

ADOPTION

Octobre / October 2005



**CONCLUSIONS ET RECOMMANDATIONS DE LA DEUXIEME REUNION DE LA COMMISSION SPECIALE SUR LE FONCTIONNEMENT PRATIQUE DE LA CONVENTION DE LA HAYE DU 29 MAI 1993 SUR LA PROTECTION DES ENFANTS ET LA COOPERATION EN MATIERE D'ADOPTION INTERNATIONALE
(17-23 septembre 2005)**

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**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
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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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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"¹ (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.

¹ 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.