



## **Conclusions and Recommendations adopted by the Fourth Meeting of the Special Commission on the practical operation of the 1993 Hague Intercountry Adoption Convention**

The fourth meeting of the Special Commission to review the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter, "the Convention") met in The Hague from 8 to 12 June 2015.

The Special Commission (SC) was attended by 255 participants from 74 States and 19 inter-governmental and international non-governmental organisations, including representatives from Members of the Hague Conference on Private International Law, Contracting States to the Convention, non-Contracting States that are actively exploring the possibility of joining the Convention, and interested international organisations. The first day of the meeting was dedicated to discussing "20 years of the 1993 Hague Convention".

Participants unanimously approved the following Conclusions and Recommendations (C&Rs) developed in furtherance of prior C&Rs of the Special Commission meetings in [2000](#), [2005](#) and [2010](#).<sup>1</sup>

### **20 years of the 1993 Hague Convention**

1. Twenty years after the entry into force of the Convention, the SC:
  - a. affirmed the continued relevance and fundamental importance of the Convention and welcomed its broad acceptance as the international benchmark for intercountry adoption today;
  - b. recognised the significant, positive impact which the Convention has had on laws and practices relating to intercountry adoption over the last 20 years, transforming an area that was previously largely unregulated into a regulated, rule-based system which strives "to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights"<sup>2</sup>;
  - c. acknowledged that the landscape of intercountry adoption has changed over the past 20 years, and encouraged Contracting States to ensure that their laws and practices adequately respond to the current reality of intercountry adoption;
  - d. encouraged non-Contracting States to consider becoming party to the Convention, bearing in mind the need for preparation prior to any ratification or accession;
  - e. emphasised the great value of the Intercountry Adoption Technical Assistance Programme ("ICATAP") of the Hague Conference and the important support it has provided to States in the implementation and operation of the Convention;<sup>3</sup>
  - f. recognised the increase in domestic adoption as one of the positive factors impacting the changed landscape of intercountry adoption.

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<sup>1</sup> Where relevant, previous SC C&Rs from 2000, 2005 and 2010 are referenced in the footnotes to this document. Reference should also be made to the "[Table of Conclusions and Recommendations of previous meetings of the Special Commission on Intercountry Adoption \(2000, 2005 and 2010\)](#)", Info. Doc. No 2 of May 2015, prepared for the Fourth Meeting of the Special Commission, available on the Hague Conference website, under "Intercountry Adoption Section" then "Special Commissions".

<sup>2</sup> Preamble of the Convention.

<sup>3</sup> 2010 SC C&R Nos 32, 33 and 34.

2. The SC reaffirmed the importance of subsidiarity<sup>4</sup> as a foundational principle of the Convention. It underlined that implementation of the subsidiarity principle is central to the success of the Convention, and to determining that an intercountry adoption takes place “in the best interests of the child and with respect for his or her fundamental rights”.<sup>5</sup>
3. To further promote the principle of subsidiarity, States are encouraged to strengthen their domestic child protection systems, including the establishment and promotion of measures which support family preservation and reunification, as well as in-country alternative permanent family care, such as domestic adoption and other traditional forms of alternative care.
4. The SC recognised that a lack of resources in some States remains one of the most serious challenges to the implementation of the subsidiarity principle, and encouraged States to provide support to other States to improve their domestic child protection systems. Any such support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process, such as creating a dependency on income deriving from intercountry adoption.
5. The SC recalled that implementation of the principle of subsidiarity should not “unintentionally harm children by delaying unduly a permanent solution through intercountry adoption”.<sup>6</sup>
6. Recalling Article 35 of the Convention, the SC reminded Contracting States to do their utmost to prevent unnecessary delays at all stages of the intercountry adoption process, while respecting the safeguards of the Convention.<sup>7</sup> Wherever possible, the use of modern methods of communication is encouraged to facilitate expeditious action.<sup>8</sup>
7. The benefits of becoming a party to the *Hague Convention of 5 October 1961 Abolishing the Requirements of Legalisation for Foreign Public Documents* (Apostille Convention) were reaffirmed by the SC in order to avoid unnecessary delays in intercountry adoption.<sup>9</sup>
8. States of origin are encouraged to specify through their Central Authority any limits in relation to the number and type of applications for intercountry adoption which they will accept, in light of the number and profile of intercountry adoptable children in the State. Receiving States should respect any limits. Moreover, even where no such limits have been specified, the number and type of applications sent to States of origin should be appropriate in view of the number and profile of intercountry adoptable children in that State.
9. The SC recognised the importance of the role of adoption accredited bodies in the intercountry adoption process in many Contracting States, and the challenges that these bodies face in light of the changed landscape of intercountry adoption.

### **Intercountry adoption of children with special needs**

10. The SC recognised that an increasing number of children being adopted intercountry today have special needs and it is essential to address the resulting challenges.

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<sup>4</sup> Preamble and Art. 4(1)(b) of the Convention.

<sup>5</sup> Art. 1(a) of the Convention.

<sup>6</sup> Para. 48 of The implementation and operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice No 1 (available at < [www.hcch.net](http://www.hcch.net) > under “Intercountry Adoption Section”) and see generally section 2.1.1 of the Guide.

<sup>7</sup> 2005 SC C&R No 14.

<sup>8</sup> 2005 SC C&R No 16.

<sup>9</sup> 2005 SC C&R No 20; 2010 SC C&R No 42. See further the specialised “Apostille Section” of the Hague Conference website (< [www.hcch.net](http://www.hcch.net) >).

11. The SC recommended that:
  - a. the subsidiarity principle of the Convention should be equally applied to children with special needs and, as a priority, measures should be promoted which support biological families in caring for children with such needs;
  - b. children with special needs determined to be in need of alternative family care should be evaluated on a systematic and regular basis to ensure that their legal, medical and psycho-social adoptability can be assessed and kept under regular review. The assessment of their psycho-social and medical adoptability is particularly important.
12. In relation to children with special needs, the SC strongly emphasised the need for:
  - a. an individualised assessment of the child's specific needs which is particularly vital for the process of matching;
  - b. counselling and preparation of the child, which should be adapted to his or her age, degree of maturity and needs;
  - c. specific selection, mandatory preparation and counselling of prospective adoptive parents,<sup>10</sup> including informing them of the post-adoption support available;
  - d. a full, accurate and up-to-date report on the child<sup>11</sup> and on the prospective adoptive parents.<sup>12</sup> The report on the prospective adoptive parents should clearly identify "the characteristics of the children for whom they would be qualified to care",<sup>13</sup> as well as the preparation and counselling they have undertaken;
  - e. a professionalised matching process involving a multi-disciplinary group of professionals; and
  - f. professional assistance to be provided to prospective adoptive parents when deciding on a child proposal, as well as in the post-adoption phase.
13. The SC warmly endorsed the work of International Social Service in relation to children with special needs, including the possibility of using *life books*<sup>14</sup> for such children.
14. The SC recommended that adoption accredited bodies should acquire and / or have access to professional expertise on the intercountry adoption of children with special needs.

### **Model forms**

15. The SC welcomed the work undertaken on the draft model forms contained at Annexes 1 to 4 of Preliminary Document No 5 as providing useful guidance in terms of the recommended content of the Article 15 and 16 reports, the post-adoption report and the statement of consent of the child to the intercountry adoption.<sup>15</sup> It recommended that work continue and, to this end, invited Contracting States, Members of the Hague Conference, and States and organisations represented at the Special Commission to submit written comments on the current drafts. In light of the comments received, the Permanent Bureau will assess whether a working group should be established to finalise the work.
16. The SC invited the Permanent Bureau to develop model forms on:
  - a. the agreements provided in accordance with Article 17(c);
  - b. the certificate of conformity which must be issued after the conversion of an adoption in accordance with Article 27.

A draft of these model forms will also be submitted to those mentioned in paragraph 15 above for their written comments and, if a working group is established, the forms will be finalised by the working group if necessary.

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<sup>10</sup> 2005 SC C&R Nos 12 and 13; 2010 SC C&R Nos 8 and 9.

<sup>11</sup> Art. 16(1)(a) of the Convention. See also 2000 SC C&R Nos 12 and 13.

<sup>12</sup> Art. 15 (1) of the Convention. See also 2000 SC C&R No 14.

<sup>13</sup> Art. 15(1) of the Convention.

<sup>14</sup> International Service Social, *life books for children "My story"*, 2014.

<sup>15</sup> 2005 SC C&R Nos 7 and 18.

17. Where necessary to ensure consistency and coherence with any new model forms, the SC invited the Permanent Bureau to update the existing model forms<sup>16</sup> in consultation with those mentioned in paragraph 15 above and, if necessary, the working group.

### **Post-adoption matters**

18. The SC recognised that post-adoption services are essential and should take into account the life-long nature of adoption. States are encouraged to develop specialised post-adoption services, in addition to the general services already in place.
19. The SC recognised that appropriate evaluations, preparation, reports, matching and post-adoption support, in relation to both the child and prospective adoptive parents, will reduce the risk of the breakdown of intercountry adoptions.
20. The SC encouraged States to consider ratification of, or accession to, 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* (hereinafter, "the 1996 Hague Convention") in view of its relevance in enhancing co-operation to protect children in many different situations, including following the breakdown of intercountry adoptions.<sup>17</sup>
21. The SC recommended that the possibility of a child searching for his or her origins be included in the counselling and preparation of the prospective adoptive parents. When an adopted child or an adult adoptee undertakes such a search, professional support at all stages is recommended.<sup>18</sup>

### **Globalisation and international mobility: habitual residence and the scope of the Convention**<sup>19</sup>

22. In order to ensure that the Convention is applied to all adoptions falling within its scope,<sup>20</sup> the SC recognised that there is a need to:
- promote consistent determinations, in the light of the Convention's objectives, of "habitual residence" in Contracting States, including developing a common understanding of the factors which might be considered when determining habitual residence;
  - promote education of the relevant judicial and administrative authorities or bodies in Contracting States in relation to determinations of habitual residence and the scope of the Convention;
  - raise awareness with the public of what qualifies as an intercountry adoption under the Convention.
23. In cases where the habitual residence of the prospective adoptive parents is uncertain, the SC reaffirmed 2010 SC C&R No 13 and further recommended that the concerned Central Authority expeditiously consult with the Central Authorities of any other relevant Contracting States before providing advice or communicating its decision to the prospective adoptive parents.
24. The SC noted with concern reports of persons moving to, or moving children from, Contracting States in order to undertake a domestic adoption in another Contracting State in an effort to deliberately circumvent the Convention. The SC invited Contracting States, when considering prospective adoptive parents' applications to adopt domestically, to consider carefully the circumstances of the prospective adoptive parents' and / or the child's presence in that State.

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<sup>16</sup> 2000 SC C&R Nos 5 and 13; 2005 SC C&R No 6.

<sup>17</sup> 2000 SC C&R No 22; 2005 SC C&R No 21; 2010 SC C&R No 41.

<sup>18</sup> 2010 SC C&R No 29.

<sup>19</sup> 2010 SC C&R Nos 11, 12 and 13.

<sup>20</sup> Art. 2 of the Convention.

25. The SC welcomed Preliminary Document No 4 of April 2015 on “Globalisation and international mobility: habitual residence and the scope of the 1993 Convention” as providing useful further guidance on the scope of the Convention and determinations of habitual residence. It recommended that the document be revised by the Permanent Bureau in light of: (1) the discussions at the SC meeting; and (2) any written comments submitted by Contracting States, Members of the Hague Conference, and States and organisations represented at the Special Commission. The SC further recommended that the finalised document be published subsequently on the website of the Hague Conference.

### **Specific issues of co-operation**

26. The SC recognised the importance of the continuation and expansion of co-operation and assistance between States in relation to the implementation and operation of the Convention.<sup>21</sup> It welcomed the positive results reported by States which have benefitted from such co-operation.
27. The SC applauded the increased horizontal co-operation<sup>22</sup> reported between States of origin, as well as regional and multilateral co-operation, to enhance the effective operation of the Convention.
28. Recalling the great value of ICATAP to the successful implementation and operation of the Convention, the SC urged States to continue to support the programme.<sup>23</sup>
29. To support States considering becoming party to the Convention, the SC recommended that the Permanent Bureau develop a tool to provide practical guidance to assist them with their legal framework for adoption.

### **Kafala and adoption**<sup>24</sup>

30. The SC recommended that *kafala*, as a child protection measure, be discussed at the next SC on the practical operation of the 1996 Hague Convention. The SC recommended that consideration be given to the inclusion of the subject on the agenda for the fourth “Malta Judicial Conference on Cross-Frontier Family Law Issues” (part of the “Malta Process”<sup>25</sup>).

### **Openness in adoption**

31. The SC noted that, where not prohibited by domestic legislation, and after professional matching,<sup>26</sup> contact between the adoptee and biological family in intercountry adoption may be beneficial in some cases. In order to maximise the benefits and minimise the risks of such contact, professional support should be offered to prepare the parties, as well as to assist them during and after contact. The adopted child’s best interests should guide the nature of this contact, taking into account his or her wishes.

### **In-family adoption (“relative adoption”)**<sup>27</sup>

32. In relation to in-family adoption, the SC:
- recalled that in-family adoptions fall within the scope of the Convention;
  - recalled the need to respect the safeguards of the Convention, in particular to counsel and prepare the prospective adoptive parents;

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<sup>21</sup> 2000 SC C&R No 10; 2010 SC C&R No 6.

<sup>22</sup> See Chapter 12.4 of *Guide to Good Practice No 2: Accreditation and Adoption Accredited Bodies* (available at < [www.hcch.net](http://www.hcch.net) > under “Intercountry Adoption Section”).

<sup>23</sup> 2010 SC C&R Nos 32, 33 and 34.

<sup>24</sup> 2000 SC C&R No 22; 2005 SC C&R No 21; 2010 SC C&R No 41.

<sup>25</sup> See further the specialised “Child Abduction Section” of the Hague Conference website (< [www.hcch.net](http://www.hcch.net) >), under “Judicial Seminars on the International Protection of Children” then the “Malta Process”.

<sup>26</sup> See Art. 29 of the Convention.

<sup>27</sup> 2010 SC C&R Nos 11 and 12.

- c. recognised that the matching process might be adapted to the specific features of in-family adoptions;
- d. recommended that the motivations of all parties should be examined to determine whether the child is genuinely in need of adoption;
- e. recognised that it is necessary to undertake an individualised assessment of each child's situation and it should not be automatically assumed that either an in-country or in-family placement is in a child's best interests.

### **Specific issues of procedure**

- 33. The SC took note of the Study undertaken by Sweden entitled, "[Commission Concerning Bilateral Agreements on Intercountry Adoption Report to the Government](#)".
- 34. The SC requested that the Permanent Bureau monitor the practice relating to agreements concluded under Article 39(2) of the Convention and other arrangements established between Contracting States on matters of procedure, co-operation or administration. To that effect, it encouraged Contracting States to send to the Permanent Bureau examples of any such agreements or arrangements.
- 35. The SC noted the risk that the multiplication of bilateral agreements with non-Contracting States could deter these non-Contracting States from becoming party to the Convention.<sup>28</sup>
- 36. In relation to Article 23 of the Convention,<sup>29</sup> the SC emphasised the importance of:
  - a. clearly designating the authorities competent to issue Article 23 certificates and keeping this information updated;
  - b. automatically issuing such certificates following an adoption decision made in accordance with the Convention wherever possible;
  - c. providing adoptive parents with the original of the Article 23 certificate without delay and, at the same time, sending a copy of the certificate to the Central Authorities of both Contracting States;
  - d. using the "Model Form for the Certificate of Conformity of Intercountry Adoption" to promote consistent practice; and
  - e. where an Article 23 certificate is incomplete or defective, co-operating to regularise the situation.
- 37. The SC reminded Contracting States that no additional procedure may be imposed as a condition of recognition.<sup>30</sup>

### **Modern technologies, including social media**<sup>31</sup>

- 38. The SC recognised that the use of modern technologies:
  - a. has improved the intercountry adoption process, in particular by making communication easier amongst the various actors and making the process more expeditious.<sup>32</sup> It recommended that Contracting States consider the possibility of scanning and sending documents by e-mail, transferring the paper documents by conventional methods thereafter if required;
  - b. may be a helpful tool in the matching process (*e.g.*, the use of short videos of children); and
  - c. may facilitate contact between the prospective adoptive parents and the child after the matching, noting the need for appropriate support.

<sup>28</sup> 2000 SC C&R No 11; 2005 SC C&R No 19; 2010 SC C&R Nos 36 and 37.

<sup>29</sup> 2000 SC C&R Nos 2(h), 17, 18 and 19; 2010 SC C&R Nos 15, 16 and 17.

<sup>30</sup> 2010 SC C&R No 18.

<sup>31</sup> 2005 SC C&R No 16.

<sup>32</sup> See Art. 35 of the Convention.

39. The SC acknowledged the need to raise awareness of the risks associated with the use of modern technologies, including social media, and encouraged the training of professionals and the education of families.
40. The SC expressed concern regarding the disclosure of sensitive personal data through the use of modern technologies, particularly concerning children. It recommended that Contracting States take appropriate measures to protect personal data and reminded them of Article 31 of the Convention in this regard.

### **The financial aspects of intercountry adoption**<sup>33</sup>

41. The SC welcomed the tools developed thus far by the Experts' Group on the Financial Aspects of Intercountry Adoption (the Harmonised Terminology, the Note, the Summary List of Good Practices and the Tables on Costs<sup>34</sup>) and recognised their practical value.
42. The SC urged Contracting States to:
- complete the Tables on Costs<sup>35</sup> as soon as possible;
  - publish the Tables on the website of their Central Authority; and
  - provide the Permanent Bureau with the link for publication on the Hague Conference website.
- In addition or alternatively, if a Contracting State so wishes, it may ask the Permanent Bureau to publish its Tables in full on the Hague Conference website.
43. The SC recommended that the Experts' Group on the Financial Aspects of Intercountry Adoption continue its work in relation to the "Draft Survey for Adoptive Parents on the Financial Aspects of Intercountry Adoption".<sup>36</sup>

### **Preventing and addressing illicit practices**<sup>37</sup>

44. The SC welcomed the frank and open dialogue which took place on preventing and addressing illicit practices, and the sharing of good practices in this regard. It noted that co-operation and coordination between States is key to preventing illicit practices.<sup>38</sup>
45. The SC recommended that the Working Group on Preventing and Addressing Illicit Practices resume its work. It noted that the United States of America has offered to co-ordinate the work of the Group and invited States to notify the Permanent Bureau of their interest in joining the Group.
46. Recalling 2010 SC C&R Nos 22 and 23 and the fact that private and independent adoptions are not compatible with the Convention,<sup>39</sup> the SC encouraged Contracting States to move towards the elimination of private and independent adoptions.
47. The SC recalled paragraph 20 above, and noted the relevance of the 1996 Hague Convention to enhancing co-operation to protect children, including trafficked children.<sup>40</sup>

### **The provision of information, including statistics**

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<sup>33</sup> 2000 SC C&R Nos 6 to 10; 2005 SC C&R Nos 2 and 5; 2010 SC C&R Nos 4 and 14.

<sup>34</sup> All available on the "Intercountry Adoption Section" of the Hague Conference website < [www.hcch.net](http://www.hcch.net) > under "Experts' Group on the Financial Aspects of Intercountry Adoption".

<sup>35</sup> "Tables on the costs associated with intercountry adoption", available on the "Intercountry Adoption Section" of the Hague Conference website < [www.hcch.net](http://www.hcch.net) > under "Experts' Group on the Financial Aspects of Intercountry Adoption".

<sup>36</sup> Prel. Doc. No 6 of June 2015, "Draft Survey for Adoptive Parents on the Financial Aspects of Intercountry Adoption".

<sup>37</sup> 2010 SC C&R Nos 1 and 2.

<sup>38</sup> 2005 SC C&R No 10.

<sup>39</sup> See also 2010 SC C&R No 24.

<sup>40</sup> 2000 SC C&R No 22; 2005 SC C&R No 21; 2010 SC C&R No 41.

48. All Contracting States that have not yet completed the revised (2014) version of the Country Profile (for receiving States and / or States of origin, as appropriate) are strongly encouraged to do so as soon as possible.
49. On an annual basis, Contracting States are urged to:
- submit their intercountry adoption statistics to the Permanent Bureau, using the forms on the website of the Hague Conference;<sup>41</sup>
  - ensure that their Country Profile remains up to date and accurate and, where required, submit a revised version to the Permanent Bureau.<sup>42</sup>
- The Permanent Bureau will continue to send an annual reminder to Contracting States in this regard.

#### **Declaration submitted by the delegations of Africa present at the meeting**

50. The SC warmly welcomed the "[\*Declaration on the need to develop a harmonised framework for the adoption of children in Africa\*](#)" submitted by the delegations of Africa present at the SC meeting. The Declaration highlights the challenges that States in Africa face in relation to intercountry adoption, affirms the need for a harmonised framework for brainstorming, taking action, sharing experiences and conducting follow-up work on the adoption process in Africa and encourages the pursuit of work in this regard. It also emphasises the benefit that States in Africa have derived from the support of Contracting States to the Convention and other technical and financial partners.

#### **Ceremony for new Contracting States and Members**

51. Furthermore, the SC witnessed and welcomed:
- the deposit of the instrument of acceptance of the Statute of the Hague Conference by the Principality of Andorra which thus became the 80th Member of the Hague Conference;
  - the deposit by Zambia and Côte d'Ivoire of their respective instruments of accession to the Convention, which now counts 95 Contracting States;
  - the European Union's signature and deposit of the instrument of approval of the *Hague Convention of 30 June 2005 on Choice of Court Agreements* which thus will enter into force on 1 October 2015; and
  - the signature by Argentina of the 1996 Hague Convention.

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<sup>41</sup> < [www.hcch.net](http://www.hcch.net) > under "Intercountry Adoption Section" then "[Annual adoption statistics](#)". See also SC C&R No 21 of 2000, No 9 of 2005 and Nos 30 and 31 of 2010.

<sup>42</sup> 2010 SC C&R No 7.