

海牙國際私法會議 亞太區域辦事處/ Gabinete da Região da Ásia-Pacífico da Conferência da Haia de Direito Internacional Privado / Asia Pacific Regional Office of the Hague Conference on Private International Law (HCCH)

澳門特別行政區法律改革及國際法事務局 / Direcção dos Serviços da Reforma Jurídica e do Direito Internacional da Região Administrativa Especial de Macau / Law Reform and International Law Bureau of the Macao Special Administrative Region

香港特別行政區律政司 / Departamento de Justiça da Região Administrativa Especial de Hong Kong / Department of Justice of the Hong Kong Special Administrative Region



WORKSHOP ON THE 1993 HAGUE CONVENTION ON CHILD PROTECTION AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION FOR EAST AND SOUTHEAST ASIAN STATES

MACAO, 27-28 MARCH 2013

CONCLUSIONS AND RECOMMENDATIONS

The Hague Conference on Private International Law co-organised, with the Law Reform and International Law Bureau of Macao Special Administrative Region of the People's Republic of China (SAR) and the Department of Justice of the Hong Kong SAR of the People's Republic of China, a Workshop on the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereafter, "the 1993 Hague Convention" or "the Convention") for East and Southeast Asian States in Macao from 27 to 28 March 2013.

The meeting gathered over 40 experts from Cambodia, China (including Hong Kong SAR and Macao SAR), the Republic of Korea, the Philippines, Thailand and Viet Nam, as well as representatives of UNICEF Cambodia, International Social Service (Hong Kong SAR and Japan Branches) and members of the Permanent Bureau of the Hague Conference, including staff from its Asia Pacific Regional Office. Cambodia, China, the Philippines, Thailand and Viet Nam are already Parties to the 1993 Hague Convention.

The Workshop aimed to further a good understanding of the 1993 Hague Convention, to consider the challenges, as well as to share good practices, concerning the implementation and operation of the Convention in the region. The programme promoted the sharing of experiences and practice related to three main topics: habitual residence, adoption accredited bodies and financial aspects of intercountry adoption. In addition, States not yet Party to the Convention were encouraged to further consider the benefits of ratification of, or accession to, the Convention.

THE PARTICIPANTS:

Having regard for the value and relevance of the multilateral Conventions developed by the Hague Conference, in particular in relation to child protection;

Considering the importance of the 1993 Hague Convention as an international legal framework aimed at protecting children in intercountry adoption and promoting the principle of subsidiarity;

Considering the important number of States of origin having ratified or acceded to the 1993 Hague Convention, and with the aim of encouraging those States which have not yet done so to ratify or accede to the Convention;

Considering the close inter-relationship between the 1993 Hague Convention and the 1989 *United Nations Convention on the Rights of the Child* (the "UNCRC"), in particular, Articles 20 and 21 of the UNCRC;

Noting that the UN Committee on the Rights of the Child and UNICEF support the 1993 Hague Convention as the appropriate legal framework for intercountry adoption and regularly recommend that States join the Convention, and acknowledging the close collaboration between

UNICEF and the Hague Conference on technical assistance, capacity-strengthening and the sharing of information;

Recalling the value of the Conclusions and Recommendations of the Asia Pacific Regional Conferences of the Hague Conference on Private International Law which took place in 2005, 2007, 2008 and 2011;

CONCLUDE AND RECOMMEND:

1. HABITUAL RESIDENCE AND THE 1993 HAGUE CONVENTION

Echoing Recommendation No 11 of the 2010 meeting of the Special Commission,¹ participants emphasised that all intercountry adoptions falling within the scope of the 1993 Hague Convention under Article 2(1), including in-family adoptions and adoptions by non-resident nationals of the State of origin, are subject to Convention procedures and safeguards.

Participants noted that in some cases there are doubts in relation to the habitual residence of the prospective adoptive parents. This is specially the case for foreign temporary workers or foreign residents in a State of origin who would like to adopt a child. Accordingly, participants recommended that the Central Authorities of both States, or in their absence, the involved competent authorities, should attempt to clarify the legal classification of such residence for the purpose of an adoption, and provide the prospective adoptive parents with advice on their particular situation before they submit an adoption request.

Participants agreed that the nationality of the parents is not relevant in establishing the habitual residence for the purposes of intercountry adoption in accordance with the 1993 Hague Convention.

2. ACCREDITATION AND AUTHORISATION OF ADOPTION ACCREDITED BODIES

Participants recognised the importance of setting clear procedures for authorisation and renewal of authorisation of foreign adoption accredited bodies.

When new partnerships between adoption accredited bodies and a State of origin are under discussion, consultations between neighbouring States of origin in order to share their experiences may be helpful.

It is strongly recommended to authorise only ethical and professional accredited bodies which are strictly selected by the receiving State. Such bodies should only be authorised to act in a State of origin when they have the capacity to respond to the actual needs of adoptable children.

The supervision and monitoring of these foreign accredited bodies is the responsibility of the receiving State, in close collaboration with the States of origin.

3. SHARING OF INFORMATION AND EXPERIENCES

The participants strongly recommended considering ways to improve the sharing of information and experiences about intercountry adoption. The various ways to implement this recommendation may be carried out under the auspices of the Representative of the Asia Pacific Regional Office of the Hague Conference. The Representative would consult widely with States in the region concerning suggestions such as creating a password-protected webpage, and/or creating a database.

¹ "The Special Commission emphasised that all intercountry adoptions falling within the scope of the Convention under Article 2(1), including in-family adoptions and adoptions by nationals of the State of origin, are subject to Convention procedures and safeguards."

In suggesting this approach, the participants recognised the real advantages of regional co-operation, both for the more effective management of the Convention and in order to enable regional parties to have a more consistent approach.

4. FINANCIAL ASPECTS OF INTERCOUNTRY ADOPTION

Participants recognised the importance of States taking effective measures to ensure the transparency and the reasonableness of the costs linked to the adoption process – as much in the receiving State as in the State of origin – in order to prevent and eliminate practices that may lead to abuses and improper financial gain.

The participants recognised the work undertaken by the [Expert Group on the Financial Aspects of Intercountry Adoption](#), and recommend the use of the tools presented by the Permanent Bureau during the first meeting in October 2012, *i.e.*, the definitions aimed at contributing to the harmonisation of terms used in this field (adopted at the meeting), as well as an “Information Note on the Financial Aspects of Intercountry Adoption” and the tables detailing the costs and expenses incurred in the adoption procedure in different countries (the completion of both of these tools is pending).

5. TECHNICAL ASSISTANCE

The participants underlined the proven value of technical assistance offered to Contracting States, as well as to those States considering ratification of, or accession to, the 1993 Hague Convention. Such assistance has been offered by the Permanent Bureau within the framework of its Intercountry Adoption Technical Assistance Programme (ICATAP), including this Workshop and the exchange of experiences between States in the region. This assists the beneficiary States towards the proper implementation of the Convention. The need to allocate sufficient resources to these activities in order to complete them successfully was reiterated.

6. GUIDES TO GOOD PRACTICE DEVELOPED BY THE PERMANENT BUREAU

The value of Guides to Good Practice Nos 1 and 2 relating to the 1993 Hague Convention, developed by the Permanent Bureau, was recognised, and their wide dissemination is desirable with a view to strengthening the knowledge of all actors involved in the intercountry adoption process.

A translation of the Guides into the main language of each State is desirable and encouraged. The participants recognised the value of the Chinese, Khmer, Korean and Vietnamese translations of Guide No 1. The Asia Pacific Regional Office of the Hague Conference would welcome other translations of Guide No 1 and similar translations of Guide No 2 in the near future.

7. RATIFICATION OF / ACCESSION TO THE 1993 HAGUE CONVENTION

The 1993 Hague Convention is the international legal framework of reference in intercountry adoption. Those States that are not yet Parties to this Convention are encouraged to ratify it, or accede to it, in order to protect the rights of children in the context of intercountry adoption, bearing in mind the need for adequate preparation prior to any ratification or accession.

Ratification of, or accession to, the 1993 Hague Convention does not create an obligation to engage in intercountry adoption, but may lead to a regularisation of informal practices relating to intercountry adoption already taking place.

Macao, 28 March 2013