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### **NOTE SUR LES QUESTIONS D'AGREMENT**

*établie par Jennifer Degeling, Collaboratrice juridique principale,  
assistée de Carlotta Alloero, stagiaire*

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### **A DISCUSSION PAPER ON ACCREDITATION ISSUES**

*drawn up by Jennifer Degeling, Principal Legal Officer,  
with the assistance of Carlotta Alloero, Intern*

*Document préliminaire No 3 d'août 2005 à l'intention de la  
Commission spéciale de septembre 2005 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*

*Preliminary Document No 3 of August 2005 for the attention of the  
Special Commission of September 2005 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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## Table of Contents

	<u>Page</u>
1. INTRODUCTION.....	4
1.1 Aim of discussion paper.....	4
1.2 General requirements for accreditation .....	4
2. GENERAL PRINCIPLES .....	4
2.1 Principles from the 1993 Hague Convention.....	4
2.2 Principles of the Convention on the Rights of the Child .....	5
2.3 General principles concerning accreditation .....	5
3. GENERAL POLICY ISSUES CONCERNING ACCREDITATION .....	6
3.1 The place of accredited bodies within the overall structure (sending and receiving countries) .....	6
3.2 Choosing the accrediting body .....	7
4. ORGANISATIONS AND STRUCTURES FOR ACCREDITATION .....	7
4.1 The respective roles and functions of the Central Authority and accredited bodies ..	7
4.2 Monitoring numbers of accredited bodies .....	9
4.3 Choosing countries for adoption arrangements.....	10
5. ACCREDITATION CRITERIA .....	11
5.1 Process for developing and publishing criteria .....	11
5.2 Developing standard criteria.....	11
6. ACHIEVING FINANCIAL TRANSPARENCY AND ACCOUNTABILITY WITH ACCREDITED BODIES.....	12
7. SUPERVISION AND REVIEW OF ACCREDITED BODIES.....	13
7.1 In country of accreditation .....	14
7.2 In country of operation.....	14
8. OPERATIONAL ISSUES .....	15
8.1 Qualifications and experience .....	15
8.2 Accredited body of receiving State operating in another receiving State.....	15
8.3 Receiving State as a State of origin .....	16
8.4 Too many files .....	16
8.5 Quality of applications and documents .....	17
8.6 Private intermediaries .....	17
8.7 Private adoptions.....	17
8.8 Communication .....	17
8.9 Internet advertising .....	18
8.10 Pressure from receiving countries .....	18
9. ACHIEVING GOOD PRACTICE WITH ACCREDITED BODIES .....	18

## **1. INTRODUCTION**

The decision to devote one day of the 2005 Special Commission to accreditation issues was made as a result of concerns expressed that standards and practices vary so widely that a special focus on the issue was warranted.

### **1.1 Aim of discussion paper**

- 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.

### **1.2 General requirements for accreditation**

The basic standards and requirements for accreditation are established in Chapter III of the Convention. For bodies which are accredited to perform certain functions of Central Authorities, the nature and extent of those functions are discussed briefly in the draft *Guide to Good Practice: Implementation* at Chapter 4B and need not be restated here.

However, what should be emphasised here is that the general principles of the Convention apply equally to accredited bodies and non-accredited persons. The Conclusions and Recommendations of Special Commissions, which refer to Central Authorities, apply equally to accredited bodies and non-accredited persons, when they perform the functions of Central Authorities.<sup>1</sup> Contracting States have a responsibility to disseminate the information from Special Commissions to the bodies and persons to which or to whom the conclusions and recommendations are directed.

## **2. GENERAL PRINCIPLES**

The general principles of the 1993 Convention apply to all entities or individuals involved in intercountry adoptions arranged under the Convention, whether they be Contracting States, Central Authorities, public authorities, accredited bodies or non-accredited persons or bodies.

### **2.1 Principles from the 1993 Hague Convention**

General principles of the 1993 Convention are discussed in some detail in the draft *Guide to Good Practice: Implementation* at Chapter 2. Briefly these principles are: the best interests of the child as the primary consideration; the development of safeguards to prevent abduction, sale, and traffic in children; effective co-operation between authorities, and the importance of competent authorities to authorise intercountry adoptions.

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<sup>1</sup> The conclusions and recommendations of the 2000 Special Commission are included in the "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 Intercountry Adoption, 28 November to 1 December 2000", drawn up by the Permanent Bureau in April 2001. The Report is available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under Convention 33.

## 2.2 Principles of the *United Nations Convention on the Rights of the Child*

As the Preamble to the 1993 Convention refers to the fact that the principles of the *United Nations Convention on the Rights of the Child* are taken into account, it is useful to refer briefly to those principles. The governing principle of Article 21 is that the best interests of the child shall be the paramount consideration. This principle is supported by certain objects:

- a) that the adoption of a child is to be authorised only by competent authorities who determine that the adoption is permissible and with the necessary consents and counselling;
- b) that intercountry adoption may be considered if the child cannot in any suitable manner be cared for in the child's country of origin (the subsidiarity principle);
- c) that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- d) that improper financial gain should be prevented;
- e) that the placement of the child in another country is carried out by competent authorities or organs.

The Optional Protocol to the *Convention on the Rights of the Child* on the Sale of Children, Child Prostitution and Child Pornography is also relevant. Article 3(5), states that "*States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments*".<sup>2</sup>

## 2.3 General principles concerning accreditation

The 2000 Special Commission made recommendations concerning accreditation as follows:

*"The following principles should apply to the process by which accreditation is granted under Article 10, to the supervision of accredited bodies provided for in Article 11 c), and to the process of authorisation provided for in Article 12.*

- a) *The authority or authorities competent to grant accreditation, to supervise accredited bodies or to give authorisations should be designated pursuant to clear legal authority and should have the legal powers and the personal and material resources necessary to carry out their responsibilities effectively.*
- b) *The legal powers should include the power to conduct any necessary enquiries and, in the case of a supervising authority, the power to withdraw, or recommend the withdrawal of, an accreditation or authorisation in accordance with law.*
- c) *The criteria of accreditation should be explicit and should be the outcome of a general policy on intercountry adoption.*

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<sup>2</sup> For the text of the Optional Protocol of the *Convention on the Rights of the Child* on the Sale of Children, Child Prostitution and Child Pornography, see < [www.ohchr.org/english/bodies/crc/index.htm](http://www.ohchr.org/english/bodies/crc/index.htm) >.

- d) *Accredited bodies should be required to report annually to the competent authority concerning in particular the activities for which they were accredited.*
- e) *Review or the re-accreditation of accredited bodies should be carried out periodically by the competent authority.*<sup>3</sup>

### **3. GENERAL POLICY ISSUES CONCERNING ACCREDITATION**

#### **3.1 The place of accredited bodies within the overall structure (sending and receiving countries)**

- a) *Taking a decision on whether to accredit bodies*

There is no obligation in the Convention to accredit bodies for the purpose of intercountry adoption. However, if accredited bodies are to be used, the Convention sets out a regulatory framework of minimum standards for their operation. Additional standards may be imposed by Contracting States.

According to the Hague Conference website and the 2005 Questionnaire responses, approximately one-third of Contracting States use accredited bodies and have provided the Permanent Bureau with details of their designation.<sup>4</sup> A number of countries responded in the Questionnaire that they use accredited bodies, but their designations have not been made to the Permanent Bureau as required by Article 13.<sup>5</sup> Other States have indicated that they intend to or may in the future use accredited bodies but are not currently doing so.

The decision whether or not to use accredited bodies may take into account factors such as past practice, efficiency of existing arrangements, or availability of public resources to conduct intercountry adoptions. From 2005 Questionnaire responses, countries which do not use accredited bodies gave the following reasons: (a) desire to centralise control and supervision of intercountry adoptions through the Central Authority; (b) desire to avoid duplication of services; (c) the small number of intercountry adoptions makes accredited bodies unnecessary; (d) the small size of the territory to cover does not warrant establishment of an accreditation process; (e) the national law only permits adoptions to be done by public authorities.

- b) *Taking a decision whether to work with non-accredited persons / bodies*

The 2005 Questionnaire responses indicated a lack of understanding of the provisions of Article 22.<sup>6</sup> Article 22(2) permits a Contracting State to allow persons or bodies who satisfy certain minimum standards to arrange adoptions, even though such persons or bodies are not accredited in accordance with Chapter III of the Convention. Non-accredited persons or bodies are therefore not bound by the requirement of Article 11 *a)* "to pursue only non-profit objectives". A State which uses non-accredited persons or bodies must inform the Permanent Bureau of the details of such persons or bodies.<sup>7</sup> As there is an implied delegation of Central Authority functions, the Central Authority remains responsible for the actions of non-accredited persons or bodies.<sup>8</sup> These issues

<sup>3</sup> Report *supra* note 1 at paragraph 23.

<sup>4</sup> 23 of 66 Contracting States, or 28 countries including those in note 5.

<sup>5</sup> Canada (Quebec), Chile, Peru, Panama and Switzerland.

<sup>6</sup> See the responses to question No 6(6) of the 2005 Questionnaire on the Practical Operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption*, (hereinafter, "2005 Questionnaire").

<sup>7</sup> Article 22(3).

<sup>8</sup> See Explanatory Report to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption*, by G. Parra-Aranguren, Hague Conference on Private International Law,

are discussed in Chapter 4.3.5 of the draft *Guide to Good Practice: Implementation* and paragraphs 373-398 of the Explanatory Report.

A State of origin may make a declaration in accordance with Article 22(4) if it does not wish to have adoption arrangements made with countries which permit non-accredited bodies or persons to perform the functions of Central Authorities in Chapter IV. The Explanatory Report states that remaining silent on this question is to be taken as acceptance of the participation of non-accredited persons or bodies.<sup>9</sup> According to the 2005 Questionnaire responses and the Hague Conference website, 23 countries have made this declaration, of which 11 are States of origin.<sup>10</sup>

### **3.2 Choosing the accrediting body**

The body granting accreditation should not also be a service provider in competition with the accredited body. Otherwise there is the potential for a conflict of interest. The question of a Central Authority (not the accrediting body) and an accredited body in competition as service providers is raised below at 4.1(c).

## **4. ORGANISATIONS AND STRUCTURES FOR ACCREDITATION**

### **4.1 The respective roles and functions of the Central Authority and accredited bodies**

- a) *Is there a clear distinction between functions and obligations of different bodies and authorities?*

Each Contracting State should provide a description of the manner in which the various responsibilities and tasks under the Convention are divided between Central Authorities, public authorities and accredited bodies, so that the entities responsible to act under particular articles of the Convention are clearly identified, as well as the mechanisms by which they interact with one another.<sup>11</sup>

The extent of the functions of accredited bodies should also be explained.<sup>12</sup>

In those States where agreements under Article 17 c) may be given by bodies other than the Central Authority, the bodies that may perform this function should be specified.<sup>13</sup>

The Organigram<sup>14</sup> was developed to allow States to indicate the status of particular authorities or bodies for Convention functions. Additional explanatory information from each Contracting State may be necessary. A standard form could be developed for this purpose and the information put on the Hague Conference website.

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*Proceedings of the Seventeenth Session*, Tome II, 1994, at paragraph 376 (hereinafter, "Explanatory Report"). Available on the Hague Conference website at: < [www.hcch.net](http://www.hcch.net) > under Convention 33, HCCH Publications.

<sup>9</sup> Paragraphs 373 and 396.

<sup>10</sup> Andorra, Australia, Austria, Azerbaijan, Belarus, Belgium, Brazil, Bulgaria, Canada (British Columbia), Colombia, Denmark, El Salvador, France, Germany, Hungary, Luxembourg, Norway, Panama, Poland, Portugal, Spain, Sweden and Venezuela.

<sup>11</sup> See Report of the 2000 Special Commission, *supra* note 1, Recommendation 1.

<sup>12</sup> See Report of the 2000 Special Commission, *supra* note 1, Recommendation 2f.

<sup>13</sup> See Report of the 2000 Special Commission, *supra* note 1, Recommendation 16.

<sup>14</sup> In Annex 1 of the 2005 Questionnaire.

b) *Are authorities or bodies competent to perform their functions?*

Authorities and bodies need to have both the legal powers and the professional skills to perform their functions. The 2005 Questionnaire responses indicated a level of dissatisfaction with the skills and competences of some authorities and bodies. These comments suggest that in some countries, the Central Authority may be appointed to perform intercountry adoption functions without the necessary powers, skills and resources. In other countries, bodies may be accredited without adequate accreditation criteria being in place, or without a proper examination of the application for accreditation against established criteria.

c) *Do Central Authorities and accredited bodies offer complementary services or are they in competition as service providers?*

Articles 8, 9 and 22 of the Convention provide an option for Central Authorities to perform the specified functions with the assistance of public authorities or accredited bodies. In some States, this division of responsibility has led to situations that are not favourable to the protection of children.<sup>15</sup>

International Social Service (ISS) stressed the useful and necessary complementarity between the services provided by the Central and competent Authorities on the one hand and the adoption bodies accredited by the receiving countries on the other hand. These accredited bodies, if sufficiently professional and regulated, can supplement the resources and expertise of Central Authorities, for example with the preparation and psycho-social support of the child, the family of origin and the adoptive parents, through the whole adoption process, or the assessment of the reliability and integrity of local contacts of the prospective adoptive parents in the country of origin.<sup>16</sup>

ISS also recalled that the United Nations Committee on the Rights of the Child in its Concluding Observations to a Hague receiving country in May 2004 expressed its concern "at the high percentage of intercountry adoptions which are not made through the accredited bodies but through individual channels" (see France, Concluding Observations, No 33: [www.ohchr.org/english/bodies/crc/crcs36.htm](http://www.ohchr.org/english/bodies/crc/crcs36.htm)).

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<sup>15</sup> See the response of Lithuania to question No 5(e) of the 2005 Questionnaire: "In France it is allowed for prospective parents to apply for intercountry adoption through the Central Authority, the Mission of Intercountry Adoption under the Ministry of Foreign Affairs or through an accredited body. At the moment in France there is only one accredited body authorized to work in Lithuania and it cannot take a lot of cases under its responsibility. That is why most of French citizens apply for adoption through their Central Authority. In such cases these difficulties arise:

- 1) *The representation of the family: the Central Authority only performs the functions under Article 15 of the Convention and Article 17 c), d). But all the communication about the adoption proceedings, and child proposal is made directly to the family. The Central Authority has no direct contact with the families.*
- 2) *The control mechanism: The Central Authority does not control the validation of agreements to adopt, does not send information if the family has adopted in another country or has changed its mind and does not want to adopt or has changed habitual residence.*
- 3) *The Central Authority has never sent post-placement reports: the Lithuanian Adoption Service has to make a request directly to families to fulfil special form on adaptation and development of an adopted child. ...*

*In Germany prospective adoptive parents are allowed to apply for intercountry adoption through an accredited body or through the regional Central Authority. As there are many regions (Länder) [each with its own Central Authority] the Lithuanian Adoption Service has to explain every time all the adoption procedures for each regional central authority, and to keep contact with various different officials. The Adoption Service has no contact with the "central" Central Authority. At the moment there is only one accredited body in Germany authorized to work in Lithuania. Communication in writing takes quite a long time, and the agreement under the Article 17 c) of the Convention usually is issued after quite a long time (2-4 months)."*

<sup>16</sup> International Social Service / International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC), response to the 2005 Questionnaire, section 4.

ISS supported a mandatory requirement that prospective adopters should go through the accredited bodies of receiving countries, leaving Central Authorities free to fulfil their policy mission and to pursue a genuinely integrated intercountry adoption policy.<sup>17</sup> It can also be considered as part of a such policy for a receiving country to encourage the creation, promote the professionalism and ensure the support, training and supervision of accredited bodies, at least if the number of prospective adoptive parents so requires.

From the example given in footnote 15, it appears that duplication of services or inefficiencies in receiving States may create unnecessary pressure on the resources of Central Authorities in States of origin.

#### **4.2 Monitoring numbers of accredited bodies**

- a) *Number of accredited bodies should be linked to number of children adoptable through intercountry adoption*

Information in Questionnaire responses and from the Hague Conference website indicates that in some countries the number of accredited bodies appears to be disproportionate to the numbers of adoptable children. In effect, the numbers of accredited bodies appears to be linked to the numbers of prospective adoptive parents with consequential pressure on sending countries to "supply" children.

This is an important issue for co-operation between Central Authorities of receiving and sending countries. States of origin should if possible identify the number of accredited bodies needed in their country in relation to the number of adoptable children.<sup>18</sup> If receiving countries are informed of this, they should then adjust or limit the number of bodies accredited and authorised for particular sending countries. Quebec reported in its Questionnaire response the good practice of Belarus in this regard.<sup>19</sup>

- b) *Number of authorised foreign accredited bodies should reflect needs of adoptable children in State of origin*

The accreditation or authorisation does not take sufficiently into account the criteria connected with the profiles of children requiring international adoption. In some cases, the accreditations or authorisations have been granted without adequate assessment of the State of origin's needs. The result is, in some receiving States, too great a number of accredited bodies to work with one State of origin, whereas no body is accredited to co-operate with States of origin where there are genuine needs.

States of origin should not simply authorise foreign accredited bodies without question, but as a matter of good practice, they should submit foreign bodies to their own accreditation or authorisation criteria. In its Questionnaire response, Lithuania described its proposed regulations for authorisations.<sup>20</sup>

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<sup>17</sup> *Ibid.* ISS adds: "A policy of compulsory recourse to adoption accredited bodies supposes the existence in the receiving countries of a sufficient amount of professionally reliable bodies (see also Chapter 5). But it can also be considered as part of a comprehensive intercountry adoption policy for a receiving country to encourage the creation, promote the professionalism and ensure the support, training and supervision of such bodies, at least if the number of prospective adoptive parents so requires."

<sup>18</sup> See the response of Estonia to question No 23 to the 2005 Questionnaire ("It has been difficult to understand for other countries that intercountry adoption number is low because of the lack of adoptable children not because of intention to keep children in institutional care. Because of that Estonia has been quite closed to new co-operation partners and it has been difficult to explain to possible receiving States").

<sup>19</sup> See response of Canada (Quebec) to question No 2(a) to the 2005 Questionnaire.

<sup>20</sup> See response of Lithuania to question No 6(2) to the 2005 Questionnaire.

The criteria for authorisation should include a requirement that the presence of the foreign accredited body in the State of origin is necessary to meet a genuine need for adoption services for particular groups of children in the State of origin. For example, a country with a large number of adoptable children with special needs (health problems, physical or psychological disabilities) may have insufficient accredited bodies to assist in placing such children for adoption.

In the 2005 Questionnaire, only one country<sup>21</sup> said it had authorised a foreign accredited body. Could this mean that foreign accredited bodies are operating in States of origin without authorisation?

### **4.3 Choosing countries for adoption arrangements**

Some States of origin have reported that they receive adoption requests from almost every receiving State in the Convention. Likewise, receiving States report that prospective adopters want the choice of adopting a child from any State of origin in the Convention.

The draft *Guide to Good Practice: Implementation* advises at Chapter 7.2 ("Placing Limits on Intercountry Adoption") that there is no obligation in the Convention to enter into adoption arrangements with all or any Contracting States. However when an intercountry adoption is proposed in the best interests of the child, the Convention procedures must be followed. The decision to work with certain countries may be based on cultural or linguistic connections. There are also practical reasons to limit the number of countries, for example, the limited resources of responsible authorities may require restrictions in order to maintain standards.<sup>22</sup>

Other reasons have been put forward for limiting the number of countries with which adoptions are arranged: (a) a limited number of partners contributes to enhancing the specialisation of foreign counterparts and to strengthening ties and thereby the expertise relating to particular children concerned; (b) it prevents States of origin from being overwhelmed by a disproportionate number of sometimes unsuitable requests from foreign prospective adoptive parents, which lessens the State's ability to focus on assessing the situation of children in care; (c) a State of origin might also prefer to co-operate with States which have common linguistic or cultural ties which can help the professionals to build closer co-operation, and the adopted children to integrate more harmoniously into their adoptive family and society and later to discover their roots; (d) States of origin may also prefer to work with States which share values relating to child welfare and with similar professional and ethical standards for assessing the suitability and the preparation of prospective adoptive parents, leading to better and closer co-operation in the best interests of children.<sup>23</sup>

If States of origin do limit the number of Convention countries with which they work, they may need to explain their policies to receiving States. In its Questionnaire response, Austria mentioned that some States of origin or Central Authorities seem reluctant to co-operate with Austrian Central Authorities directly when there are no accredited bodies as intermediaries.

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<sup>21</sup> Peru, 1 of 12 States of origin to respond.

<sup>22</sup> See the responses to question No 17 of the 2005 Questionnaire. Seven States indicated they had restrictions on adoption arrangements.

<sup>23</sup> International Social Service / International Reference Centre for the Rights of Children Deprived of their Family Monthly Bulletin No 5/2005, May 2005.

## 5. ACCREDITATION CRITERIA

No specific problems were reported in the Questionnaire concerning the development of accreditation criteria but many States noted it as a subject requiring further discussion. One State of origin indicated that when a foreign accredited body is seeking accreditation or authorisation in the State of origin, a copy of the criteria by which the accreditation was originally granted in the receiving State must be provided by the foreign accredited body.<sup>24</sup> ISS proposed some detailed requirements for accredited bodies to be monitored by public authorities.<sup>25</sup>

### 5.1 Process for developing and publishing criteria

Accreditation criteria that are developed through a process of consultation between relevant parties and experienced professionals will benefit from their knowledge and practical experience including experiences in other countries. If model or core criteria are to be developed by recommendation of the Special Commission (see 5.2 below) these should be taken into account as the basic building blocks of any national criteria.

Accreditation criteria should be established by law or similar enactments in order to ensure their transparency, legality and enforceability. These criteria must provide clear and comprehensive instructions with regard to matters such as staff and their qualifications, financial management and accountability, supervision and review of operations, code of conduct for the bodies, penalties for breaches.<sup>26</sup>

Once accreditation criteria have been developed, they have to be published, a practice that is already in use in some countries. Public awareness may be achieved through various media, e.g. newspapers or Internet. Criteria should be published, e.g. on the website of Central Authorities, to guarantee transparency in the process.<sup>27</sup>

### 5.2 Developing standard criteria

The need to develop a set of standard or model accreditation criteria has been recognised as a general priority. There was almost unanimous support for such criteria in the 2000 Questionnaire responses.<sup>28</sup> These criteria should be developed and strengthened with reference to the best interests of the child.

A set of agreed standard or core criteria for accreditation could be the basis on which States could build an accreditation framework adapted to their particular needs. Consideration should be given to the establishment of a Working Group for this purpose.

It is noted that a single model of comprehensive accreditation criteria usable for all countries might not be feasible and realistic and that is not what is intended here. The purpose of developing a set of standard criteria is that it would only include those core or basic criteria which States agree should be common to all jurisdictions.

<sup>24</sup> See the response of Chile to question No 6(1)(d) of the 2005 Questionnaire.

<sup>25</sup> International Social Service / International Reference Centre for the Rights of Children Deprived of their Family (ISS/IRC) response to the 2005 Questionnaire, section 5.

<sup>26</sup> See for example the accreditation criteria of Canada (Quebec) and Canada (British Columbia) in response to question No 6(1)(c) of the 2005 Questionnaire. See also Work. Doc. No 2 prepared for the Special Commission 2005 by Euradopt and Nordic Adoption Council.

<sup>27</sup> In Denmark, annual reports are published with evaluations of accredited bodies. See response from Denmark to question 6(1)(f) of the 2005 Questionnaire. For examples of websites which publish criteria, see: for France, < [www.diplomatie.gouv.fr](http://www.diplomatie.gouv.fr) >; for Italy, < [www.commissioneadozioni.it](http://www.commissioneadozioni.it) >; for Ireland, < [www.adoptionboard.ie](http://www.adoptionboard.ie) >; for Sweden (in Swedish, English and Spanish), < [www.adoptionsmyndigheten.se/frameset.htm](http://www.adoptionsmyndigheten.se/frameset.htm) > (→ *Auktorisation* → *krav* (criteria) and *villkor* (conditions)).

<sup>28</sup> See responses to question No 6(1)(m) of the 2005 Questionnaire.

The benefits of a set of standard criteria could be that: (a) if the minimum standards reflecting the requirements of the Convention are established, they will become the norm for all countries; (b) they will be known and understood by all parties involved in intercountry adoptions; (c) they could facilitate improved co-operation between sending and receiving countries, especially in the supervision and review of accredited bodies.

A copy of the standard / model / core accreditation criteria could be published on the website of the Hague Conference.

## **6. ACHIEVING FINANCIAL TRANSPARENCY AND ACCOUNTABILITY WITH ACCREDITED BODIES**

The issue of transparency in adoption costs and fees continues to be troublesome. The 2005 Questionnaire responses indicated that as a general rule accreditation criteria of Contracting States required accredited bodies to be financially sound and to provide regular reports to the supervising authority.

An analysis of Questionnaire responses indicates that responding States recognise the reasonableness of charging legitimate fees and costs for adoptions. However, they also want: (a) transparency in fees, including details of the full amount expected and the purpose of the fee; (b) receipts for all amounts paid; (c) published international fee schedules, for information and comparison (they could be published on the Hague Conference website).

States were concerned by: (a) mandatory contributions or donations which are required to support child protection services, which have no consistent basis and no evidence that they are used for the stated purpose (although widely accepted in practice, it is not clear that they come within the Convention rules); (b) lack of control over costs charged by intermediaries and others in the adoption "chain" (co-ordinators, translators, interpreters) in the State of origin; (c) lack of knowledge, and inability to find out, about amounts charged by intermediaries (including private lawyers); (d) disparity in costs within the individual countries.

Central Authorities are reminded of their obligation in Article 8 to take all appropriate measures to prevent improper financial gain, and the relevance of this obligation to the supervision of accredited bodies.

At the 2000 Special Commission, certain recommendations were made concerning improper financial gain, costs and expenses, as well as donations and contributions. These state as follows:

*"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. (Recommendation 6)*

*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. (Recommendation 7)*

*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. (Recommendation 8)."*

If these recommendations were implemented by all Contracting States, the information gained from them could be the basis for developing an international fee schedule referred to above.

The comment of Quebec perhaps identifies the heart of the problem: "While and as long as receiving States do not discuss in a fully transparent manner the issue of the costs involved in international adoption, and behave as competitors, the bidding process can only amplify."<sup>29</sup>

## 7. SUPERVISION AND REVIEW OF ACCREDITED BODIES

Many good practices to supervise and review accredited bodies were noted in the 2005 Questionnaire, especially where accreditation criteria included criteria for supervision and review. For example, some Central Authorities or supervising authorities had daily review of the work of accredited bodies through reading home studies. In others, quarterly reports were required.

Supervision and review is an area requiring co-operation between Central Authorities of sending and receiving countries. However, in some countries, lack of supervision and regulation of accredited bodies was identified by respondents as a significant problem. Particular problems include:

- a) Lack of resources in supervising body to conduct any or adequate supervision and review.<sup>30</sup> This could also result in an inability to impose or enforce penalties for contravention of criteria. Lack of resources for supervision in India may be the reason for the comment of New Zealand that Indian agencies are "*offering children to applicants who have no valid home study and are acting outside CARA guidelines.*"<sup>31</sup>
- b) Lack of supervision over costs.<sup>32</sup> Quebec (Canada) regrets that, despite all the efforts, there are still difficulties in reviewing and controlling the activities of accredited bodies and intermediaries in the State of origin. It states that in some cases, it seems difficult, even for the accredited body, to supervise the costs and activities of its intermediaries abroad.<sup>33</sup> However Quebec also reported the good practice of Lithuania where a limit is set on the amount that an intermediary can charge.<sup>34</sup>
- c) Switzerland identified as a problem an adoption accredited body having its head office in non-Convention countries. However, Romania stated that it would not authorise a foreign accredited body which did not have its headquarters in a Hague Convention State.<sup>35</sup>
- d) Failure of accredited bodies in receiving States or foreign accredited bodies to provide post-transfer or post adoption reports or annual reports to the sending country.<sup>36</sup>

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<sup>29</sup> Response of Canada (Quebec) to question No 10(8) of the 2005 Questionnaire.

<sup>30</sup> See the response of Finland to question No 6(1)(h) of the 2005 Questionnaire.

<sup>31</sup> See the response of New Zealand to question No 2(c) of the 2005 Questionnaire.

<sup>32</sup> Norway referred to concerns regarding the supervision of accredited bodies in Colombia as to costs.

<sup>33</sup> See the response of Canada (Quebec) to question No 6(1)(l) of the 2005 Questionnaire. See also the response of Chile to question No 3(c) "*... Nos preocupan situaciones en que diversos intermediarios han contactado a matrimonios residentes en el extranjero, y les han ofrecido gestionar la posibilidad de adopción de lactantes...*".

<sup>34</sup> See the response of Canada (Quebec) to question No 2(a) of the 2005 Questionnaire.

<sup>35</sup> See the response of Romania to question No 6 of the 2005 Questionnaire.

<sup>36</sup> See response of Chile to question No 6(1)(h) and (l) and Peru to question No 6(l) of the 2005 Questionnaire.

- e) Requirement of some countries that the prospective adoptive parents must travel to the country to have the child “proposed” to them in person. Is this a requirement of the accredited body or the State authorities? In either case, the requirement appears to contravene the Convention if travel is required before the matching is done (it should be done on the basis of reports – see Article 16(1)), and before the Central Authority of the receiving State has seen the report on the child as required by Article 16(2), or discussed the report with the parents.<sup>37</sup>
- f) Receiving States said there should be more supervision and regulation of accredited bodies in States of origin. It was not clear if they meant the State of origin’s own accredited bodies or foreign accredited bodies authorised to operate in the State of origin.

The Central Authorities play an important role in supervising agencies, bodies and approved persons operating within their own country, or authorised to operate in a sending country. This is a key for the success of Convention.

### **7.1 In country of accreditation**

In relation to supervision and review of bodies in the country of accreditation, the accreditation criteria or implementing measures should deal with matters such as:

- a) who has responsibility for supervision of accredited bodies and how is the supervision to be undertaken, for example, by regular reporting on statistics, finances, staffing, training;
- b) who will review the performance of accredited bodies, how often, and according to what procedures or performance measures;
- c) a procedure (including penalties) for contravention of the criteria or an unsatisfactory evaluation or review (for example, accreditation may be withdrawn immediately or the body may be cautioned and given an opportunity to show improvement);<sup>38</sup>
- d) the conditions for renewal of accreditation and for what period.

### **7.2 In country of operation**

In most cases the country of accreditation will be the country of operation. But where a body accredited in one country is authorised to operate in another country, arrangements should be made with the other country to receive feedback on the operation of authorised bodies, as part of the review or renewal of accreditation. Questionnaire responses indicated that some receiving States regularly visit sending countries to review the operation of their accredited bodies.<sup>39</sup>

There should be a procedure for supervision and review of accredited bodies in the country where the body performs its functions. Effective supervision and review require established procedures and resources and these may be lacking in some sending countries.

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<sup>37</sup> Canada (Manitoba) reported this practice.

<sup>38</sup> See the responses to question No 6(1)(f) of the 2005 Questionnaire by Finland, Switzerland and Canada (British Columbia). The latter said that an accredited body is notified in writing of any alleged breach and arrangements for a hearing of the matter. Immediate suspension is possible.

<sup>39</sup> See the response of Norway to question No 6(1)(f) of the 2005 Questionnaire.

## 8. OPERATIONAL ISSUES

### 8.1 Qualifications and experience

Article 11 *b*) of the Convention requires accredited bodies to be staffed by personnel who are qualified by their ethical standards and training or experience to work in the field of intercountry adoption. The same requirement is imposed on non-accredited persons or bodies in Article 22(2) *b*), but not on Central Authorities.

The Questionnaire responses to question 5(b) and (c) indicate that Central Authorities tend to be staffed by very experienced and well qualified personnel. Staff numbers are supplemented by contracted social workers and other professionals who perform certain specialised functions.

Unlike the 2000 Questionnaire, respondents to the 2005 Questionnaire did not identify problems of inadequate qualifications or experience in accredited bodies, as a specific problem (but a specific question on this issue was not asked). It is to be hoped that there have been improvements in the past 5 years.

Personnel of Central Authorities and accredited bodies should possess appropriate qualifications and training to understand the requirements of the Convention. They should possess professional qualifications relevant to intercountry adoption, such as social work, psychology, child protection and related disciplines. Quebec described its multidisciplinary team<sup>40</sup> and British Columbia noted that its licensing rules require the job description, qualifications and experience for each position in the accredited body.<sup>41</sup> On the other hand, Lithuania [at page 20] commented that when a Lithuanian child is proposed, staff of the accredited bodies in receiving States do not always provide professional counselling to the family to help it understand the true needs and possible future development problems of the child.<sup>42</sup>

Small Central Authorities which handle only a small number of adoptions will require fewer personnel,<sup>43</sup> but expert advice should be available when needed.

In Recommendation No 1443/2000 on International Adoption: respecting children's rights,<sup>44</sup> the Parliamentary Assembly of the Council of Europe called upon the States member, among other things, to "... *help those countries from which foreign children come to develop their own adoption laws and to train the relevant personnel in public authorities and properly accredited agencies and all other professionals involved in adoption; ...*".

### 8.2 Accredited body of receiving State operating in another receiving State

Another issue stressed by ISS is the situation where bodies accredited in one receiving State decide to operate in another receiving State. ISS reported<sup>45</sup> that some adoption bodies from the United States of America, recruit through the Internet prospective adoptive parents residing habitually in a Hague Convention country. These bodies are not "accredited" in the receiving country and have no support mechanism in it. The Central Authority of the receiving country usually has to intervene at some point. This topic,

<sup>40</sup> Response to question No 5(b) of the 2005 Questionnaire.

<sup>41</sup> Response to question No 6(c) of the 2005 Questionnaire.

<sup>42</sup> See response of Lithuania to question No 2(c) of the 2005 Questionnaire.

<sup>43</sup> See the responses of Estonia and Monaco to question No 5(b) of the 2005 Questionnaire.

<sup>44</sup> For the text of Recommendation No 1443/2000, see the webpage of the Council of Europe: <http://assembly.coe.int/Mainf.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta00/erec1443.htm#1>.

<sup>45</sup> See Work. Doc. No 1, 2000 Special Commission: "Evaluation presented by the International Social Service at the Special Commission of November / December 2000".

called "triangular adoptions", was discussed at the meeting of European Central Authorities in March 2005, and different practices were noted. One country said it had accepted some triangular adoptions but these were bad experiences because of lack of co-operation between the foreign adoption body and the Central Authority. Another country authorised "triangular adoptions" very rarely, under a special permission of the Central Authority, for non-Hague countries for which there are no accredited bodies. Other countries specifically prohibited such practice.<sup>46</sup>

This seems to be a new turn of events raising many questions: how can these bodies assist and support the families in other receiving States? What criteria have to be considered in order to allow the child's placement? Next, what criteria are to be established to review the adoption's monitoring? How can international co-operation between the two receiving States be organised?

It is possible that a body may be accredited in more than one receiving country. If so, it will be necessary to determine whether and to what extent the accredited body in one receiving State may be involved in adoptions in another receiving State.

### 8.3 Receiving State as a State of origin

Another issue to be considered could be the situation where a receiving country becomes a country of origin or vice-versa (for instance, a US body wishing to place an African-American child with a European family). As stressed by ISS,<sup>47</sup> this situation gives rise to issues relating to the accreditation and authorisation of the bodies concerned, and the relevance of such adoptions to the child's best interests.

Of 39 respondents, only 6 said they were both receiving States and States of origin.<sup>48</sup> The USA had no statistics on numbers of its children adopted abroad. Hungary said it was a receiving State when women came from neighbouring countries to have their babies and left them in the hospital.<sup>49</sup>

### 8.4 Too many files

Agencies accept more homestudy cases than they are actually able to process. In its Questionnaire response,<sup>50</sup> ISS reported that according to UNICEF, worldwide "(...) *the adoption applications seem to exceed the number of adoptable children as far as young healthy children are concerned. The opposite seems, nonetheless, the case for children considered hard to place (children with special needs: aged, ill or handicapped, in sibling groups), for whom there is a serious lack of prospective adoptive parents*".<sup>51</sup>

There should be a limit on the number of files sent from receiving States. Agreement is necessary between sending and receiving States as to an appropriate and manageable number of files of prospective adoptive parents that could be sent to the sending State.<sup>52</sup>

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<sup>46</sup> Denmark, Norway, Italy.

<sup>47</sup> *Ibid.*

<sup>48</sup> Czech Republic, Estonia, Hungary, Mexico, Panama and the United States of America.

<sup>49</sup> See responses to question No 1(a) of the 2005 Questionnaire.

<sup>50</sup> At Section 1.

<sup>51</sup> N. Cantwell, "Inter-country Adoption – A Comment on the Number of 'adoptable' Children and the Number of Persons seeking to adopt internationally", *International Child Protection. The Judges' Newsletter*, published by the Hague Conference, t. V, Spring 2003, pp. 69-73, [http://hcch.e-vision.nl/index\\_en.php?act=publications.details&pid=2799](http://hcch.e-vision.nl/index_en.php?act=publications.details&pid=2799) and [www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/Cantwell\\_Intercountry\\_Adoption\\_English.pdf](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/Cantwell_Intercountry_Adoption_English.pdf).

<sup>52</sup> See response of Estonia *supra* at note 15.

## 8.5 Quality of applications and documents

A number of sending countries commented on the substandard quality of documentation from receiving countries and lack of preparation in dossiers.<sup>53</sup> Substandard reports on prospective adoptive parents were noted by Chile, Lithuania and Sri Lanka.<sup>54</sup>

## 8.6 Private intermediaries

Many receiving States use private intermediaries or representatives in sending countries to assist with adoption arrangements. Often these arrangements could not be made without their assistance. Questionnaire responses noted that there is a lack of regulation and supervision of intermediaries.<sup>55</sup> There is a lack of clarity in their involvement, the part they actually play, and the fees they charge. However, as an example of good practice, the Central Authorities of Quebec and Lithuania consulted each other over the choice of a Lithuanian intermediary.<sup>56</sup>

## 8.7 Private adoptions

Private adoptions may come within the scope of the Convention if they involve the movement of a child from one Contracting State to another Contracting State for the purpose of adoption (Article 2). However, their very nature as "private" adoptions means that the competent authorities in each Contracting State are excluded from the process. Such adoptions are therefore not in accordance with the Convention and an Article 23 certificate of compliance cannot be issued: see the draft *Guide to Good Practice: Implementation* at Chapter 7.6.5. Accredited bodies should not be involved in arranging private adoptions.

## 8.8 Communication

Communications problems were reported in the Questionnaire. These include:

- a) Problems between the accredited body and the accrediting body, e.g. In Australia, there were communication problems between the accredited body for South Australia and the Central Authority which resulted in its accreditation being withdrawn.<sup>57</sup>
- b) Lack of post transfer information, post-adoption reports and no response to requests for such information e.g. in Chile, in a case where the operation of an Italian accredited body was investigated with respect to the monitoring of the adoption and counselling of the adopters, that body never replied; Peru encountered difficulties regarding post-adoption monitoring reports.
- c) Delays by accredited bodies in providing annual reports e.g. there have been also problems of delay in obtaining information relating to the annual management of foreign accredited bodies.<sup>58</sup>

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<sup>53</sup> See the response of Lithuania to question No 5(e) of the 2005 Questionnaire where it underlined the fact that "The Central Authority of Great Britain has no representatives for Lithuanian adoption program so they always send a file (dossier) of prospective adoptive family directly to the Adoption Service without translations of the documents. In such cases Adoption Service sends file to the embassy of Great Britain and asks to translate it. It takes time and makes the adoption procedure more complicated".

<sup>54</sup> See responses to question No 2(c) of the 2005 Questionnaire.

<sup>55</sup> See Section 7 above.

<sup>56</sup> Response of Canada (Quebec) to question No 2(a) of the 2005 Questionnaire.

<sup>57</sup> See the response of Australia to question No 6(1)(l) of the 2005 Questionnaire.

<sup>58</sup> See the response of Chile to question No 6(1)(l) of the 2005 Questionnaire.

- d) Lack of response by States of origin to enquiries about establishment of new adoption arrangements.<sup>59</sup>

To improve co-operation and communication between authorities and bodies in both States, Central Authorities must co-operate with each other in the exchange of information and in a prompt and friendly communication in order to protect the best interests of the children.

### **8.9 Internet advertising**

The undesirable practice of advertising offers over the Internet has been stressed by Switzerland. Any attempt to adopt a child who has been chosen from a photograph on the Internet would appear to contravene all the safeguards put in place by the Convention to establish a procedure to "*ensure intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights.*"<sup>60</sup>

Accredited bodies are also reminded that Contracting States agreed in Recommendation 11 of the 2000 Special Commission that Convention standards should, as far as practicable, be applied to non-Convention adoptions.

### **8.10 Pressure from receiving countries**

Central Authorities and States should also work together to prevent pressure on sending countries by foreign accredited bodies seeking authorisation. States of origin should report incidents of pressure to the accrediting country. Authorisation to operate in the sending country can be refused or withdrawn by both countries, or by the sending country alone, when accredited bodies or persons act improperly or if the number of accredited bodies exceeds the requirements of the sending country (see Article 12).

Other examples of pressure from receiving States include pressure to supply children in response to (a) excessive numbers of applications; (b) applications from unsuitable applicants (those who have not been properly assessed or who do not meet the eligibility criteria of the State of origin); (c) applications for categories of children who are not available for adoption (such as babies under 12 months).

Pressure on Central Authorities of States of origin arising from the structural arrangements in receiving States was also identified by Lithuania at Section 4.1(c) above. One of the problems identified – when large numbers of accredited bodies from one country contact a single State of origin Central Authority for the same or similar information – may be a communication problem in the receiving State. Communications between accredited bodies and Central Authorities in other Contracting States may be controlled if accredited bodies were required to go through their own Central Authority for general information requests.

## **9. ACHIEVING GOOD PRACTICE WITH ACCREDITED BODIES**

Areas on which good practice guidelines might be developed in relation to accreditation and accredited bodies have been identified as follows:

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<sup>59</sup> See the response of New Zealand to question No 2(c) of the 2005 Questionnaire.

<sup>60</sup> Preamble to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption*.

- a) designations and functions of accredited bodies under Article 13: these should be advised to the Permanent Bureau at the time of accreditation;<sup>61</sup>
- b) staffing and resources of accredited bodies: should be appropriate and sufficient to maintain a good level of service – to children, parents and authorities;
- c) preparation of reports on prospective adoptive parents: these have been identified as substandard in some cases and minimum standards could be set;
- d) improvements in communication between bodies and authorities: deficiencies exist both within States and between States;
- e) co-operation between bodies and authorities in States of origin and receiving States: to work only with authorised or accredited bodies, persons, intermediaries;
- f) fixed fees or limits on fees for adoption services: these could be set and publicised widely;
- g) regular visits: by receiving States to States of origin to monitor work of accredited bodies and keep up to date with developments in that country;
- h) authorisation requirements for foreign accredited bodies: more assistance needed for States of origin to develop these requirements;
- i) procedures for accreditation: more assistance needed for some States to develop their procedures;
- j) accreditation criteria: more assistance needed for some States to develop their criteria;
- k) agreed guidelines for post-adoption reports: basis or standard guidelines could be developed to achieve a more consistent interpretation of the Convention.

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<sup>61</sup> See Report of the 2000 Special Commission, *supra* note 1, Recommendation 2:

"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.*

[...]

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."*