Abduction Convention.

therefore directed at future Contracting States as well as new and established Contracting States and their authorities to achieve the objects of the Convention, namely, the protection of children who are adopted internationally.

17. The Special Commission gave its general endorsement to the draft Guide to Good Practice and agreed to certain revisions to be made by the Permanent Bureau, with the assistance of a group of experts appointed by the Special Commission. A final version of the Guide may be ready for publication in 2007.

18. A Recommendation on the methodology to complete the work on the draft Guide states as follows:

The Special Commission gives its general endorsement to the draft Guide to Good Practice dealing with Implementation of the 1993 Convention prepared by the Permanent Bureau. It requests the Permanent Bureau, with the assistance of a group of experts appointed by the Special Commission, to review the draft in the light of comments made in the Special Commission on which there was consensus, and in particular by the addition of appropriate references to the situation of children with special needs. The revised text should then be circulated for their comments / approval to Contracting States, Member States of the Hague Conference and organisations represented at the Special Commission. Once there is a consensus, the Permanent Bureau will prepare the text for publication. The Permanent Bureau is authorised, in preparing the Guide to Good Practice for publication, to make changes of an editorial nature, to update where necessary any factual information contained in the Guide, to determine the presentation of the material in the Guide, provided that this does not involve any changes in substance or emphasis.

19. The States invited to participate in the Working Group of Experts were: Australia, Belgium, Brazil, Burkina Faso, Canada, Chile, China, Colombia, Germany, India, Lithuania, Norway, the United States of America and South Africa, as well as representatives of International Social Service and the Nordic Adoption Council.

20. An important recommendation of the Special Commission was that the Permanent Bureau should continue to gather information from different Contracting States and non-governmental organisations with the view to the development of future parts of the Guide to Good Practice.

The Special Commission recommends that the Permanent Bureau, in consultation with Contracting States and non-governmental organisations, collect information on issues including, *inter alia*, the financial aspects of intercountry adoption, reports on prospective adoptive parents, preparation of prospective adoptive parents, and post-adoption reports, with the view to the possible development of future Parts of the Guide to Good Practice.

21. A separate recommendation was made concerning a Guide on accreditation issues.

BECOMING A PARTY TO THE CONVENTION

22. The importance of a proper assessment of the current national situation of adoption and adequate preparations to become a Party to the Convention were emphasised. Some experts noted that flexibility in the application of the Convention is important and supported the principle of progressive implementation. However, there are some basic requirements that cannot be delayed and should be met at the time of ratification or accession, such as the designation of the Central Authority.

23. A number of countries demonstrated good practices in their preparation for becoming a Party to the Convention. For example, Kenya has not yet ratified the Convention, but its domestic laws and regulations are in place to implement the Convention. A National Adoption Committee has been established to regulate both national and international adoption agencies.

24. The United States of America has its legislation in place and is currently establishing the national framework for accreditation of bodies. The delegation of the US observed that although they are still working on its implementation measures, their country is already acting in accordance with the major principles of the Convention. In this regard the Special Commission was assured that the US Government supports the issue of subsidiarity, that is, the consideration of intercountry adoption for a child who needs a permanent family placement and who cannot find a suitable one in his or her home country. The delegation declared that the last part of this statement was equally important as the first and the US supports efforts of countries of origin to promote domestic adoption.

25. The US implementing measures are intended to ensure that those involved in intercountry adoption do not engage in improper financial activities. Under their implementation plans, all third persons – whether as members of accredited bodies or providing adoption services on an individual basis, will be under government oversight and will carry a designation as accredited or approved.

26. The US Government declared that they were also mindful of the need, as noted in the draft Guide, to ensure that the financial assistance of a donor country does not influence the intercountry adoption policy of a country of origin. An expert of the US assured the Special Commission delegates that the development assistance for child welfare provided by USAID is provided for capacity building in general – with no link to whether the receiving government permits intercountry adoption.

27. In the Guide to Good Practice, the section on Contemplating Becoming a Party to the Convention at Chapter 1.4, is to be read in conjunction with Annex 1 in Part III of the Guide, which contains a Detailed Pathway to Ratification/Accession and includes information about the formal treaty processes.

GENERAL PRINCIPLES

28. A number of general principles were discussed. In the Guide to Good Practice, the general principles are grouped under four headings: the protection of the child's best interests, the safeguards for the child against abduction, sale or trafficking, the establishment of a framework of co-operation between authorities, and the establishment of a framework for authorisation of competent authorities to approve intercountry adoptions. Under each general principle there is a discussion of additional principles or measures which support the implementation or operation of the general principle. It was emphasised that the general principles of the Convention apply to all entities and individuals involved in intercountry adoption, whether they be Contracting States, Central Authorities, public authorities, accredited bodies or non-accredited persons or bodies. An expert from the Philippines emphasised strongly that international adoption is not a matter of satisfying the needs of foreign adult individuals alone. It is a social and legal measure for the protection of children and must therefore be under the responsibility of the State or States involved.

Best interests of the child

29. The best interests of the child is the over-arching principle which should guide all our actions under the Convention. This principle is in part observed or upheld by implementing the subsidiarity principle and also the principle of non-discrimination. Some of the practical measures supporting the best interests principles are: (a) ensuring the child is adoptable, (b) preserving information about the child, and (c) matching the child with a suitable family.

30. A representative of UNICEF supported the connection (mentioned in Chapter 2.1 of the draft Guide to Good Practice) between the best interests of the child and the child's fundamental rights, while noting that the 'best interests of the child' is a notion that is prone to manipulation. He also noted the reference to illegal adoptions, and believed a distinction should be made between illegality which arose because of an irregularity during the adoption procedure and those adoptions which had illegal purposes. Some support was given for the view that a fault in administrative formalities should not in itself jeopardise the placement of the child. Other experts expressed their agreement with UNICEF and stated that there should be a more precise explanation of 'best interests of the child' in the draft Guide, bearing in mind that the notion of the 'best interest of the child' had different meanings and that any definition therefore had to be flexible.

Subsidiarity

31. Many experts discussed the importance of the principle of subsidiarity. Subsidiarity protects the child's best interests by finding the best permanent solution for the child. Subsidiarity means in practice that when all the possibilities have been considered, it is concluded that intercountry adoption is the best solution to find a permanent home for a particular child.

32. The application of the subsidiarity principle to family or relative adoptions was raised. This is referred to under the heading "Family or relative adoptions" at paragraphs 138-139.

Co-operation

33. Co-operation between States is essential to ensure the effectiveness of any safeguards put in place. In practice, this principle is implemented first through international co-operation between Central Authorities, and between other public authorities and accredited bodies performing the functions of Central Authorities; second, through intra-State co-operation between authorities and agencies regarding Convention procedures; and third, through co-operation to prevent abuses and avoidance of the Convention. Concerning the principle of co-operation, the majority of experts stated that in order to increase the level of co-operation between States, an exchange of information on the processes of other States and a centralisation of this information are necessary.

34. Attention was drawn to the second aspect of co-operation referred to in the preceding paragraph. He stated that States should first attend to the effective implementation of the Convention within their own country. There has to be co-operation between the different authorities of a State in order to ensure the internal co-ordination of the procedure. Internal co-operation could prevent competition to which adopters became the victim. Moreover, such co-operation could prevent private adoptions occurring in circumvention of the Convention.

35. A concrete suggestion was made by a State of origin that receiving States could contact the States of origin before sending the files, in order to facilitate the treatment of the files and limit negative responses.

36. It was agreed that co-operation between receiving States and States of origin was vital, but co-operation between like States was also important to exchange information on shared problems. The example of the meetings organised by the Ibero-American Central Authorities was given. The European Central Authorities also meet on an annual basis. States were encouraged to conduct regional meetings for the exchange of information. An appreciation of the cultural backgrounds of children could also be fostered. The Special Commission made a number of recommendations regarding co-operation:

Contracting States are encouraged to undertake and participate in regional and / or bilateral meetings to exchange information and good practices.

37. The Special Commission made a recommendation as follows:

The Special Commission stresses the importance of enhancing co-operation and exchange of information between Central Authorities, public authorities, accredited bodies and any bodies and persons under Article 22(2), notably with a view to promoting good practice and to ensuring that illegal and unethical procedures prior to the adoption of a child be effectively and systematically combatted.

38. Some examples of a breakdown in co-operation were given: when a State did not respond to enquiries from another authority or body; when a State of origin gave information to adopters before first informing the authorities of the receiving State; when a receiving State does not give information to a State of origin on the follow-up of adoptions.

39. Co-operation through information sharing was supported, in particular, the idea of sharing information to ensure transparency of the adoption procedure. There was support for the suggestion that the Permanent Bureau could be the repository of such information and make the information available, for instance on its website, and add links to national websites. Furthermore, the sharing of that information would facilitate the identification of accredited bodies and the foreseeability of costs. A recommendation to this effect was made as follows:

To further the work commenced by the development of the organigram (Appendix 6 of Prel. Doc. No 2), the Special Commission invites the Permanent Bureau, to collect specific information from Contracting States, including, *inter alia*, procedures, website addresses and how the various responsibilities and tasks under the Convention are divided between Central Authorities, public authorities, accredited bodies and any bodies and persons under Article 22(2). This information should be made available on the website of the Hague Conference

40. In the Organigram (Annexed to the Questionnaire) The Permanent Bureau attempted to obtain information from each Contracting State concerning which authority or body performed particular functions. In view of the preceding recommendation, it would seem that the effectiveness of the organigram as a uniform table of information is limited to a general overview of arrangements, and supplementary information is needed to describe the procedures in each country.

41. The suggestion was made that States of origin inform receiving States of the numbers and profile of adoptable children, as a working basis for receiving States to manage their applications and avoid giving false expectations to parents. Some experts from States of origin favoured the sharing of information on the number of adoptable children in this way, but they were not always in a financial position, or did not have the computer infrastructure, to give such information. They suggested that assistance would

be welcome. The suggestion was made that States of origin could inform Receiving states of the numbers of applications from prospective adopters that their resources permitted them to process. It was noted that the information on children was confidential according to the legislation of certain States and that usually only general and statistical information could be given. In fact, this was how “numbers and profile of adoptable children” should be understood. No identifying information should be provided at this stage. On the other hand, publication of numbers of adoptable children could be interpreted as unethical and an inappropriate encouragement of international adoptions.

KEY OPERATING PRINCIPLES

42. Key operating principles are discussed in the Guide to Good Practice. Within the framework created by the general principles in Chapter 2, the key operating principles are intended to guide the day to day operation of Convention procedures and handling of files or other requests and should be taken into account when Contracting States are considering their implementing legislation and measures, including necessary resources and powers. They therefore apply to all authorities and bodies responsible for performing functions or obligations under the Convention. The key operating principles for adoption practice are:

- a) *Progressive implementation*: this means that all Contracting States are encouraged to view implementation of the Convention as a continuing process of development and improvement.
- b) *Resources and powers*: without adequate resources and powers, it is not possible for authorities and bodies to perform their functions or obligations effectively.
- c) *Co-operation*: In each country there may be many different authorities and bodies involved in the intercountry adoption process. Co-operation, whether between authorities and bodies within each Contracting State, as well as co-operation between Contracting States, is essential to achieve the objects of the Convention.
- d) *Communication*: As with co-operation, there are many authorities and bodies involved. Good co-operation cannot be achieved without good communication, and vice versa.
- e) *Expeditious procedures*: are essential to protect the interests of children. The procedures must not be so fast as to circumvent or bypass proper procedures, but they must not be so slow that children are left too long in institutions.
- f) *Transparency*: Transparent procedures (including fees and charges) are a practical and effective way to limit malpractice in adoption.
- g) *Minimum standards*: The Hague Convention only provides for minimum standards to be observed within the intercountry adoption process. Contracting States are encouraged to develop and apply higher standards.

INSTITUTIONAL STRUCTURES : CENTRAL AUTHORITIES AND ACCREDITED BODIES

Central Authorities

43. The Guide to Good Practice did not intend to provide a comprehensive guide to Central Authority functions and responsibilities, or for those of accredited bodies. It is

intended primarily to assist policy makers, especially in pre-ratification / accession planning, to identify relevant considerations in choosing, establishing and consolidating a Central Authority.

44. The main point for policy makers considering pre-implementation issues is that the Central Authority should be established and functioning, with adequate powers and resources, when the Convention enters into force for a new Contracting State. Even if most functions are to be performed by accredited bodies or other public bodies, the Central Authority must still be established as the principal point of contact for the Convention.

45. The role of the Central Authority, both national and international, must be clearly defined. Under the Convention, certain functions must be performed only by Central Authorities. Other functions may be performed by public authorities or delegated to accredited bodies.

46. The extent of the Central Authority's role and functions should be considered at an early stage by policy makers and legislators who will decide on the powers and resources of the Central Authority.

Accredited bodies

47. The process of accreditation of bodies is one of the Convention's safeguards to protect children in adoption. The Convention requires that any private body or agency wishing to operate in the field of intercountry adoption must be accountable to a supervising or accrediting authority (see Articles 6-13).

48. As mentioned above, the Guide to Good Practice did not intend to provide a comprehensive review of procedures for accredited bodies or for accreditation. The purpose of the brief review of accredited bodies in the Guide is to alert policy makers to the fact that only basic standards are imposed by the Convention to guide the accreditation process. They also need to consider other matters such as: a) the extent of the accredited body's functions ; b) which authorities or bodies will be responsible for accrediting and supervising accredited bodies; c) the criteria for accreditation ; d) financial accountability of accredited bodies, including regulation of costs and fees.

Non-Accredited persons and bodies

49. Persons who have been approved in accordance with the standards set out in Article 22(2) of the Convention may only perform the functions in Articles 15-21.

50. Non-accredited persons do not have to meet all the eligibility requirements of accredited bodies, for example, the requirement that they pursue non-profit objectives does not apply to non-accredited persons and bodies.

51. A country of origin may make a declaration in accordance with Article 22(4) that it will not permit adoptions of its children when a country allows non-accredited persons to perform the functions of Central Authorities in Chapter IV.

52. An expert stated that the term 'non-accredited persons', as used in the draft Guide to Good Practice, caused confusion and should no longer be used. This term implied a lack of control, which was not the case in her State which used the term 'approved'. The Principal Legal Officer noted that the term "non-accredited person or body" used in the Guide was taken from the Explanatory Report for the 1993 Convention by M. G Parra-

Aranguren. The term referred to the persons or bodies who were approved to perform certain functions in accordance with Article 22(2). The term was used in the Guide to overcome the confusion and misunderstanding surrounding the term 'approved persons' that was evident from the 2005 Questionnaire responses to Article 22.2. The Questionnaire responses are on the Hague Conference website at [www.hcch.net/Convention 33/ Questionnaires & Responses](http://www.hcch.net/Convention_33/Questionnaires%20&%20Responses).

ACCREDITATION ISSUES

53. The discussion on accreditation took place on the first day of the Special Commission. It was based on the *Discussion Paper on Accreditation Issues* (Prel. Doc. No 3). The Discussion Paper analysed the responses on accreditation issues from the Questionnaire (Prel. Doc. No 1), and that information is not repeated in this report. The aims of this Discussion Paper were: a) to stimulate discussion on important issues concerning accreditation; b) to help clarify the terms of the Convention and the obligations of States in order to achieve better and more consistent practices; c) to stimulate debate on the usefulness of developing a Guide to Good Practice on accreditation; d) to stimulate debate on the possibility of developing core accreditation criteria and establishing a Working Group for this purpose.

54. It was emphasised that the general principles of the Convention, referred to above at paragraphs 27-40 apply to all entities or individuals who intervene in an intercountry adoption arranged under the Convention. Experts were reminded that the Convention does not require any State to appoint or use accredited bodies.

Issues of general policy and structure

55. A number of experts were invited to give a short explanation of the approaches to the general policy and structure of accreditation in their respective countries. Many good practices were evident. Experts from Receiving States described different models, but their common characteristics were that the accredited body was appointed by a competent authority according to published criteria and supervised by the Central or other government Authority. In the French and Spanish model, there are two ways to adopt internationally: either privately or through accredited bodies. In France, accredited organizations intervened in only 41% of the international adoptions in 2004. In Sweden, all intercountry adoptions for families living in Sweden, except in family related adoptions, must be mediated through one of six Swedish accredited bodies. These accredited bodies are non-governmental organisations.

56. The United States is taking a decentralised approach to accreditation. The Central Authority, the US Department of State, will appoint a number of accrediting agencies which would accredit bodies in each US state. It will also delegate its functions to the competent authorities or accredited bodies, but retain oversight of their activities.

57. Experts from States of origin also described different models and demonstrated good practices. In Costa Rica, no national agencies are accredited. Foreign bodies seeking accreditation must be from a State that has ratified the Convention and the request must be made to the Costa Rican Central Authority. In Brazil, all applications for international adoptions must be submitted to the Central Authority of the Brazilian state concerned, which is a part of the judicial branch. The accreditation of a foreign body is only considered if that body is already accredited in its own country. Individual persons will not be accredited. Accreditation, however, is not automatic, as the number of accredited bodies from a receiving State will be considered. Accreditation is granted first at a federal level and then at the state level. It is valid for two years, with the possibility of renewal.

58. Bodies seeking accreditation in the Philippines from States Party to the Convention are subject to a process of authorisation, while bodies from States that are not Party to the Convention are subject to accreditation. In South Africa, the Central Authority is responsible for the accreditation of domestic bodies and the maintenance of a national registry, while the domestic accredited bodies are responsible for the establishment of working agreements with accredited bodies in Convention countries. If a State Party to the Convention does not have accredited bodies, then the national accredited bodies of South Africa would work directly with the Central Authority of such a State.

59. Guidance was sought from the Permanent Bureau regarding countries of origin that apply requirements concerning accredited bodies to Central Authorities. The question has arisen when a Receiving country which does not use accredited bodies, wants to have adoption arrangements with a State of origin which only uses accredited bodies to arrange adoptions. In some cases requirements of the State of origin are too onerous or impossible to meet when applied to a government authority. In other cases, the legislation of the State of origin only provides for arrangements with accredited bodies or courts.

60. The matter should be able to be resolved through effective communication and an exchange of information between the countries concerned. The example of South Africa above shows that it is possible to find a solution. The State of origin needs to know that the Central Authority of the Receiving country will undertake, at the highest possible standard, the full range of functions and responsibilities normally carried out by accredited bodies. This is an issue which should be addressed in the Guide to Good Practice.

Accreditation criteria including supervision and review of accredited bodies

61. An expert from Canada (Quebec) described a model for supervision and review of its accredited bodies. The Central Authority of Quebec is responsible for recommending certification, as well as monitoring and supervision of bodies. All international adoptions have to be carried out by certified bodies, except in special cases. Accreditation criteria are included in the Quebec legislation. Accreditation is granted for a period of two years and can be renewed for three years. The accredited bodies are accountable to the Central Authority, which also has the power of inspection. The Central Authority Secretariat also supervises the bodies in the States of origin by sending missions and it liaises with the authorities in those States. The Secretariat also has a supporting obligation towards the bodies in the States of origin. By comparison, the reported practice of another State that it would visit its accredited bodies at least once every three years would appear to be inadequate supervision.

62. In Information Document No. 1, Part II, EurAdopt and the Nordic Adoption Council presented their suggested criteria for the accreditation of bodies in receiving States. The criteria were based on two main principles: the child's best interests and the subsidiarity principle including the prevention of child abandonment. The criteria provide guidelines for the formal process of accreditation, the organisation and structure of the body seeking accreditation, the financial regulation and accountability, and the adoption services to be provided by the body. Information Document No. 1, Part II, also clarified the distinction between accreditation and authorisation under Article 12.

63. One of the aims of the discussion was to consider the value of developing model accreditation criteria. The use of such criteria would be to facilitate the co-operation between States. However, any criteria to be drawn up would only provide a basic framework and States would be able to adapt them for national requirements. There was support for the development of model criteria. Some experts thought that it should not go beyond the core criteria. The Special Commission recommended that:

The Permanent Bureau should continue to gather information from different Contracting States regarding accreditation with the view to the development of a future Part of the Guide to Good Practice dealing with accreditation. The experience of non-governmental organisations in this field should be taken into account. Such information should include financial matters and should also be considered in the development of a set of model accreditation criteria.

64. The Special Commission reaffirmed Recommendation No 6 of the Special Commission of November / December 2000:

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

Co-operation between states regarding accreditation

65. A number of States of origin such as India and Colombia, informed the participants that national adoptions were now given priority over international adoptions. For this reason, there might be a need to limit the number of accredited bodies from receiving States which were working in a State of origin. Co-operation between States was necessary to ensure that accredited bodies did not put pressure on States of origin to obtain authorisation to work in those States.

66. Countries of origin explained that it was important for them to be able to limit the number of receiving States with which they would co-operate because they had more demands by prospective adopters than adoptable children. They added that it was unfair to prepare families in receiving States if there were no adoptable children. A small number of delegations of receiving States were concerned about limits on the number of countries with which they could have adoption arrangements. One country which did not support arbitrary limits on intercountry adoptions believed that the best way to assist States of origin is to promote capacity building in the Central Authority.

Reaffirmation of earlier recommendations on Central Authorities and Accredited Bodies

67. The Special Commission recognised the ongoing importance of recommendations made at the 2000 Special Commission concerning the designation of Central Authorities and accredited bodies. It therefore reaffirmed

Recommendation No 2 of the Special Commission of November / December 2000, and underlines, in particular, the importance of designating Central Authorities without delay:

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

- a) ***The designation of the Central Authorities, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau not later than the date of the entry into force of the Convention in that State.***
- b) ***Such communication should, in accordance with Article 13 and paragraph 274 of the Explanatory Report on the Convention by G. Parra-Aranguren (Proceedings of the Seventeenth Session (1993), Tome II, Adoption – co-operation, page 591), give notice***

of any other public authorities (including their contact details) which, under Article 8 or 9 discharge functions assigned to the Central Authorities.

- c) *The extent of the functions of the Central Authorities and any such public authorities should be explained.*
- d) *The designation of accredited bodies, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau at the time of their accreditation.*
- e) *Where a body accredited in one Contracting State is, in accordance with Article 12, authorised to act in another Contracting State, such authorisation should be communicated to the Permanent Bureau by the competent authorities of both States without delay.*
- f) *The extent of the functions of accredited bodies should also be explained.*
- g) *All the information referred to above should be kept up-to-date and the Permanent Bureau informed promptly of any changes, including in particular any withdrawals of accreditation or authorisation to act.*
- h) *Designations, in accordance with Article 23, of authorities competent to certify an adoption as having been made in accordance with the Convention should also be kept up-to-date."*

Accredited bodies and the moratorium in Romania

68. The situation regarding Romania's moratorium on the application of the Convention was raised, as well as the uncertainty as to whether the moratorium had been lifted, and whether or not the Romanian accredited bodies mentioned on the website of the Hague Conference were still operating. An expert from Romania stated that new legislation had entered into force on 1 January 2005 in her State and that the moratorium no longer applied. The old accreditations were no longer valid. The effect of the new legislation is that the only intercountry adoptions permitted from Romania will be those by grandparents in another country. The experts emphasised the importance of the communication to the Permanent Bureau by all Contracting States of correct information on legislation and modifications in accreditation and authorisation.

Using accredited bodies

69. Some experts explained that their countries had made a policy decision not to designate accredited bodies as there was no obligation under the Convention to do so. However, as mentioned in paragraph 58, certain problems had been encountered. An expert from a State of origin drew on her experience to explain that her State preferred working with accredited bodies since they often prepared families better and provided better post-adoption services than Central Authorities. She claimed that working with accredited bodies also permitted better control over the procedure, through the mechanism of authorisation. Other advantages of using accredited bodies were that accreditation could be withdrawn if functions were not performed properly; and psycho-social assistance to the child and the prospective adopters was more likely to be provided.

70. It was stated that generalisations about the competence and skills of Central Authorities should not be made and that in some States, Central Authorities were well

equipped to perform all the tasks in the adoption procedure at a professional level. An expert from another State of origin observed that in her experience, it was simpler to work with Central Authorities since that eliminated the need for the authorisation of bodies.

71. It was noted that even if there were accredited bodies, one could always address any problems to the Central Authority, which had ultimate responsibility for functions. Any problems of accreditation, authorisation, sending of files or uncertainty about procedures when an accredited body in one country has to deal with a Central Authority in another should always be dealt with through cooperation and communication between the Central Authorities in the countries concerned.

72. Several other important points were made: a) there was no uniformity in national legislation on the issue of whether accredited bodies were responsible for the actions of their representatives, and it was suggested that there should be a detailed study on this question and solutions proposed; b) the importance of comprehensive criteria for accreditation and the assurance of effective national supervision of accredited bodies; c) the importance of a clear distinction between the functions of Central Authorities and accredited bodies and the need to ensure those distinctions are known and understood.

THE CONTEXT FOR NATIONAL ADOPTIONS

73. In reviewing the Guide to Good Practice, the meeting discussed the place of national child care, protection and adoption systems as part of a comprehensive policy on intercountry adoptions. Experts agreed that the four phases of the national systems: the child's entry into care, family preservation or reunification, temporary child care or institutionalization, and national (domestic) adoption, have an important place in the Guide. Intercountry adoption is the next phase in that continuum. The four phases refer to the internal child care and protection system and encompass services that States may offer independently of intercountry adoption. They demonstrate the sequential approach to intercountry adoption and the practical application of the subsidiarity principle. Many experts noted that consideration must always be given to the ultimate objective of protecting children and for this reason, good practices in national adoption must be examined as the good foundation for intercountry adoption.

74. The Special Commission was reminded of the close links between the 1993 Convention and the United Nations Convention on the Rights of the Child. In the week before the Special Commission, the United Nations Committee on the Rights of the Child issued a recommendation for drawing up international standards on alternatives for children without parental care.

75. The majority of experts emphasised the preservation and the reunification of the family as the primary solution. To promote this kind of solution, certain experts suggested the development of children's services or using a global approach to provide aid for families. Financial assistance to States of origin should not be given in a way which could lead to a sense of indebtedness and undue pressure. They suggested in the alternative, assistance in the form of co-operation, technical training, and rules of good practice. Furthermore, it was highlighted that international co-operation is essential for national adoption and such international aid programs must be clearly delineated from intercountry adoption.

76. The Special Commission was reminded of the diversity of priorities and challenges faced by States of origin in developing a national child protection system. An example of such a system was given by an expert from Brazil. She gave a presentation on the *Sistema de Informação para a Infância e a Adolescência* (SIPIA), the national database

system for the formulation of public policies related to the rights of children at all governmental levels. She indicated that as a direct result of implementing the Convention in Brazil, there has been an improvement in the quality of adoptions and an increase in national adoptions.

THE INTERCOUNTRY ADOPTION PROCESS UNDER THE CONVENTION

77. As Central Authority functions in Chapter IV of the Convention may be performed by public authorities, accredited bodies and the non-accredited persons or bodies referred to in Article 22(2), the proper designation of those bodies or persons must have been made before they perform the Central Authority functions. Furthermore, the rules in Chapter IV of the Convention are mandatory and must be followed in all adoptions, including family or relative adoptions.

Establishing that a child is adoptable (Article 4 a))

78. The adoptability of a child is determined according to the law (including its rules of private international law) and procedures of the State of origin. It is important that the legal criteria as well as medical, psychological and social aspects of adoptability, which may be relevant, are addressed in implementing legislation and procedures. For example, to establish the child's adoptability, it should be made clear which particular procedures, such as a determination of abandonment, or evidence of permanency planning, need to be satisfied before a child may be declared adoptable.

79. A question was raised concerning the role of the court in a receiving country which has to make the final adoption order. In the case in question, the court applies its own law to decide if the child is adoptable before making the order. In theory the court could find that the child is not adoptable according to its law (including its rules of private international law) and the adoption order cannot be made, even though the child was declared adoptable by the State of origin. It is to be hoped that before any adoptions take place, a receiving State will have made known any limitations in its own law so that any defect in the procedures or obstacle to the adoption would have been identified in the Receiving country before the adoption reached this late stage. The Convention makes clear in Article 4 that it is the State of origin which determines the adoptability of a child. This decision is made in accordance with the national law of the State of origin. A child who does not meet the legal criteria of adoptability in the receiving State should not be proposed or considered for adoption by that State. A solution may also be found in Article 17 c) of the Convention, according to which the adoption may not proceed if the requirements of the Convention and the laws of each country have not been met.

Report on the child and the prospective adoptive parents

80. Both receiving States and States of origin emphasised the importance of having accurate reports, in the pre-adoption and the post-adoption phases. Comments on the shortcomings of some reports referred to inaccurate reports on the adoptive parents from receiving States and on inadequate reports on children from States of origin.

81. The Guide to Good Practice emphasises the need for thoroughness and objectivity by authorities in the receiving country in the assessment and preparation of the prospective adopters, and in drawing up the report on the applicants in accordance with Article 15. Accurate reports on the adoptive parents assist the State of origin to make an informed decision regarding matching.

82. Experts were reminded of the safeguard in the Convention when reports are prepared by non-accredited bodies or persons referred to in Article 22(2). They may only

do so under the responsibility of other authorities or bodies in accordance with Article 22(1).

83. An expert from Colombia introduced Working Document No 11 and proposed that a standard form be created for the evaluation of the applicants for an intercountry adoption. Several experts noted the need for standards for the contents of the reports. A recommendation was made to this effect.

84. Article 16 of the Convention refers to the preparation of a report on the child. Contracting States will normally have detailed internal guidelines for this procedure. Article 16 on the report on the child should be read in conjunction with Article 30 concerning preservation of information on the child (see also paragraphs 106-112 below).

85. Comments were also made on inadequate reports on children from States of origin. There are benefits in trying to gather as much information on the child's background as possible: it is in the child's best interests to have all relevant information given in the social and medical reports; it improves matching for families; it allows prospective adoptive parents to make an informed decision about accepting the proposed child; it becomes a future resource for that specific child.

86. The Special Commission made the following recommendations:

The Special Commission recommends that the Permanent Bureau, in consultation with Contracting States and non-governmental organisations, develop a model form for the consent of the child (Article 4(d)(3)) as well as model forms or protocols regarding the operation of Articles 15 and 16 of the Convention.

87. The delegation of Denmark proposed in Working Document 6 a standard form for a Supplementary medical report on young children, concentrating on their psychological and social conditions. This is mentioned below at paragraph 114 under the heading "Use of standard forms". The proposal received support and a recommendation was made:

The Special Commission reaffirms the usefulness of the Model Form – Medical Report on the Child and notes the usefulness, in particular in the case of very young children, of the supplement to this form as proposed in Working Document No 6, pp. 8-9.

88. The majority of experts believed a greater exchange of experiences, such as the cases where adoptions have failed for whatever reason, would increase the sense of shared responsibility and co-operation between States of origin and receiving States.

Preparation of the prospective adoptive parents

89. The Convention requires competent authorities to ensure that prospective adoptive parents receive counselling about adoption, as may be necessary. "Counselling" in this context refers to preparation for the adoption and may include training and education. It will assist States of origin if they receive in the report on the parents some indication that the parents received adoption preparation.

90. The need for proper preparation of the prospective adoptive parents in the receiving States was emphasised in the Special Commission. It was said that this is crucial for managing the expectations of the prospective adoptive parents and for diminishing the pressures on States of origin. In some cases, prospective adoptive parents mistakenly

feel they have a right or entitlement to a child. In other cases, the number or profile of adoptable children does not correspond to their expectations for an adoption.

91. Some experts stated that the evaluation of the prospective adoptive parents should include a determination of whether they had the capacity to respond to potential difficulties relating to the adoption and to adapt to changing circumstances. Post-adoption support should be available in order to help the parents for difficult stages during the development of the child. This could include counselling and information to prospective adoptive parents regarding the procedure and the consequences of adoption before the initiation of the adoption procedure. The importance of preparing the children for adoption was also mentioned.

92. The lack of uniformity in reports and the lack of and thoroughness in the preparation of prospective adopters was commented upon. For example, in one country the children available for intercountry adoption are usually over age 5 and have a variety of problems. Not all parents are suitable for adopting an older child and it important to prepare prospective parents adequately through counselling and education.

Matching

93. Paragraphs 6.2.5 of the draft Guide refers to matching the child and the adoptive family. Comments were made on the matter of parents travelling to a country of origin and making contact with a child before a match is made. To prevent inappropriate practices before the matching, Article 29 prohibits any contact between the prospective adoptive parents and any person whose consent might be influenced, intentionally or otherwise, by the adoptive parents. The only exceptions to this rule are for cases of relative adoptions, where the parties obviously know each other, or if the competent authority sets some conditions for contact and those conditions are complied with.

94. There was support for the view that the matching should be communicated first to the Central Authority or an accredited body of the receiving State before any notification to the prospective adoptive parents. As a general rule Central Authorities/ accredited bodies of States of origin should not give information to adopters about the match before first informing the authorities of the receiving State. A specific recommendation on this issue was made as follows:

The Special Commission recommends that States actively discourage direct contacts between prospective adoptive parents and authorities in the State of origin until authorised to do so. Exceptionally, such contact at the appropriate time may be desirable, for example in the case of a child with special needs.

95. A formal acceptance of the match by the prospective adoptive parents is necessary as the adoptive parents must confirm to the Central Authority that they accept the child proposed to them. The Central Authority must confirm their acceptance under Article 17. This procedure creates an opportunity for the prospective adoptive parents and the Central Authority / accredited body to discuss the proposed match. Matching occurs in a moment in time, and after that moment, both the parents and the child could have a change in their circumstances requiring proper consideration. For example, the child can develop problems not previously identified, or the financial or emotional circumstances of the adoptive parents can change.

Article 17 procedures

96. Many experts stated that prospective adoptive parents should not be permitted to contact the Central Authority of the State of origin directly, or to travel there to try to make contact with the child or the child's carers without invitation, before agreements

under Article 17 are given. Such practices opened the possibility for pressure on States of origin. It was noted that in some cases, such as specific needs cases, direct contact may be appropriate and does not violate Article 29 when the competent authority in the State of origin has authorised the contact.

97. The requirements of Article 17 cannot be met until the permissions in Article 18 have been obtained for the child to leave the country of origin and to enter the receiving country and reside there permanently.

Entrustment and transfer of the child

98. It was said that adoptive parents should escort the child from the State of origin, as that enables them to know and understand the child's life and living conditions before the adoption and to understand something of the background of the child.

99. Entrustment of the child to the parents must not take place until all agreements under Article 17 have been given. This is an important safeguard in the Convention. It is possible that some countries are skipping this step in the mistaken belief that it is identical to Article 23. It is important to understand the difference. In Article 17 both Central Authorities are required to agree that the adoption can proceed. Article 23 requires the State which makes the final adoption order to issue a certification that all the convention procedures have been followed (not only those in Article 17) and the adoption is in compliance with the Convention.

Avoiding undue delay

100. Some experts suggested introducing deadlines for the treatment of files. It was stated that blame for delays should not be placed on States of origin, since they often encountered practical difficulties. Others stated that the failure of Central Authorities / accredited bodies to respond to questions caused much unnecessary delay. It was agreed that there should not be unnecessary delays, but a certain delay was necessary in order to ensure diligence in the adoption preparations and a decision in the best interests of the child.

101. The Special Commission made recommendations as follows:

The Special Commission reminds States Parties to the Convention of their obligations under Article 35 to act expeditiously in the process of adoption, and notes in particular the need to avoid unnecessary delay in finding a permanent family for the child.

The Special Commission recommends the use of flexible and efficient systems of communication taking into account, where available, advances in technology.

Legalisation

102. It was said that clear information on the requirements of other States for legalisation of documents could prevent delays, which were detrimental to the interests of the child.

103. The Secretary General encouraged States to become Party to the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation of Foreign Public Documents* in order to facilitate the legalisation of the documents for the adoption. He added that many States were in favour of such a recommendation in their responses to the Questionnaire (Prel. Doc. No 1). Some of the benefits of joining this Convention are that the process would be simpler and quicker and usually cheaper; and the use of the

apostille would reduce the formalities. On the other hand an expert from Australia reported that the cost of the apostille in her country was very expensive and not recommended as it imposed great additional costs on parents.

104. Some experts wondered whether it would not be possible to go a step further in the recommendation and to dispense with the requirement of legalisation altogether, but other experts were not prepared to go that far. The Special Commission made a recommendation that:

stresses 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 recommends that States Parties to the Adoption Convention but not to the Apostille Convention, consider the possibility of becoming a party to the latter.

Article 23 certificate

105. The Special Commission heard that there was uncertainty as to the mandatory nature of granting the certificate under Article 23 of the Convention: in some States a certificate was given automatically or very easily while in other States adoptive parents had to apply for it. The absence of a certificate caused difficulties for recognising the adoption and for according the child the nationality of the receiving State.

106. A question was asked whether a judgment granting an adoption could be sufficient as a certificate of conformity under Article 23. The Secretary General replied that the model form for a certificate of conformity in Annex 11 of the Annexes to the draft Guide to Good Practice was a recommended form, not a mandatory form. States could choose the manner in which they certify conformity with the Convention, provided all the relevant information is included in the certifying document. However the benefits of using the form are that it covers all the relevant details, it is easily understood and it is becoming more widely used.

Preservation of information and the search for origins

107. Article 30 of the Convention imposes on Contracting States an obligation to preserve any information they have about the child and his or her origins. There is also an obligation to ensure the child has access to that information under certain conditions.

108. Article 30 should be read in conjunction with Article 16, because the information referred to is mainly that which is required for the preparation of the report on the child that the Central Authority of the State of origin is to transmit to the Receiving State. Therefore, as a practical matter, it may be beneficial for States to include the retention of records as a duty of the same office that prepares the report on the child. States may also want to clearly determine, and include within their laws, the length of time that records should be kept.

109. Many experts stated that personal information had to be retained in the files in order for the adopted children to have future access to the information on their origins. Currently, more and more adopted children were looking for information on their origins. In the same manner, more and more biological parents sought information on the whereabouts of their adopted children. It was said that the gathering of as much information as possible was important to guarantee the best interests of the child as

adoption is a lifelong experience and every piece of information could be important for the adoptee. Countries of origin should be encouraged to collect information about birth parents, such as a photograph, or a gift to present to their children, for the future benefit of the adoptee. As more and more adoptees search for their biological families, it is important to have long-term policies and procedures for the preservation of information.

110. Not all States had the same notion of confidentiality. It was agreed that a child had a right to information on his / her own background. The right of the child to obtain information about his or her origins derives from the right to know his or her parents as provided for in Article 7(1) of the *UN Convention on the Rights of the Child*. But the right of adopted children to information did not have to infringe the biological parents' right to privacy. Information would not be made public, but only supplied to the adopted child. Furthermore, factual information, such as age, health and social circumstances, could be given without disclosing the names of the parents. In many countries, the disclosure of information is based on the mutual consent by the adult adopted child and the biological parents.

111. However, it was said that the child's right must be balanced against the right of birth parents not to have their identity disclosed to the child who is relinquished for adoption. For example, in some countries an unmarried mother who had consented to the adoption might be later harmed by the disclosure of her past. Therefore, Article 30 does sanction some restrictions to the right of the child to have information, as access is only "in so far as is permitted by the law of that State." Furthermore, States of Origin are permitted to withhold identifying information from the report on the child in accordance with Article 16(2).

112. While Article 30 acknowledges the right of the child to discover his or her origins under certain circumstances, it is necessary to limit the possibility of misuse of personal data, which is disclosed during the adoption process. Consequently, the Convention establishes minimum safeguards by prescribing that the information on the child and the prospective adoptive parents should only be used for the purposes for which it was gathered or transmitted. These obligations and safeguards are also given emphasis through the requirements of Article 9 *a*) that Central Authorities shall take all appropriate measures to "collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption".

113. Some experts commented on initiatives taken to assist adopted children and biological parents in their search for their roots or their children and to facilitate possible encounters. The conservation of and access to adoption information is very important to the adoptee and following generations. It was suggested that evolving technologies should be used for copying and preserving records. Consideration should be given to assisting Central Authorities to acquire the adequate technical resources for the collection and preservation of information.

Use of Standard Forms

114. It was stated that there should be standard forms for the Article 17 consent by Central Authorities, the medical report, the adoption certificate, adoptability and travel documents. A recommendation concerning forms for Article 4(d)(3) and Articles 15 and 16 was made (see under the heading "Report on the child and the prospective adoptive parents" at paragraph 85).

115. The delegation from Denmark introduced Working Document No 6, which contained a supplementary form for the model form for medical reports introduced in 2000 (See Annex 2 of this Report). Psychological and social conditions for very young children were

covered by the supplementary form. It was noted that the proposed model form focussed on children under the age of four, while children with special needs were not catered for. It was also said that the use of a standard form might result in the loss of descriptive information or nuances that would have been mentioned if there were no set form. Many experts thought that that model form was a good proposal, even if it were just a recommended form and not mandatory. A recommendation was made to this effect (see above under the heading "Report on the child and the prospective adoptive parents").

Children with Special needs

116. Co-operation in the interests of special needs children was discussed. A representative of International Social Service proposed a four-phase approach. Firstly, States of origin could assess the number and profiles of intercountry adoptable children with special needs and share these details (but not any identifying information – to protect the privacy of the children) with receiving States. Secondly, the capacity to respond to the real needs of the intercountry adoptable children with special needs should be made a requirement for accreditation of an accredited body in a receiving State and for its authorisation by a State of origin. Thirdly, if necessary, States of origin should limit the number of receiving States and of foreign accredited bodies with whom they co-operate, in order to provide better services for children with special needs. Fourthly, as a practical measure, in order to adapt to the special needs of the children there could be a reversal of the flow of the files, *i.e.* States of origin would request the receiving States to look for prospective adoptive parents capable of caring for particular children with special needs. Recommendation 1 of the Special Commission recommends the inclusion in the Guide to Good Practice of "appropriate references to children with special needs". A representative was of the view that a separate part of the Guide should be devoted to children with special needs.

117. Children with special needs are hard to place, and may wait for years for a suitable family. Some never find a family, and therefore children with special needs deserve special attention. It was suggested that on the Hague Conference website, countries could list the facilities they have for permanent placement of such children. It is important to raise awareness, to get professionals involved, promote placement of children with special needs at national and intercountry levels, and promote as far as possible adoption by nationals of the country.

118. Children with special needs need adoptive parents with different skills and more suitable, tailor-made services, including methods to actively look for parents, as suggested by ISS. Special needs children could also receive priority above others for adoption. In the adoption process, there should be specific matching procedures. There should also be specific post-adoption services, and opportunities for adoptive parents to obtain support. Older children could be adopted through simple or open adoptions, which would give older children a family while keeping some links with their biological family.

119. The following recommendations were made:

The Special Commission recognises the importance of States of origin sending information to receiving States on the needs of children to better identify prospective adoptive parents.

The Special Commission recognises that as a matter of good practice, authorities in receiving States should co-operate with authorities in States of

origin in order to better understand the needs of children in States of origin.

Costs

120. Working Document No 1 was introduced by an expert from the Netherlands. He reminded delegates that at the Special Commission of 2000, serious concerns were expressed regarding the level of costs in intercountry adoption. After discussions in 2000 an informal working group was established to survey costs relating to adoption, and make an assessment of reasonable costs. The original proposal was that a group of experts from states of origin and receiving states would form a small working group to perform the task.

121. He stated that the attempt by the Informal Group on Costs to draw up a document to assess the costs of adoption, as mentioned at the Special Commission of 2000, was not successful since their draft survey was too complicated, there was no budget and a lack of time. He remained of the opinion that the cost project could be useful and requested the support of the Permanent Bureau in that regard.

122. An expert reminded the participants that although the adoption in itself might be free according to the Central Authority, in her experience adoptive parents were always charged administrative and legal costs by accredited bodies. The costs of maintaining a child in an orphanage pending completion of the adoption could also reasonably be charged for.

123. Emphasis was given to the need for proper information and transparency to combat over-charging by accredited bodies. Experts thought that better co-operation between the States could help in controlling costs. They suggested that the website of the Hague Conference could be the central repository of information on costs to be provided by the States when they provide general information on their procedures. Important details are the amount of the fees and costs and the services covered by the fees. Transparency in the amounts of fees and costs is a practical and effective way to limit malpractice and improper financial gain in adoption.

124. A number of important points were made concerning costs: a) development assistance was important, but it should be organised between States and not by asking high fees of the adopters; b) there had to be an equal distribution of funds gained by donations between the different orphanages in States of origin; c) the question of fees had to be dealt with on both the national and the international level; d) fees had to be reasonable and should not exceed the cost of services provided.

125. The Special Commission reaffirmed Recommendations Nos 7-9 of the Special Commission of November / December 2000 concerning costs which stated:

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

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

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

LEGAL ISSUES SURROUNDING IMPLEMENTATION

Bilateral Agreements

126. A question was raised concerning the existence of an obligation to conclude bilateral agreements for the implementation of the Convention between the two countries concerned. The Convention imposes no such obligation, but for practical reasons, most countries require a formal or informal procedure to be put in place with another country before adoptions can be arranged between them. This is usually done through a bilateral agreement. Furthermore, the Convention provides only a basic framework for co-operation and additional requirements may be imposed by means of a bilateral agreement.

Placing limits on intercountry adoption

127. One of the concerns expressed by countries of origin when contemplating ratification or accession to the Convention is that they may be obliged to develop co-operative arrangements with all other Contracting States, or at least to deal with requests for adoption from all the receiving States that are Parties to the Convention. In fact, there are sound reasons that limitations, whether by receiving States or States of origin, may be necessary. Some of them are mentioned in the Guide to Good Practice at Chapter 7.

128. A country of origin is not obliged to make intercountry adoption arrangements with all receiving countries which are Parties to the Convention. Likewise, a receiving country is not obliged to make intercountry adoption arrangements with all countries of origin which are Parties to the Convention. However both receiving countries and countries of origin should be ready to provide information to Contracting States concerning any decisions to limit their co-operation with other countries. Several experts insisted on the right of receiving States to be able to restrict adoptions from particular countries to protect the best interest of the child.

129. Contracting States are not bound to engage in intercountry adoption. The Convention does not oblige a Contracting State to involve itself in intercountry adoption either generally or in a particular case. Nor does ratification / accession imply commitment to a particular level of involvement in intercountry. However, the Convention does require that, if intercountry adoption is undertaken by a Contracting State, the rules and procedures set out in the Convention must be followed.

130. Several experts asked for a clarification on the meaning of the term "moratorium". The Principal Legal Officer stated that a moratorium is usually a temporary stop on the activity of international adoption. An expert noted that the use of the term "indefinite time", referred to in section 7.2.4 of the draft Guide, suggests that it is possible to renounce to the terms of the Convention by imposing an indefinite moratorium. The Secretary General acknowledged that there could be a conflict with the use of this term. The issue should be considered by the Working Group when revisions to the Guide are being made.

131. In keeping with the general principle that the Convention does not oblige States to engage in intercountry adoption, the placing of a moratorium on adoption is not necessarily inconsistent with Convention obligations. There may be good child protection reasons why this should occur.

132. Many experts believed that delays caused by moratoria, particularly for "pipeline" cases (cases which had commenced before the moratorium was imposed), might not be in the best interest of the child. The situation in Romania was raised and cases were mentioned where children and prospective adoptive parents had been matched, and had

even met, but the adoption was stopped because of the moratorium. An expert from Romania described the new legislation on adoption procedures, noting that the changes had been made in response to criticism from the international community regarding, among others, the absence of transparency. She explained that between 2001 and 2004, the moratorium was in force and applications submitted prior to this period were considered, based on the old procedure, permitting the approval in certain situations. She added that the Romanian Office for Adoption is currently considering applications that were submitted after 2001 on a case-by-case basis. Experts were reminded that in dealing with pipeline cases, the best interest of the child should remain paramount when deciding whether to proceed with an intercountry adoption and a case-by-case approach is the only solution.

133. Communication between Central Authorities is a key to reducing the impact of moratoria or restrictions on adoptions. It was suggested that prior to implementing a moratorium, a State of origin should hold discussions with the relevant receiving States. It was proposed that the Guide to Good Practice should include a section outlining a process for countries deciding to impose a moratorium or restriction on intercountry adoption.

Nationality

134. Many States of origin felt strongly that receiving States should automatically grant nationality to an adopted child to avoid situations where a child becomes stateless. An expert from Chile introduced Working Document No 10 and emphasised that for the best interests of the child, statelessness should be prevented, that the child should automatically obtain the nationality of the receiving State, and that he / she should be treated the same as a child adopted domestically. Cases were mentioned concerning children adopted abroad who did not acquire the nationality of the new habitual residence country. Later as young adults, they faced deportation because of minor offences. The Secretary General added that nationality does not play a role in the application of the Convention. He concluded that co-operation between the authorities of the child's and the prospective adoptive parents' respective habitual residence was needed to ensure a child did not become stateless and obtained the nationality of the adoptive parents with the minimum of delay. A recommendation was made to this effect:

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.

Habitual residence

135. It was suggested that the concept of "habitual residence" of the prospective adoptive parents be further clarified to decide whether particular cases of intercountry adoption fall under the Convention and its safeguards. In particular, the example was given of temporary workers who circumvent the rules of the Convention by adopting a child under the domestic law in the country where they are working. It is difficult for the authorities to determine where is the habitual residence of the prospective adoptive parents. In another situation, parents with dual nationality travelled to one of their countries of nationality and adopted children according to the procedure for national adoptions and then brought the children back with them to their State of habitual residence. Receiving States were in a difficult position as to the recognition of such adoptions: on the one hand, if recognition is refused, the children may be left in limbo, but on the other hand such practices should not be encouraged.

136. Several experts raised concerns with regards to the relocation an adoptive family during or after the adoption. There may be a lack of post-adoption monitoring in such cases, but between Convention countries there should be co-operation between authorities to achieve the objects of the Convention. The Chair stated that there could be problems with the recognition of foreign adoption judgments if the parents relocate to a non-Convention country.

137. The majority of experts agreed with the response of the Hague Conference to the Tsunami disaster that affected several Asian and African countries in December 2004.³ In such a situation, efforts to reunify a displaced child with his or her parents or family members must take priority. Premature and unregulated attempts to organize the adoption of such a child abroad should be avoided and resisted.

Family or relative adoptions

138. Experts agreed with the draft Guide to Good Practice that intra-family intercountry adoptions are within the scope of the Convention. Children to be adopted by a relative should benefit from the safeguards and guarantees of the Convention. In the intra-family cases it must still be verified that the adoption is in the child's best interest. It should not be automatically presumed that an adoption by a relative is always better for a child than adoption by another family. The detailed report on the prospective adopters required by Article 15 is necessary in the case of adoption by relatives to determine whether a possible adoption is in the child's best interests.

139. Some experts wondered about the application of the principle of subsidiarity to intra-family intercountry adoptions: would that not mean that one would first have to try finding an adoptive family in the State of origin? In most cases, such a family could be found and the family abroad would not be able to adopt the child. The Principal Legal Officer noted that the overarching principle of the Convention is the best interest principle, not the subsidiarity principle. While it was important to look for a home in the country of origin, a permanent home in another country would be preferable to a temporary home in the country of origin. It is necessary to consider all the relevant factors to decide which is the better family for the child and where is the best permanent home for that child.

140. Other experts agreed that the principle of subsidiarity did not stand on its own, but had to be evaluated in the light of the best interests of the child. It was stated that the principle of subsidiarity had two elements, namely that the child should stay in his / her family of origin rather being adopted and if the child had to be adopted, he / she should be adopted nationally rather than internationally. However, the Principal Legal Officer noted that an adoption by a family member abroad would be preferable to a national adoption if the former was in the child's best interest. For example, if the non-relative prospective adopters in the country of origin, and the relative prospective adopters abroad, were equally well qualified to care for the child, preference might be given to the relative adopters to preserve the family bond. It is necessary to examine, on a case-by-case basis, if an intra-family intercountry adoption is in the best interest of the child. Some Experts were of the view that intra-family adoptions deserved a separate section in the Guide to Good Practice.

Private adoptions

141. With regard to the question of scope, Article 2 applies to all cases where a child habitually resident in one Contracting State has been, is being, or is to be moved to

³ The media release is on the Hague Conference website at www.hcch.net/Convention33/Miscellaneous

another Contracting State for the purpose of adoption. Private adoptions do therefore come within the scope of the Convention and are subject to Convention requirements. However due to their private nature, they are not compatible with Convention standards and procedures.

Adoptions by same sex couples

142. The question was raised whether adoptions of children by unmarried and homosexual couples were covered by the Convention. Although the Explanatory Report stated clearly that only heterosexual married couples were understood by the term "spouses" in Article 2, one had to take cognisance of modern societal trends and adapt the interpretation of the Convention in that sense. Whether a Convention country considers an unmarried couple or a same sex couple as "spouses" is a question of public policy for individual countries.

Recognition and effects of the adoption

143. The Chair noted that the draft Guide to Good Practice did not contain anything on the matter of recognition and effects of the adoption. These are matters to be dealt with in the implementing measures of Convention countries.

144. Clarification was sought on the application of Article 26 of the Convention which concerns the effects of recognition of the adoption. The Secretary General explained that Article 26(1) concerning recognition of the legal relationships affected by the adoption applied to all adoptions, while Article 26(2) only applied to some adoptions, namely those that terminate the pre-existing legal parent-child relationship. The purpose of the second paragraph was to ensure that a child who had been adopted by a full adoption would have the same rights in the receiving State (and in any other State where the adoption was recognised) as if he / she had been adopted according to the national law of that State. Article 26(2) is intended to give effect to Article 21 c) of the UN Convention on the Rights of the Child. The Chair added that that rule did not concern conflicts of law, but the recognition of adoptions.

145. The Secretary General asked delegates whether they had experience on the application of Article 27 of the Convention that permitted converting a simple adoption into a full adoption. The Chair stated that that question was difficult for States where only full adoptions existed. Furthermore, it was problematic to view the consent to simple adoption as sufficient for the receiving State to convert the adoption into a full adoption.

POST-ADOPTION MATTERS

146. The Convention obligations imposed on Contracting States do not cease with the transfer of a child to the adoptive parents. The Convention requires States to undertake a range of other general functions that may be relevant to particular adoptions, such as the provision of counselling or post adoption reports, or that may be relevant to a general review of the operation and implementation of the Convention, such as the collection of statistics. Some of these functions address the long-term needs of adopted persons and their families, and cross-border co-operation between States of Origin and Receiving States will be necessary when adult adoptees are searching for their origins.

147. The participants were reminded that adoption was not a single event, but a life-long process. There had to be a balance between the rights of States of origin to have information about their children and the obligations on receiving States to report on the adopted children.

148. The obligations concerning preservation of information are dealt with under the heading “The Intercountry Adoption Process under the Convention” at paragraphs 106-112

Post-adoption reports to states of origin

149. The interpretation of Article 9 was discussed with reference to post-adoption reports. From a legal point of view, there is no obligation in the Convention for the sending of post-adoption reports. However, it is a legal requirement in many States of origin. In this respect, the provision of post-adoption reports cannot merely be regarded as a moral obligation as was suggested by some experts. The inclusion of this requirement in the bilateral agreements or arrangements between Convention countries also highlights its importance to the States of origin.

150. The Convention imposes an obligation on Central Authorities to promote counselling and post adoption services. When developing a national and intercountry adoption system, States should give consideration to who will provide post adoption services. The nature and extent of these services is not specified, but States must take all appropriate measures to promote them. This should be interpreted as meaning that States must do everything within their powers and resources to carry out the obligation.

151. The Explanatory Report at paragraph 237 elaborates on the reasons for this provision in the Convention. The words on post adoption services were added at the suggestion of some origin countries “because of the importance of post-adoption services to ensure the child's adjustment into his or her new home or environment, and successful outcome of the adoption [...] the Convention should promote the social and cultural protection of the adopted children, and make, through the Central Authorities, a conscious effort to see that they were not only protected, but also integrated into their new environment.”

152. Experts from States of origin described mandatory post-adoption reporting requirements in their national legislation. These experts highlighted that the prospective adoptive parents’ commitment to providing these reports is a condition of the intercountry adoption. They presented their reasons for needing post-adoption reports, including: improving domestic public opinion on international adoption, which is sometimes perceived as a national failure; better preparation of children for adoption, as well as prospective adoptive parents; and to determine with which States the intercountry adoptions are most successful. It was noted that the reports provide a sense of reassurance to Central Authorities and communities in States of origin that intercountry adoption is an appropriate solution for some children, and the Convention process provides some safeguards. Experts from receiving States thanked the States of origin for their explanations. They highlighted that this information is important for Central Authorities of receiving States in explaining to prospective adoptive parents the reasons that certain States of origin need post-adoption reports.

153. Experts from receiving States, for their part, explained that certain legal reporting requirements imposed by States of origin on adoptive parents create a heavy burden on the latter as well as on the Central Authorities of the receiving States who are asked to enforce the requirements. The view of Receiving States was not a desire to prohibit post-adoption reporting, but simply limiting the period of reporting time to one or two years in order to achieve a fair balance. One Receiving Country reported that it discusses with parents during the preparation stage the reasons that many countries need such reports as it is important for them to know. Preparation of the reports provides an opportunity to discuss the progress of the adoption with the parents (and possibly the child).

154. Many experts from receiving States indicated that the right to privacy of the parents is fundamental in their countries and Central Authorities cannot interfere in the private lives of families and do not have the power to oblige the adoptive parents to provide reports. A receiving country reported that it encourages adoptive parents, including through communication to accredited bodies as appropriate, to comply with post-adoption reporting requirements of country of origin, with the goal of improving child welfare services in such countries and increasing public confidence in the positive nature of intercountry adoption.

155. It was noted that the protection of the child after an adoption has taken place is not the responsibility of the State of origin, but rather of the receiving State, which must be trusted to carry out this duty. As an issue of non-discrimination between a child adopted nationally and one adopted internationally, the amount of supervision and reporting should be comparable in both situations. Several experts indicated that post-adoption reports must be distinguished from post-adoption monitoring, highlighting that the reports are but one of many methods of monitoring. The difference between supervisory and supportive monitoring was noted. One expert believed that there is an exaggerated reliance on post-adoption reports and this tends to mask the real children's rights problems. He insisted that the emphasis should be on ensuring that the proper precautions are taken in the pre-adoption phase. If that process were conscientiously followed, the need for post-adoption reports would decrease.

156. The Chair concluded that there are three important issues: 1) intercountry adoption must be in the best interest of the child; 2) a balance must be struck between the control over adoptions and the respect for privacy; and 3) legislative constraints exist in receiving States and States of origin. As these legislative requirements cannot be ignored, a compromise was needed, based on mutual trust.

157. The Secretary General reminded the Special Commission that there was lengthy discussion on this topic during the negotiations to the Convention during which the same issues were raised. He referred the experts to the Explanatory Report's comments on Article 9. He insisted that all solutions must conform to the Convention and he concluded that co-operation, communication and trust are fundamental to the operation of the Convention.

158. A recommendation was made on post-adoption reporting to reflect the compromise that was needed in this matter. It states as follows:

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.

159. Working Document No 7, "Suggestions for Specification of Post Adoption Services According to Article 9c of the Hague Convention of 29 May 1993" was introduced by an expert from the International Korean Adoptee Associations (IKAA). IKAA represents 9 associations from 7 countries. It is an independent non-profit organisation devoted to the development of post-adoption services and assistance in the search for families. Working Document No 7 proposed minimum requirements for post adoption services, including: the connection of knowledge and experience; research on the problems of adult adoptees; access to inexpensive qualified counselling for parents and children; education

of social workers, therapists, doctors, nurses, teachers and others who are likely to deal with intercountry adoptees; assistance in the search for family; and access to files.

160. Working Documents Nos. 4 and 5 proposing post-adoption services were introduced by an expert from Euradopt-NAC and was supported by many experts. However, one expert stated that the time was not yet ripe to introduce minimum standards in that domain. Working Document No. 4 proposed better post-adoption services for families who struggle with problems too difficult for them to manage without help from professionals, in particular, problems for children whose lives were especially traumatic before the adoption. Working Document Nos. 5, "Origin and Personal History of Adoptees - Principles for Search, Knowledge and Reunion" examines the question from two perspectives: first, distinguishing between the right to know/obtain information and the right to access/reunion; second, the importance of timing for both receiving information and for reunion.

161. Representatives of ChildONEurope gave a report on their research into post adoption matters in Europe. Childone is an institutional network of National Observatories on childhood appointed by the national ministries of the intergovernmental group L'Europe de L'Enfance. Its current project is to collect statistics and undertake a comparative research survey on national and international adoptions in Europe. The survey examined the legislative basis for post adoption services, which countries provide the services, and who provided them. The survey concluded that a legal basis for the service was ineffective in guaranteeing the service when insufficient importance was attached to the service and inadequate resources were allocated.

STATISTICS

162. Mr Selman (United Kingdom) made a presentation on intercountry adoption statistics which he has compiled from both receiving States and States of origin. He underlined the importance of standardising the information. For example, in certain States the information on intercountry adoptions included intra-family adoptions, while in other States only non-family adoptions were counted. To obtain a true picture of intercountry adoption in a country, it was important to count the number of adoptions in relation to the size of the population or in relation to the number of births in that country. Additional statistical details of interest were gender, age, special needs, and status of the child (abandoned or orphaned).

163. When collecting statistics, it was advisable not to seek too much detail, as this may impose a burden on the administrative resources of agencies and authorities. The value of such statistical analysis was to follow the evolution of intercountry adoptions and the categories of children concerned, from both receiving States and States of origin. Experts were reminded of the importance of sending statistics regularly to the Permanent Bureau, which is also developing a method of enabling Central Authorities to add their statistics directly onto the Hague conference website.

164. In a discussion of the draft Statistics Forms in Annex 5 of the Guide to Good Practice, some experts thought that more detailed information on costs had to be included. However, too much detail could not be asked (especially if it was difficult to obtain) as this may discourage responses. Mr Selman believed that it was more important to obtain a small amount of accurate data from as many countries as possible, than a large amount of data from few countries. The following recommendation was made:

The Special Commission welcomes the development of the draft forms for the gathering of general statistical information (Appendix 5 of Prel. Doc. No 2) and underlines the importance for States Parties to submit general statistics to the Permanent Bureau using these forms on an annual basis.

PREVENTING ABUSES OF THE CONVENTION

165. There had been discussion of abuses of the Convention during the discussion of general principles in Chapter 2 of the draft Guide to Good Practice, in particular issues around the abduction, sale and traffic in children. In the discussion on prevention of abuses, reference was made to the scenarios in Annex 3 ("Creating effective procedures – practical examples"). Those scenarios illustrated how national child protection systems might minimise abuses. The discussion also highlighted the importance of cooperation between States to prevent abuses.

Unethical or illegal practices

166. It was said that unethical practices exist, and if they are ignored they can be a breeding ground for illegal practices. For example, birth mothers travel abroad to a Receiving State to give birth for an arranged adoption. This situation may not be covered by the Convention and is a source of concern.

167. An expert from Chile reported that if any breach of the Convention is detected involving criminal behaviour, it is punishable under penal law. Chile prohibits private adoptions but sometimes the parties involved are ignorant of legal requirements. In other cases notaries transact private adoptions between parents. This is illegal but sometimes only comes to light after the child has left the country.

168. An expert from India was concerned about unethical practices such as falsification of documents, soliciting children, and insufficient efforts at the local adoption level to look for a national solution before considering intercountry adoption.

Transparency in costs to prevent improper financial gain

169. There was general support for the principle that achieving transparency in costs and fees would be a significant step towards preventing improper financial gain. The problem is that when costs and fees are unregulated there is potential for abuse. Delegates appreciated the emphasis given to cooperation between countries of origin and receiving States to have an exchange of information about costs and fees charged. They agreed there had to be transparency between receiving States about their own costs and not just pressure on countries of origin to be open and transparent. It was suggested that if countries can clearly identify who may charge fees, it will clarify who should be involved in the adoption process and who should not.

170. One country of origin which did not impose any costs for intercountry adoption reported that a European accredited body charged exorbitant fees, exceeding 30,000 euros for an adoption. This country was firmly committed to clamping down on such excessive charging, and had revoked the accreditation of various bodies because of complaints made, and now requested that reports of costs actually charged be available to all parties.

171. A receiving State believed that the Central Authority should be responsible for checking on costs imposed by accredited bodies. It was said that even if the accredited body's costs were transparent, it was impossible to control some other costs such as

payments sought by intermediaries. Some control over such costs could be exercised by accredited bodies and agencies by dealing only with respected intermediaries. In certain legislation, any contracts between parties have to be deposited with the Central Authorities.

Undue pressure on States of origin

172. Undue pressure on States of origin may take various forms. Some of these were mentioned in the *Discussion Paper On Accreditation Issues* at paragraph 8.10:

- a) pressure on countries of origin by foreign accredited bodies seeking authorisation;
- b) pressure to supply children in response to excessive numbers of applications, applications from unsuitable applicants or applications for categories of children who are not available for adoption (such as babies under 12 months);
- c) pressure to respond to large numbers of accredited bodies from one country who contact a single State of origin Central Authority for the same or similar information

A representative thought that it was important to make a distinction between deliberate pressure on States of origin and situations that inadvertently caused pressure.

Application of Convention principles to non-Convention countries

173. The importance of co-operation with non-Contracting States to the Convention was emphasised, as a large number of children came from such States. Regarding the question of applying the principles of the Convention to non-Contracting States, the Chair noted that the draft Guide to Good Practice referred to the recommendation on this question adopted by the Special Commission of 2000. Experts supported its continued application in a recommendation:

The Special Commission reaffirms Recommendation No 11 of the Special Commission of November / December 2000:

"Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are "convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children", the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention."

INTERNATIONAL PLACEMENTS NOT WITHIN THE SCOPE OF THE CONVENTION

174. The Chair emphasised the complementary nature between the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*. As some types of placement were not covered by

the 1993 Hague Convention, it is necessary to promote the benefits of accession or ratification the 1996 Hague Convention. However, one expert stated that some States were still studying that Convention before ratifying it and were therefore not in favour at this stage of a Special Commission recommendation urging accession and ratification to the 1996 Hague Convention.

175. A recommendation was made to reflect these views:

The Special Commission recognises the need to consider how best to regulate the different types of international placement falling outside the scope of the Convention. The value in this context of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*, in particular Article 33, was recognised. The Special Commission also recognised the reference to this Convention in the important Decision of the United Nations Committee on the Rights of the Child, 37th Session, "Children without parental care", October 2004.

REQUESTS FOR ASSISTANCE

176. In the spirit of co-operation, which is the cornerstone of the Convention, a number of requests for assistance were made to the Special Commission: the delegation of Colombia requested technical assistance from international bodies and co-operation with other States regarding accreditation; the delegation of Guatemala sought assistance to overcome the legal impediment to the practical operation of the Convention; the delegation of Kenya sought the assistance of the Permanent Bureau for training judges, social workers and agency personnel as part of its pre-accession preparation; the delegation of South Africa sought assistance with developing programmes aimed at keeping children in South Africa. The Secretary General stated that many States sought assistance from the Permanent Bureau, but unfortunately it can only respond to the demand subject to its limited resources.

177. The Permanent Bureau has sought additional funding from Member States through the Supplementary Budget to try to respond to requests for assistance of the kind mentioned in the preceding paragraph. A *Proposal For A Pilot Implementation Assistance Programme* for the 1993 Convention is in Annex 3. The pilot programme will provide assistance directly to the governments of two States which are planning ratification of, or accession to, the Convention, or which have ratified or acceded but are experiencing difficulties with implementation of the Convention.

178. The pilot programme, which is Phase II of the development of the implementation assistance programme for the Intercountry Adoption Convention, is designed to put into practical effect the strategies set out in the Guide to Good Practice. Following a programme of internal assessment and assisted implementation, States will be provided with guidance on legal matters, structuring of effective child welfare programs and child protection measures related to adoption, the use of accredited bodies and approved (non-accredited) persons, and the development and funding of a Central Authority.

IMPLEMENTATION OF THE CONVENTION IN GUATEMALA

179. The meeting was attended by a high level delegation from Guatemala. Following the serious concerns about adoption practices in Guatemala, expressed at the first Special Commission meeting of November 2000, experts at the 2005 Special Commission heard

of some ongoing problems occurring and the remedial steps being taken in Guatemala.

180. The legal status of the Convention in Guatemala was clarified. A Guatemalan expert stated that the decree by which the Guatemalan Government had approved accession to the Convention was declared unconstitutional by the Constitutional Court of Guatemala in 2003. For this reason, the delegation of Guatemala asked the Special Commission for assistance to overcome this legal impediment and to find a solution for having the Convention apply to Guatemala. The depositary takes the view that as the instrument of accession was validly made, the Convention is in force for Guatemala. However, in a practical sense, the Convention cannot be applied there, for the reasons given by the Guatemalan delegation.

181. An expert from Guatemala indicated that Guatemala is primarily a State of origin, with an average of 5,000 adoptions per year. Procedures make it possible for lawyers to arrange adoptions and for private adoptions to be carried out easily, without much oversight. There are 7,000 notaries in Guatemala and they are also empowered to carry out adoptions. Several social problems contribute to problems surrounding adoptions: high poverty rates, mothers abandoning their children because they cannot afford to raise them; the high number of requests for Guatemalan children. As a result, the best interest of the child is no longer the main objective of adoption, but adoption has become a lucrative practice and does not serve its purpose as a social institution for the protection of children.

182. Concern in Guatemala has grown and therefore procedures have been introduced to protect children, including DNA testing prior to granting an adoption. Guatemala has been working with UNICEF in respect of new legislation already approved by the family and child welfare system to protect the child and to focus on best interests. The public prosecutor will require lawyers to obtain special authorization to carry out adoption work. Although the General Prosecutor's Office is appointed as the Central Authority it is not operational, and the only way an adoption may proceed at the moment is through an agency or a notary according to domestic legislation.

183. The delegation of Guatemala requested the support of the Special Commission to deal with its problems of implementing the Convention. The following recommendation was made:

22 The Special Commission:

- a) **Recognises the initiative of the Government of Guatemala, which led to the visit of the Secretary General to Guatemala from 31 May-3 June 2005;**
- b) **Takes note of the Report of the Secretary General of 15 June 2005, in particular the "action points"⁴ (Work. Doc. No 8) on which a consensus emerged during this visit;**

⁴ The "action points" refer to commitments by the Government of Guatemala (1) to send a high-level delegation to the Special Commission, (2) to respond positively to an offer made in 2003 on behalf of 13 States to provide assistance to Guatemala in respect of implementation of the 1993 Convention, (3) to propose to Congress the formal withdrawal of the reservations made to Articles 11 and 12 of the Vienna Convention on the Law of Treaties, which were identified by the Constitutional Court of Guatemala in its ruling of 13 August 2003 as reasons for considering that *Decreto 50-2002*, by which Guatemala had approved the accession to the 1993 Convention, was unconstitutional, and (4) to take urgent steps to resubmit the 1993 Convention to Congress for it to confirm its legal effect within Guatemala.

- c) **Appreciates** the presence at the Special Commission of a high-level delegation from Guatemala, including the Vice Minister of Foreign Affairs; the *Procurador General de la Nación* (the Central Authority under the Convention); Chairmen of three Parliamentary Committees, and others;
- d) **Recognises** the efforts being made by the Government of Guatemala towards the full implementation of the Convention;
- e) **Urges** Guatemala to confirm, as soon as possible, the legal effect of the Convention within its legal order consistent with Guatemala's international obligations under the Convention;
- f) Having regard to the request for support made during the Special Commission by the delegation of Guatemala, **calls upon** the States and international organisations represented at the Special Commission to co-operate with the Government in its endeavours to fully implement the Convention.

FUTURE WORK TO IMPROVE THE OPERATION OF THE CONVENTION

184. The Recommendations of the Special Commission contain a considerable work program to improve the operation of the Convention. The Permanent Bureau will play a major co-ordinating role in managing these projects and will work in close co-operation with Convention partners. All Member States, Contracting States, and international organisations will be kept informed of developments through a consultative process.

185. The work program includes :

Guide to Good Practice

1. Review of the draft Guide by the Working Group and prepare it for publication.
2. Research for a future Part of the Guide on accreditation including financial matters and a set of model accreditation criteria.
3. Research for possible future Parts of the Guide on issues of:
 - a) the financial aspects of intercountry adoption,
 - b) reports on prospective adoptive parents,
 - c) preparation of prospective adoptive parents, and
 - d) post-adoption reports.

Model Forms

4. Development of a model form for the consent of the child (Article 4(d)(3)).
5. Development of model forms or protocols for Articles 15 and 16 of the Convention.

Collection and dissemination of information

6. Expand the information on the website of the Hague Conference by collecting specific information from Contracting States, including their procedures, website addresses and division of responsibilities and tasks under the Convention.

Statistics

7. Revise the draft statistics forms as discussed in the Special Commission.

ANNEX 1 – CONCLUSIONS AND RECOMMENDATIONS

**Conclusions and Recommendations of the second 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
(17-23 SEPTEMBER 2005)**

Guide to Good Practice

1. The Special Commission gives its general endorsement to the draft Guide to Good Practice dealing with Implementation of the 1993 Convention prepared by the Permanent Bureau. It requests the Permanent Bureau, with the assistance of a group of experts appointed by the Special Commission, to review the draft in the light of comments made in the Special Commission on which there was consensus, and in particular by the addition of appropriate references to the situation of children with special needs. The revised text should then be circulated for their comments / approval to Contracting States, Member States of the Hague Conference and organisations represented at the Special Commission. Once there is a consensus, the Permanent Bureau will prepare the text for publication. The Permanent Bureau is authorised, in preparing the Guide to Good Practice for publication, to make changes of an editorial nature, to update where necessary any factual information contained in the Guide, to determine the presentation of the material in the Guide, provided that this does not involve any changes in substance or emphasis.

2. The Special Commission recommends that the Permanent Bureau, in consultation with Contracting States and non-governmental organisations, collect information on issues including, *inter alia*, the financial aspects of intercountry adoption, reports on prospective adoptive parents, preparation of prospective adoptive parents, and post-adoption reports, with the view to the possible development of future Parts of the Guide to Good Practice.

Designation of Central Authorities, other authorities and bodies under the Convention

3. The Special Commission reaffirms Recommendation No 2 of the Special Commission of November / December 2000, and underlines, in particular, the importance of designating Central Authorities without delay:

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

- a) The designation of the Central Authorities, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau not later than the date of the entry into force of the Convention in that State.*
- b) Such communication should, in accordance with Article 13 and paragraph 274 of the Explanatory Report on the Convention by G. Parra-Aranguren (Proceedings of the Seventeenth Session (1993), Tome II, Adoption – co-operation, page 591), give notice of any other public authorities (including their contact details) which, under Article 8 or 9 discharge functions assigned to the Central Authorities.*
- c) The extent of the functions of the Central Authorities and any such public authorities should be explained.*
- d) The designation of accredited bodies, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau at the time of their accreditation.*

- e) *Where a body accredited in one Contracting State is, in accordance with Article 12, authorised to act in another Contracting State, such authorisation should be communicated to the Permanent Bureau by the competent authorities of both States without delay.*
- f) *The extent of the functions of accredited bodies should also be explained.*
- g) *All the information referred to above should be kept up-to-date and the Permanent Bureau informed promptly of any changes, including in particular any withdrawals of accreditation or authorisation to act.*
- h) *Designations, in accordance with Article 23, of authorities competent to certify an adoption as having been made in accordance with the Convention should also be kept up-to-date."*

Accreditation

4. The Special Commission recommends that the Permanent Bureau should continue to gather information from different Contracting States regarding accreditation with the view to the development of a future Part of the Guide to Good Practice dealing with accreditation. The experience of non-governmental organisations in this field should be taken into account. Such information should include financial matters and should also be considered in the development of a set of model accreditation criteria.

5. The Special Commission reaffirms Recommendations Nos 6-9 of the Special Commission of November / December 2000:

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

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

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

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

Collection and dissemination of information

6. The Special Commission reaffirms the usefulness of the Model Form – Medical Report on the Child and notes the usefulness, in particular in the case of very young children, of the supplement to this form as proposed in Working Document No 6, pp. 8-9.
7. The Special Commission recommends that the Permanent Bureau, in consultation with Contracting States and non-governmental organisations, develop a model form for the consent of the child (Article 4(d)(3)) as well as model forms or protocols regarding the operation of Articles 15 and 16 of the Convention.
8. To further the work commenced by the development of the organigram (Appendix 6 of Prel. Doc. No 2), the Special Commission invites the Permanent Bureau, to collect specific information from Contracting States, including, *inter alia*, procedures, website addresses and how the various responsibilities and tasks under the Convention are divided between Central Authorities, public authorities, accredited bodies and any bodies and persons under Article 22(2). This information should be made available on the website of the Hague Conference

Statistics

9. The Special Commission welcomes the development of the draft forms for the gathering of general statistical information (Appendix 5 of Prel. Doc. No 2) and underlines the importance for States Parties to submit general statistics to the Permanent Bureau using these forms on an annual basis.

Co-operation and communication

10. The Special Commission stresses the importance of enhancing co-operation and exchange of information between Central Authorities, public authorities, accredited bodies and any bodies and persons under Article 22(2), notably with a view to promoting good practice and to ensuring that illegal and unethical procedures prior to the adoption of a child be effectively and systematically combatted.
11. Contracting States are encouraged to undertake and participate in regional and / or bilateral meetings to exchange information and good practices.
12. The Special Commission recognises the importance of States of origin sending information to receiving States on the needs of children to better identify prospective adoptive parents.
13. The Special Commission recognises that as a matter of good practice, authorities in receiving States should co-operate with authorities in States of origin in order to better understand the needs of children in States of origin.
14. The Special Commission reminds States Parties to the Convention of their obligations under Article 35 to act expeditiously in the process of adoption, and notes in particular the need to avoid unnecessary delay in finding a permanent family for the child.

15. The Special Commission recommends that States actively discourage direct contacts between prospective adoptive parents and authorities in the State of origin until authorised to do so. Exceptionally, such contact at the appropriate time may be desirable, for example in the case of a child with special needs.

16. The Special Commission recommends the use of flexible and efficient systems of communication taking into account, where available, advances in technology.

Nationality

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.

Post-adoption reporting

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.

Application of Convention principles to non-Convention countries

19. The Special Commission reaffirms Recommendation No 11 of the Special Commission of November / December 2000:

"11 Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are "convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children", the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention."

Other Conventions

20. The Special Commission stresses 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 recommends that States Parties to the Adoption Convention but not to the Apostille Convention, consider the possibility of becoming a party to the latter.

21. The Special Commission recognises the need to consider how best to regulate the different types of international placement falling outside the scope of the Convention. The value in this context of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*, in particular Article 33, was recognised. The Special Commission also recognised the reference to this Convention in the important Decision of the United Nations Committee on the Rights of the Child, 37th Session, “Children without parental care”, October 2004.

Implementation of the Convention in Guatemala

22. The Special Commission:

- a) Recognises the initiative of the Government of Guatemala, which led to the visit of the Secretary General to Guatemala from 31 May-3 June 2005;
- b) Takes note of the Report of the Secretary General of 15 June 2005, in particular the “action points”⁵ (Work. Doc. No 8) on which a consensus emerged during this visit;
- c) Appreciates the presence at the Special Commission of a high-level delegation from Guatemala, including the Vice Minister of Foreign Affairs; the *Procurador General de la Nación* (the Central Authority under the Convention); Chairmen of three Parliamentary Committees, and others;
- d) Recognises the efforts being made by the Government of Guatemala towards the full implementation of the Convention;
- e) Urges Guatemala to confirm, as soon as possible, the legal effect of the Convention within its legal order consistent with Guatemala’s international obligations under the Convention;
- f) Having regard to the request for support made during the Special Commission by the delegation of Guatemala, calls upon the States and international organisations represented at the Special Commission to co-operate with the Government in its endeavours to fully implement the Convention.

⁵ The “action points” refer to commitments by the Government of Guatemala (1) to send a high-level delegation to the Special Commission, (2) to respond positively to an offer made in 2003 on behalf of 13 States to provide assistance to Guatemala in respect of implementation of the 1993 Convention, (3) to propose to Congress the formal withdrawal of the reservations made to Articles 11 and 12 of the Vienna Convention on the Law of Treaties, which were identified by the Constitutional Court of Guatemala in its ruling of 13 August 2003 as reasons for considering that *Decreto 50-2002*, by which Guatemala had approved the accession to the 1993 Convention, was unconstitutional, and (4) to take urgent steps to resubmit the 1993 Convention to Congress for it to confirm its legal effect within Guatemala.

ANNEX 2 – SUPPLEMENTARY MEDICAL REPORT

DRAFT

Supplement to the general medical report on the child

Report concerning the psychological and social circumstances of the child

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

Please decide on each heading.

Activity with toys:	
<input type="checkbox"/>	1. The child's eyes follows rattles/toys, that are moved in front of the child
<input type="checkbox"/>	2. The child holds on to a rattle
<input type="checkbox"/>	3. The child plays with rattles: putting it in the mouth, shaking it, moving it from one hand to the other etc
<input type="checkbox"/>	4. The child puts cubes on top of each other
<input type="checkbox"/>	5. The child plays purposely with toys: pushes cars, puts dolls to bed, feeds dolls etc
<input type="checkbox"/>	6. The child plays role-play with toys with other children
<input type="checkbox"/>	7. The child draws faces, human beings or animals with distinct features
<input type="checkbox"/>	8. The child cooperates in structured games with other children (ballgames, card games etc)
<input type="checkbox"/>	No observation available
Vocalization/language development:	
<input type="checkbox"/>	1. The child vocalizes in contact with caregiver
<input type="checkbox"/>	2. The child repeats different vowel-consonant combinations (ba-ba, da-da, ma-ma etc)
<input type="checkbox"/>	3. The child uses single words to communicate needs
<input type="checkbox"/>	4. The child speaks in sentences
<input type="checkbox"/>	5. The child understand prepositions as: on top of, under, behind etc
<input type="checkbox"/>	6. The child uses prepositions as: on top of, under, behind etc
<input type="checkbox"/>	7. The child speaks in past tense
<input type="checkbox"/>	8. The child writes his own name
<input type="checkbox"/>	9. The child reads simple words
<input type="checkbox"/>	No observation available
Motor development:	
	The child turns from back to stomach from age: _____
	The child sits without support from age: _____
	The child crawls/moves forwards from age: _____
	The child walks with support from furniture from age: _____
	The child walks alone from age: _____
	The child walks up and down stairs with support from age: _____
	The child walks up and down stairs without support from age: _____
	The child rides a bicycle without support from age: _____

Contact with adults:	
<input type="checkbox"/>	1. The child smiles in contact with known caregiver
<input type="checkbox"/>	2. The child is more easily soothed when held by known caregiver
<input type="checkbox"/>	3. The child cries/follows known caregiver, when the caregiver leaves the room
<input type="checkbox"/>	4. The child actively seeks known caregiver when he/she is upset or has hurt him/herself
<input type="checkbox"/>	5. The child seeks physical contact with all adults, that come into the ward
<input type="checkbox"/>	6. The child communicates his feeling in words to caregivers
Contact with other children:	
<input type="checkbox"/>	1. The child shows interest in other children by looking or smiling at their activity
<input type="checkbox"/>	2. The child enjoys playing beside other children
<input type="checkbox"/>	3. The child engages actively in activities with other children
General Level of Activity:	
<input type="checkbox"/>	Passive
<input type="checkbox"/>	Active
<input type="checkbox"/>	Overactive
General mood:	
<input type="checkbox"/>	Sober, serious
<input type="checkbox"/>	Emotionally indifferent
<input type="checkbox"/>	Fussy, difficult to soothe
<input type="checkbox"/>	Happy, content

Any additional comments?

Name, occupation, signature and stamp of the examining person

Date

**ANNEX 3 – PROPOSAL FOR A PILOT IMPLEMENTATION ASSISTANCE
PROGRAMME**

PROPOSAL FOR A PILOT IMPLEMENTATION ASSISTANCE PROGRAMME:

*THE HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN
AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION⁶*

BACKGROUND

The Permanent Bureau (*i.e.* the Secretariat) of the Hague Conference on Private International Law has been active for several years in conducting programmes to support the effective implementation, as well as the development of sound and consistent State practice, under the three modern Hague Children's Conventions. These three world-wide Conventions, drawn up in the Hague in 1980, 1993 and 1996, deal respectively with international child abduction, intercountry adoption and international child protection more generally.⁷ Together they form the basis of a rapidly expanding international structure offering practical means for the protection of vulnerable children in cross-border situations. In response to the 2004 request to restructure the budget of the Organisation Member States have recognised the importance of this work in relation to the 1980 Convention by securing permanent resources in this respect. At the September 2005 Second Meeting of the Special Commission on the practical operation of the 1993 Convention, it was recommended and concluded by consensus that additional work, for which the Permanent Bureau does not have sufficient resources, has to be undertaken to support the implementation of the Convention.

OBJECTIVES

There is a pressing need to strengthen and expand the work carried out to support the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*. In order for the Convention to operate successfully, it is essential that the initial steps necessary for its effective implementation within each Contracting State be carefully planned. The pilot programme will provide assistance directly to the governments of two States which are planning ratification of, or accession to, the Convention, or which have ratified or acceded but are experiencing difficulties with implementation of the Convention.

The pilot programme, which is Phase II of the development of the implementation assistance programme for the Intercountry Adoption Convention, is designed to put into practical effect the strategies set out in the Guide to Good Practice, currently in development at the Permanent Bureau. Following a programme of internal assessment and assisted implementation, States will be provided with guidance on legal matters, structuring of effective child welfare programs and child protection measures related to adoption, the use of accredited bodies and approved (non-accredited) persons, and the development and funding of a Central Authority.

⁶ Annex C of the Supplementary Budget And Explanatory Notes for the Financial Year Lii (1 July 2006 – 30 June 2007), *Preliminary Document No 5 of March 2006, drawn up by the Permanent Bureau Document drawn up for the attention of the Special Commission of April 2006 on General Affairs and Policy of the Conference.*

⁷ *The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction; The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption; and The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.*

The programme will be operated directly by the Permanent Bureau, utilising staff and resources dedicated to this project, as well as international consultants. The use of a pilot programme will enable the Permanent Bureau to review at periodic intervals the effectiveness of the programme, and to keep Member States updated on the progress of the project. Recognising that the base costs for the programme are the most substantial, additional countries could be added at much lower per country costs for a larger programme should States wish to contribute to a pilot project involving three or more countries.

IMPLEMENTATION ASSISTANCE PROGRAMME

During the 2000 and 2005 Meetings 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 Inter-country Adoption* there was broad agreement that information, advice and training to support the effective implementation of the Convention was needed. The Convention places heavy burdens of responsibility on States of Origin, and implementation assistance may be particularly vital in countries that have few resources available for this purpose.

The development of the Implementation Assistance Programme consists of three phases. The first phase is currently being conducted by the Permanent Bureau. The second phase is the proposed pilot programme, and the third phase is a fully operational implementation assistance programme.

PHASE I

Development: The development phase of the programme includes the establishment of a programme development team, the formulation of a programme development plan, and the initial development of materials for use in assisting countries with effective implementation of the Convention, including the Guide to Good Practice on Implementing Measures.

Timeline: Phase I will cover a six-month period.

Phase I Stages:

- Establishment of programme development team
- Formulation of programme development plan
- Development of initial training / assessment materials

Part I of the Guide to Good Practice in respect of implementation of the Inter-country Adoption Convention will soon be completed. The Guide sets out information in respect of the framework of the Convention, institutional structures, including Central Authorities, national and international frameworks, legal issues surrounding implementation, post-adoption matters, and preventing abuses of the Convention. Subsequent Parts of the Guide, including Accreditation and Central Authority Practices, are anticipated.

PHASE II

Pilot Programme: The pilot programme will allow for the development of training materials, the identification of test countries, assessment and development of an implementation plan, practical assistance in executing the implementation plan, and an evaluation of the pilot programme.

Timeline: Phase II will cover eighteen months.

Phase II Stages:

- Continuation of the development of the Guide to Good Practice
- Identification of test countries and identification of available experts
- Initial assessment of Country conditions, development of implementation plan
- Initial execution of development plan in target States
- Review of and revisions to pilot programme
- Report to States Parties

PHASE III

Implementation Assistance Programme: Under Phase III of the project, a fully operational implementation assistance programme will be available with requests for assistance handled on an as-needed basis at the discretion of the Permanent Bureau and Member States. A full plan and budget will be developed based on the results of the pilot programme report.

COSTS (PHASE II)

Estimated costs for the pilot programme to assist two States:⁸

	EUROS
a. Co-ordinator (part-time for 18 months)	30,000.00
b. Development, translation of implementation materials	6,000.00
c. Travel / other costs for international assistance ⁹	40,000.00
d. Administration costs / meetings	10,000.00
e. Overheads	5,000.00
Sub-total	91,000.00

⁸ Additional States could be added at a cost of 20,000 Euros per State.

⁹ Travel cost for implementation team of 3 specialists to travel three times to each country, as well as in-country expert assistance.