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PRIVATE INTERNATIONAL LAW
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1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

25 Years of
Protecting Children
in Intercountry Adoption

1993
-
2018

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FOREWORD

2018 marks a very important year for the Hague Conference on Private International Law (HCCH), which celebrates not only the 125th anniversary of its first meeting in 1893, but also the 25th anniversary of the conclusion on 29 May 1993 of the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (1993 Hague Convention).

I am pleased to see that interest in the 1993 Hague Convention has never stopped growing over these 25 years, and that the Convention currently has almost 100 States Parties. While this is a great achievement, the challenge is still to ensure that all States Parties are able to implement and operate the Convention properly, ensuring that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights.

The implementation of the 1993 Hague Convention has led States to rethink and improve their approach to intercountry adoption from a child's rights perspective. It has also helped to raise awareness about the need to support birth families in order that they can take care of their children, and the promotion of domestic permanent family placements when this is not possible.

Over these 25 years, the panorama of intercountry adoptions has changed considerably: there has been a significant decrease in the number of intercountry adoptions and the profile of children in need of adoption has changed. There is also an increasing need for further support and counselling to adoptees and their families. States should therefore continuously adapt their practices to the new reality surrounding intercountry adoptions, including the challenges. For example, child protection systems are not always efficient enough and therefore it is difficult to properly implement the subsidiarity principle; illicit practices are still occurring, as highlighted by the work undertaken by the Working Group on Preventing and Addressing Illicit Practices; and some major States of origin are still not party to the Convention, resulting in children adopted in those States not being able to benefit from the guarantees of the Convention.

I am pleased to introduce this Brochure which aims to give a brief overview of the Convention and of the different tools, published by the HCCH and the International Social Service (ISS), to assist interested parties in properly implementing the Convention and its safeguards.

The HCCH looks forward to continuing working with States and all relevant stakeholders to protect children.

Christophe Bernasconi
Secretary General
29 May 2018

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TESTIMONIES

International Social Service (ISS) is pleased to join the HCCH, our longstanding partner and friend, in celebrating the 25th anniversary of the 1993 Hague Convention. Chantal Saclier, founder of the International Reference Center for the rights of children deprived of their family (ISS/IRC), actively participated in the preparatory work for the 1993 Hague Convention. This close partnership continues today and has been formalized in a cooperation agreement, signed in 2014.

It is thanks to the trust of the HCCH, Central Authorities and governmental bodies that ISS, an NGO, has been able to establish the ISS/IRC and its international network. Using the framework of the 1993 Hague Convention and other international standards, such as the *United Nations (UN) Convention on the Rights of the Child* and more lately as well the *United Nations Guidelines for the Alternative Care of Children*, we have been working together to ensure that intercountry adoptions are truly in the child's best interests. The 1993 Hague Convention has resulted in, among other things, a better evaluation of the child's and the prospective adoptive parents' needs and capacities, less recourse to illicit practices and strengthened cooperation.

The principle of cooperation that is at the heart of the 1993 Hague Convention is facilitated by ISS/IRC's activities to forge ties among key stakeholders involved in some way or another in the fate of these children, either in the receiving country or in the country of origin, including representatives of governmental or non-governmental bodies, those not belonging to any entity, professionals, parents or adoptees. The ISS/IRC aims to enable them to develop mutual trust, to build a relationship of solidarity aimed at sharing information, ideas and methods, to help each other, and to create together.

Yet, more needs to be done, especially as the developments of science and changes within society render the problems ever more complex. We believe that flexibility, kindness, humility and questioning, the acceptance of specific characteristics and consideration of the uniqueness of the various involved parties, are essential in our actions, decisions, advice and written materials as persons acting in the lives of other human beings.

ISS/IRC team, Jean Ayoub and Mia Dambach

Unlike some colleagues and friends, I did not have the privilege of taking part in the negotiations of the 1993 Hague Convention. I was still a child when it was adopted. In fact, I actually did not know of the Convention until 2003 - the year I started my professional work on children's rights - though I knew of intercountry adoption from my parents, who shared the story of family friends from Australia that had kindly expressed an interest to adopt my younger brother.

However, my engagement with the Convention in the subsequent years has been decidedly closer. I had the opportunity to conduct my doctoral thesis on intercountry adoption in four African countries. In my academic position at the Dullah Omar Institute at the University of the Western Cape and beyond, the Convention continues to be part of my teaching and research interest. I also had a number of opportunities to engage with the HCCH and Contracting as well as non-Contracting States on the Convention. As a member of both the African Committee of Experts on the Rights and Welfare of the Child and the UN Committee on the Rights of the Child, I enjoy the privilege of witnessing what the Convention has meant and ought to mean to States.

Many would find it difficult to quibble with the fact that the 1993 Hague Convention is one of the most successful instruments of the HCCH. The success of the Convention can be appreciated from different angles ranging from its ratification level; how it managed to place a child's best interests at the heart of the adoption process; the extent to which national and international courts rely on it; and the number of diverse States, even non-Contracting States, that still draw guidance from the Convention in their domestic law, bilateral agreements, policy and practice. To be more specific, the Convention has spurred debate and clarity, among others, on adoptability, the application of the principle of subsidiarity, international cooperation, and the role of non-State actors, and has helped stakeholders to appreciate the magnitude of illicit activities in relation to intercountry adoption, and propose concrete measures to prevent abuse. In addition in some States, the Convention has helped as an entry point to undertake reforms on alternative care.

The Convention remains relevant, and in some contexts even more relevant today than before. The 25th anniversary is a fitting honour to an instrument that is not counting its days but making its days count for children.

Benyam Dawit Mezmur

*Associate Professor of Law, University of the Western Cape
Member and former chairperson of the African Committee of Experts on the Rights and
Welfare of the Child and the UN Committee on the Rights of the Child*

WHY THIS CONVENTION?

During the last decades of the 20th century, adoption of children from countries of the "Global South" to countries in the "Global North" became a common phenomenon. But it also became increasingly manifest that for want of effective common safeguards and procedures and lack of coordination and cooperation between countries of origin and receiving countries, the rights and interests of children, birth parents and adoptive parents were insufficiently protected.

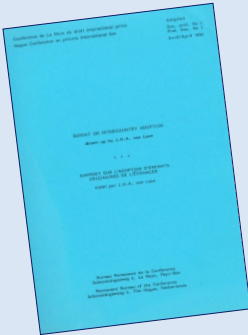
It fell upon the Hague Conference (HCCH) to draw up a global legal framework to establish the protection and cooperation needed. Yet, in the early 1990s its membership was small (39 States, compared to 83 Members today), consisting mainly of countries receiving children. Involving countries of origin was considered indispensable for balanced discussions, but would they accept an invitation to participate in negotiations in The Hague concerning "their children"? They did, and in great numbers, which showed global awareness of the need for action. Countries of origin were the first to sign the Convention on 29 May 1993. Ever since, countries of origin and receiving countries have kept equal pace in joining the Convention, thus demonstrating worldwide trust in its effectiveness. Support of other international bodies, such as the UN Committee on the Rights of the Child, Unicef and UNHCR, has reinforced global confidence in the Convention.

Although the treaty is about international adoption, it is unique among the Hague Conventions for its far-reaching impact on internal laws and procedures. Countries of origin must not only assess their adoption procedures, but often drastically review their national child care systems to give effect to the Convention, including its principle of subsidiarity. Expert assistance, including through the HCCH's ICATAP programme, to many of these countries is and will remain critical. Receiving countries also have had to reform their laws and regulations, for example those on private intermediaries. This likewise requires their continuing attention.

Adoption is in essence a noble institution providing an alternative family to a homeless child. The Convention aims at creating the right conditions under which adoption may take place across borders in the context of ongoing globalisation. It forges permanent links between countries, leading to better understanding of different societies and cultures and stimulating international solidarity. May the Convention in the years ahead continue to protect children and families, and to mobilise goodwill around the world!

*Hans van Loon,
Former Secretary General of the HCCH (1996-2013);
previously, as a member of its secretariat, in charge of the preparation and
negotiation of the Convention*

To know more about what led to the conclusion of this Convention, see:



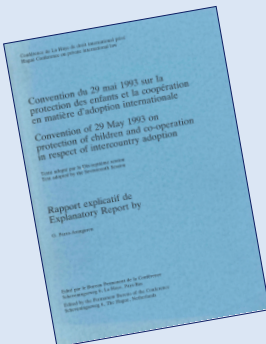
Report on Intercountry Adoption, by J.H.A. van Loon (1990).

Explains the practices and abuses arising within intercountry adoption before the Convention existed.

Gives an overview of the legal framework surrounding intercountry adoptions at that time.

Supports the need to negotiate an international treaty which would address the different abuses within intercountry adoptions and provide for a framework of co-operation between States to protect children and respect for their rights.

To know more about the reasons behind the articles of the Convention, see:



Explanatory Report on the Convention, by G. Parra-Aranguren (1993).

Describes the circumstances in which the Convention was discussed.

Provides a thorough explanation of why and how each article of the Convention was negotiated.

Clarifies the language of each article, how they should be interpreted, and what they entail.

These documents are available on the HCCH website under the "Adoption Section".

THE 1993 HAGUE CONVENTION IN A NUTSHELL



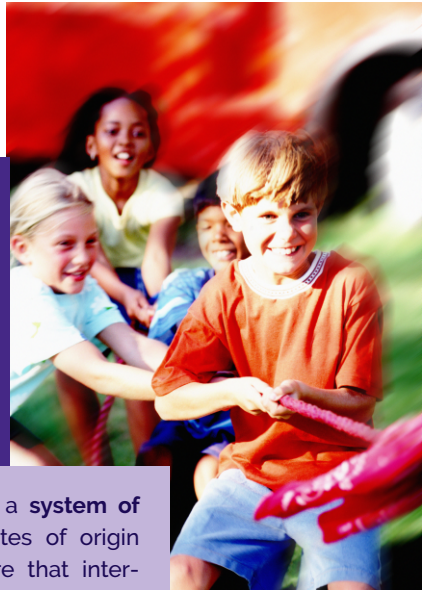
The 1993 Hague Convention was developed to **respond to the serious and complex human and legal problems** in intercountry adoption and the absence of an international legal instrument that could respond to this situation.

It gives effect to Article 21 of the UN **Convention on the Rights of the Child** (CRC) by adding substantive safeguards and procedures to the broad principles and norms laid down in the CRC. Those substantive safeguards are aimed at ensuring that intercountry adoptions take place in the **best interests of the child** and with respect for the child's fundamental rights. However, these safeguards are only **minimum standards**, and therefore States are encouraged to improve and raise those standards.

The 1993 Hague Convention recognises that **growing up in a family** is of **primary importance** and is essential for the happiness and healthy development of the child. It also recognises that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her country of origin (**principle of subsidiarity**).



By setting out **clear procedures** and **prohibiting improper financial or other gain**, the 1993 Hague Convention provides greater **security, predictability** and **transparency** for all parties to the adoption, and tries to prevent illicit practices, including the abduction, the sale of, or traffic in children.

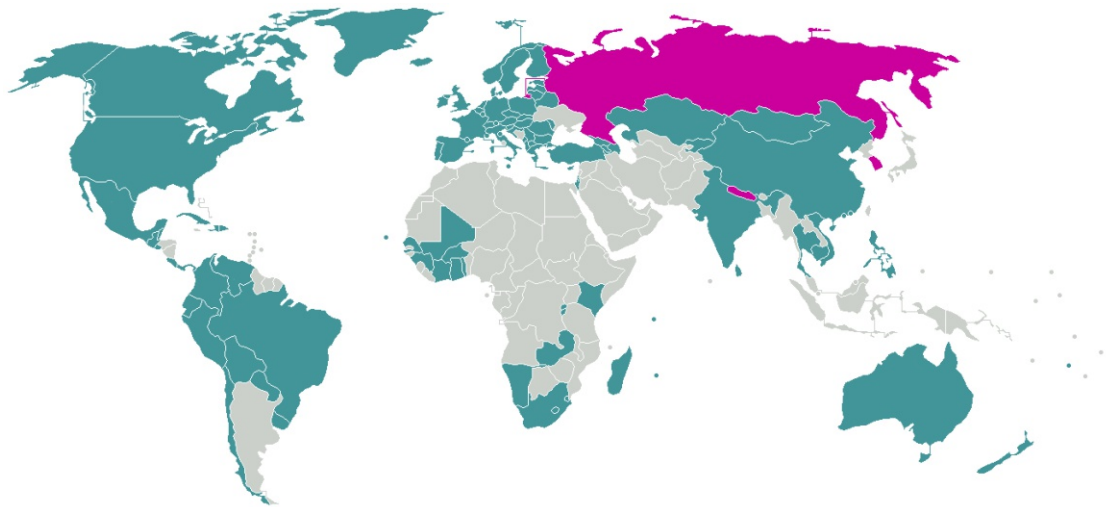


The 1993 Hague Convention establishes a **system of co-operation** between authorities in States of origin and receiving States, designed to ensure that inter-country adoption takes place under conditions which help to guarantee the best adoption practices and elimination of abuses. The Convention makes clear that receiving States and States of origin must share the burdens and benefits of regulating intercountry adoption. It sets out clearly which functions within the adoption process are to be performed by each State.



The 1993 Hague Convention guarantees the **automatic recognition** in all Contracting States of adoptions made in accordance with the Convention.

STATES PARTIES & SIGNATORIES AS OF 29 MAY 2018



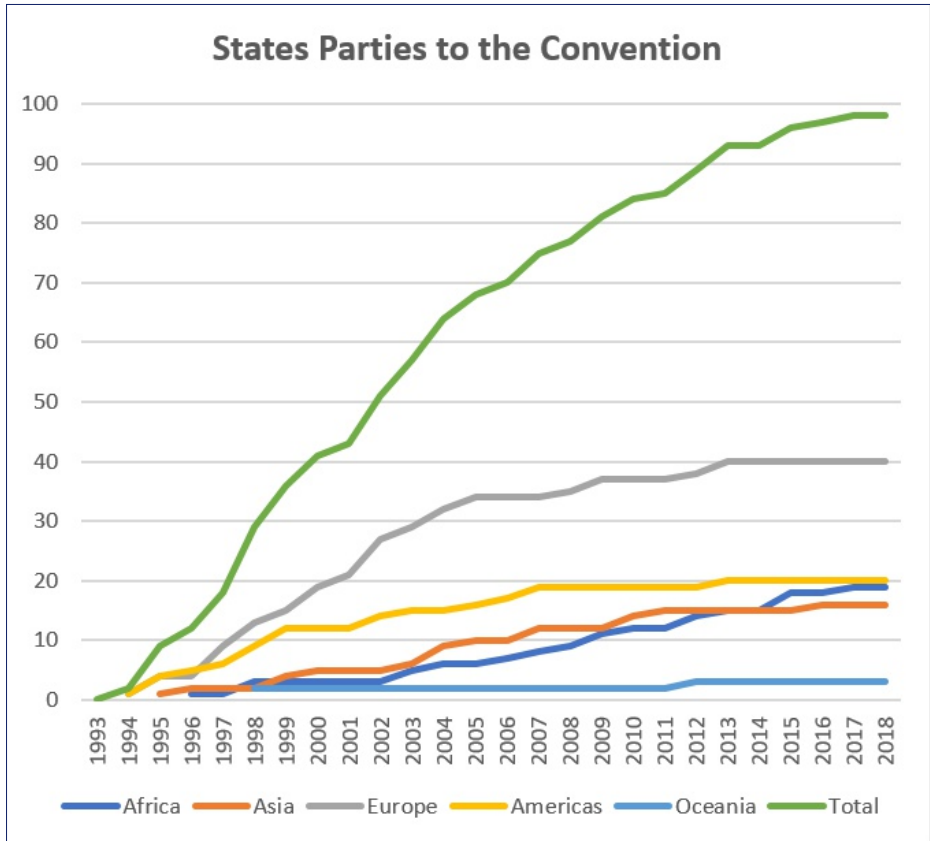
States Parties (98)

Only signatory States (3)

Contracting States, in their relations with non-Contracting States, should apply as far as practicable the standards and safeguards of the Convention.

Recommendations of all Special Commission meetings (for further information on what a Special Commission meeting is, please see p. 33)

NUMBERS OF STATES PARTIES TO THE 1993 HAGUE CONVENTION OVER THE PAST 25 YEARS



25 YEARS OF THE 1993 HAGUE CONVENTION:



Over these 25 years, the safeguards and principles established in the 1993 Hague Convention have been implemented by States Parties. This has contributed to the success of this Convention and the protection of children, but there still remain challenges that we need to face in the future:

Establishing safeguards to ensure that intercountry adoptions (ICAs) take place in the best interests of children

- ✓ With the 1993 Hague Convention, the best interests of children were put at the heart of ICAs, which contributed to:
 - the creation of an international benchmark with an orderly, rules-based and State-supervised global intercountry adoption system;
 - a new division of responsibilities and clear roles for each actor in the adoption process; and
 - a more safe, clear, ethical, transparent, and smooth adoption procedure.
- 🔍 However, States should continue to:
 - properly implement the Convention;
 - improve the effectiveness of their Central Authorities and other competent authorities and bodies by providing them with the necessary powers and resources.

MAIN ACHIEVEMENTS & REMAINING CHALLENGES¹

Implementing the principle of subsidiarity

- ✓ The 1993 Hague Convention has contributed to the improvement of States' child protection systems and has stimulated programmes for supporting birth families, giving effect to the principle of subsidiarity.
- 🔍 Many States, however, do not have the necessary resources to implement an efficient child protection system, which hampers the proper application of this principle.

Establishing safeguards to protect children from abduction, sale and trafficking

- ✓ The Convention has promoted effective regulations, more controls, more rigorous procedures, and the processing of ICAs through competent authorities, all of this contributing to mobilising political will to increase efforts to prevent and address illicit practices.
- 🔍 Although less frequent than 25 years ago, illicit practices are still occurring. It is crucial that States recognise the problems, tackle the enabling factors that create an environment conducive to illicit practices, establish prevention mechanisms, continue to control their authorities and bodies, monitor the procedures, and co-operate to respond effectively whenever illicit practices occur.

¹ Based on "20 years of the 1993 Hague Convention: Assessing the impact of the convention on laws and practices relating to intercountry adoption and the protection of children", Prel. Doc. No 3 of May 2015 for the attention of the Special Commission of June 2015 on the practical operation of the 1993 Hague Intercountry Adoption Convention.

Establishment of a system of co-operation

- ✓ The 1993 Hague Convention has stimulated community building between all relevant authorities and bodies, at both the internal and international levels.
 - ✓ At the international level, it has set a clear framework of co-operation through official and well-established channels, improving efficiency and communication.
 - ✓ It has also encouraged a sense of shared responsibility between States of origin and receiving States, and common understanding of the Convention's language.
- 🔍 Co-operation is an ongoing process that States need to constantly rethink and improve to avoid misunderstanding, inconsistencies, poor co-ordination and duplicative efforts.

Ensuring the automatic recognition of intercountry adoptions

- ✓ Automatic recognition has helped to guarantee the certainty of the child's status by integrating both the adoption procedure in the State of origin and the adoption procedure in the receiving State into one single procedure.
- 🔍 However, some States still only recognise intercountry adoption decisions after a recognition procedure, hampering the full objectives of the Convention. These States should remove these additional procedures.



The changing landscape of intercountry adoptions

- Since 2005, the number of ICAs undertaken has decreased. This global decline may be attributed in part to the proper implementation of the principle of subsidiarity, but as well to suspension of ICAs in specific States of origin, often following abuses, corruption, crime, irregular adoptions and traffic in children for adoption. In addition, a complex mix of societal, economic, political and legal factors has contributed to the picture we see today.
- The profile of adoptable children has changed, with mainly intra-family adoption and the adoption of children with special needs nowadays.
- Adoption procedures tend now to be more lengthy due to the more rigorous, transparent, regulated and monitored procedures.
- There is a better control of the financial aspects of adoption, but in some cases, adoption is more costly due to the involvement of more professionals.
- The 1993 Hague Convention has also raised awareness of the importance of post-adoption support and counselling, and access to origins.



Looking to the future

The 1993 Hague Convention should continue to be the cornerstone of ICAs by providing the framework in which States can, among others:

- adapt to the new reality encompassing ICAs;
- rethink how prospective adoptive parents should be selected to fit the specific and special needs of adoptable children;
- promote more co-operation between Contracting States;
- comply with minimum safeguards in a timely manner;
- guarantee the welfare of adoptees before, during, but also after the adoption procedure.

25 RIGHTS & PRINCIPLES (AT LEAST)

1. The **best interests** of the child shall be the paramount consideration in adoption (Art. 1(a) 1993 Hague Convention (HC); Art. 21 Convention on the Rights of the Child (CRC)).
2. **Prevent** the **abduction** of, the **sale** of, or **traffic** in children for adoption, and any other illicit practices (Preamble & Art. 1(b) 1993 HC; Art. 35 CRC).
3. Ensure to the maximum extent possible the **full and harmonious development** of the child (Preamble 1993 HC; Art. 6 CRC) and prevent, if possible, the child from entering the child protection system.
4. Respect the child's right to be **cared for by** his or her **parents**, as far as possible (Preamble & Art. 4(b) 1993 HC; Art. 7(1) CRC).
5. Ensure that States take, as a matter of priority, measures to enable the child to **remain in the care** of his or her family of origin (Preamble 1993 HC; Art. 18(2) CRC).
6. Guarantee that a child shall **not** be **separated** from his or her **parents** against their will, except when competent authorities, subject to judicial review, duly determine that it is necessary for the best interests of the child (Art. 4(c) 1993 HC; Art. 9(1) CRC).
7. Ensure **alternative care** for children deprived of family. This could include adoption (Preamble 1993 HC; Art. 20(2) & 20(3) CRC).
8. Give due consideration to in-country permanent family alternative placement, or other suitable care, before considering intercountry adoption (**subsidiarity**) (Art. 4(b) 1993 HC; Art. 21(b) CRC).
9. Ensure that intercountry adoption of a child is authorised and carried out only by **competent authorities** and **bodies**, in accordance with applicable **laws** and **procedures** (Arts 6-9 1993 HC; Art. 21(a) & 21(e) CRC).
10. Ensure that all required persons, institutions and authorities **consent** to the adoption after being **counselled** and duly informed of the effects of their consent (Arts 4(c), 4(d) & 5(b) 1993 HC; Art. 21(a) CRC).
11. Ensure that the **consent of the mother** to her child's adoption, where required, has been given only **after** the **birth** of the child (Art. 4(c)(4) 1993 HC).
12. Ensure that the child has been properly **counselled** and **informed** of the effects of the adoption (Art. 4(d)(1) 1993 HC; Art. 21(a) CRC).

IN INTERCOUNTRY ADOPTION

CELEBRATING 25 YEARS

13. Respect the child's right to **express** his or her **views** freely in all matters affecting him or her, when capable of forming his or her own views, and **consideration** of his or her **views**, **opinions** and **wishes** in accordance with his or her age and maturity (Art. 4(d)(2) 1993 HC; Art. 12(1) CRC).
14. Ensure that the **child's consent** to his or her adoption, where required and having regard to his or her age and maturity, has been given freely (Art. 4(d)(3) 1993 HC; Art. 21(a) CRC).
15. Ensure that all **children** that may be adopted have previously been **declared adoptable** and in need of adoption (Arts 4 & 16 1993 HC).
16. Ensure that adoptive **candidates** are **eligible and suitable** to adopt, and have been properly counselled (Arts 5 & 15 1993 HC).
17. **Match** the child with eligible and suitable prospective adoptive parents, taking into consideration the needs of the child (Arts 15 & 16 1993 HC).
18. Ensure that the child's ethnic, religious and cultural **background** is taken into consideration in adoption (Art. 16(1)(b) 1993 HC; Art. 20(3) CRC).
19. Establish a **co-operation** mechanism to help protect the child (Art. 7(1) 1993 HC; Art. 21(e) CRC).
20. Ensure the **preservation** of all **information** concerning the child from the moment he or she enters the child protection system (Art. 30(1) 1993 HC; Art. 8(1) CRC).
21. Ensure the child's **access** to such **information**, under appropriate guidance, in so far as is permitted by the law of the State (Art. 30(2) 1993 HC; Art. 7(1) CRC).
22. Prevent and address **improper financial or other gain** (Arts 8 & 32 1993 HC; Art. 21(d) CRC).
23. Act **expeditiously** in the process of adoption (Art. 35 1993 HC) while at the same time ensuring all guarantees.
24. Ensure the **automatic recognition** by all Contracting States of intercountry adoption decisions undertaken in accordance with the 1993 Convention (Art. 23(1) 1993 HC).
25. Promote the development of adoption counselling and **post-adoption services** (Art. 9(c) 1993 HC).

PRINCIPAL FEATURES OF THE 1993 HAGUE CONVENTION

This section provides an overview of the principal features of the 1993 Hague Convention. Over the past 25 years, different documents and tools have also been developed by the HCCH and ISS to assist authorities and stakeholders in properly implementing the Convention.

For whom are the tools?

- Most documents and tools are intended for policy-makers involved in planning to implement the Convention in their country, Central Authorities, competent authorities (e.g., judges, administrative authorities), adoption accredited bodies, lawyers, psychologists, social workers, caseworkers, and other professionals involved in intercountry adoptions.
- While they might be technical tools, prospective adoptive parents, adoptees and families are also encouraged to consult them.
- Other documents are more specifically intended for prospective adoptive parents and adoptees.

Where to find these tools?

- If you are reading this Brochure online, all documents and tools referred to in this Brochure are accessible via links to the relevant websites.
- If you are reading a paper version of this Brochure, documents and tools are available at the following addresses:

For HCCH documents and tools, please refer to the HCCH website < www.hcch.net > and "Adoption Section".



For ISS/IRC documents and tools, please refer to the ISS website < www.iss-ssi.org > and "Resources".



If documents are not publicly available or not available online, it is specified under each document if, and where, it may be obtained.

& IMPLEMENTATION ASSISTING TOOLS

The best interests of the child are paramount

The 1993 Hague Convention gives effect to Articles 3 and 21 of the CRC, which provides that the best interests of the child should be **THE** paramount consideration in adoption. The Convention contains certain rules to ensure that adoptions take place in the best interests of the child and with respect for his or her fundamental rights. For example, States must consider national solutions first (implement the principle of subsidiarity); ensure that the child is adoptable; ensure that the consent of the birth mother is only given after the birth of the child; preserve information about the child and his or her parents; and evaluate thoroughly the prospective adoptive parents.

This fundamental principle of the child's best interests should guide the development of an integrated national child care and protection system, of which one part may be an ethical, child-centred approach to intercountry adoption.

For further information on the principle of the *best interests* of the child and *basic information about adoption*, refer to:



HCCH - Guide to Good Practice No 1 (2008)

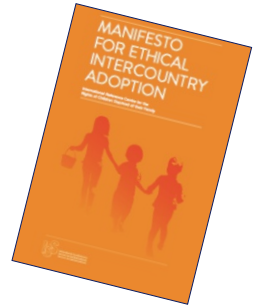
Generally, provides information on how to implement and achieve the objects of the 1993 Hague Convention.

Chapter 2 provides information on how to interpret the principle of the best interests of the child, which serves as the pillar in properly implementing and achieving the objects of the 1993 Hague Convention.

ISS/IRC - Manifesto for Ethical Intercountry Adoption (2015)

Intends to promote ethical practices in order to protect children and ensure that intercountry adoptions take place in the best interests of the child.

Proposes considerations based on applicable international standards, and ISS missions.



ISS/IRC - Country Fact Sheets to the CRC Committee

Consists of short summaries of both the alternative care and adoption system of a given country, highlighting advances and risks.

Addressed to members of the Committee on the Rights of the Child to help them question governments on relevant issues.

Available on the OHCHR website by selecting a specific country, the *CRC Committee*, and *info from Civil Society Organizations*.



Specially for children with special needs and in institutions

ISS/IRC - "A better future is possible": Promoting Family Life for Children with Disabilities in Residential Care (2016)

This practical Handbook for professionals offers:

- a method and procedures to support political authorities and field actors involved in designing permanency planning for children with disabilities in residential care;
- practical tools for practitioners in charge of children with disabilities (grids for the observation of the child, case management tools, guidance on the preparation of the child for his or her new environment, etc.).



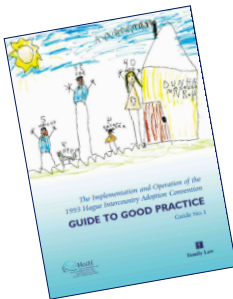
Subsidiarity principle

'Subsidiarity' in the 1993 Hague Convention means that Contracting States recognise that a child should be raised by his or her birth family or extended family whenever possible.

If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered.

Only after due consideration has been given to suitable national solutions should intercountry adoption be considered, and then only if it is in the child's best interests. As a general rule, institutional care should be considered as a last resort for a child in need of a family.

For further information on the principle of *subsidiarity*, refer to:

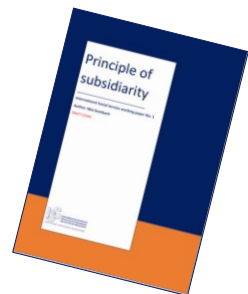


HCCH - Guide to Good Practice No 1 (2008)

Chapters 2 and 6 present a clear explanation, agreed by all States Parties to the 1993 Hague Convention and Member States of the HCCH, of the meaning of subsidiarity and how it should be interpreted in light of the principle of the best interests of the child.

ISS/IRC - Working Paper 1: Principle of Subsidiarity (forthcoming)

Provides a comprehensive explanation of this principle based on legal, policy and practical considerations.



Safeguards to protect children from abduction, sale and trafficking

States should establish safeguards to prevent abduction, sale of and trafficking in children for adoption by:

- protecting birth families from exploitation and undue pressure;
- ensuring that only children in need of a family are adoptable and adopted;
- preventing improper financial or other gain and corruption; and
- regulating bodies and individuals involved in adoptions by accrediting them in accordance with the Convention standards.

For further information on **abuses** within intercountry adoption, refer to:



ISS/IRC - Investigating the Grey Zones of Intercountry Adoption (2012)

Presents a study on illicit activities related to intercountry adoption around the world covering the last three decades.

Underlines theoretical and technical obstacles that hinder the protection of children against any form of trade along with recommendations.

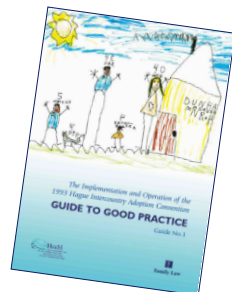
For further information on how to **prevent** and **address** abuses, refer to:

HCCH - Guide to Good Practice No 1 (2008)

Chapter 2 explains how to establish safeguards to prevent abduction, sale of and trafficking in children for adoption.

Chapter 10 explains how to prevent abuses of the Convention, in particular, preventing improper financial gain, promoting co-operation and preventing undue pressure on States of origin.

Chapter 8.7 explains what to do when there is a failure to comply with the Convention.



HCCH - Note on Financial Aspects of Intercountry Adoption (2014)



Presents a glossary of the main terms regarding financial aspects.

Comprehensively addresses issues and good practices regarding the financial aspects of intercountry adoption, including costs, contributions, donations and development aid.

Studies the problems related to improper financial or other gain and some of the good practices to address them.

HCCH - Summary List of Good Practices on the Financial Aspects of Intercountry Adoption (2014)

Lists good practices on the financial aspects of intercountry adoption and clarifies which actors are responsible.

Highlights and connects relevant articles of the 1993 Hague Convention to the financial aspects of intercountry adoption.



HCCH - Fact Sheet on Preventing and Addressing Illicit Practices in Intercountry Adoption (2015)

Gives background information and a definition of illicit practices.

Identifies key obstacles in addressing illicit practices and mechanisms to prevent them.

Presents ideas to prevent and respond to illicit practices.



ISS/IRC - Intercountry Adoption and its Risks: A Guide for Prospective Adopters (2011 – 2nd ed. in 2016)

Specifically addressed to prospective adopters. All stake-holders are also encouraged to refer to it.

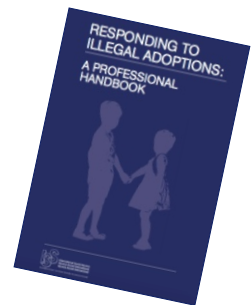
Guiding tool on step-wise information of the procedure and what to expect throughout it.

Indicates risks for potential malpractice and the dangers that the Central Authorities or their accredited body should mitigate.

ISS/IRC - Responding to Illegal Adoptions: A Professional Handbook (2016)

Focuses on potential responses available for illegal adoption from a legal, psychosocial, social and political perspective.

Provides possible answers to various situations accruing from illegal adoptions.



Role of authorities and bodies

Central Authorities, other competent authorities (e.g., judicial or administrative authorities) and adoption accredited bodies (AABs) may take part in the adoption procedure according to the 1993 Hague Convention.

The Convention provides for a system of Central Authorities in all Contracting States and imposes certain general obligations on them, such as:

- co-operation with one another through the exchange of general information concerning intercountry adoption;
- the elimination of any obstacles to the application of the Convention; and
- a responsibility to deter all practices contrary to the objects of the Convention.

Central Authorities may also have specific obligations in respect of individual adoptions.

An AAB:

- may perform some of the functions of Central Authorities;
- needs to be accredited and authorised according to the Convention;
- must be accountable to a supervising or accrediting authority; and
- must play an effective role in upholding the principles of the Convention and preventing illegal and improper practices in adoption.

For further information on *Central Authorities* and *AABs*, refer to:

HCCH - Guide to Good Practice No 1 (2008)

Chapter 4 addresses the establishment and the role of Central Authorities.

HCCH - Guide to Good Practice No 2 (2012)

Clarifies the Convention obligations and standards for establishment and operation of AABs.

Identifies good practices, and proposes accreditation criteria.



Co-operation between States and within States

The Convention envisages a system in which all Contracting States work together to ensure the protection of children. Co-operation between Contracting States is essential to ensure the effectiveness of any safeguards put in place.

In practice, this principle is implemented through:

- international co-operation between Central Authorities, and between other public authorities and AABs performing the functions of Central Authorities;
- intra-State co-operation between all concerned actors regarding Convention procedures; and
- co-operation to prevent abuses and avoidance of the Convention.

For further information on the *co-operation* principle, refer to:



HCCH - Guide to Good Practice No 1 (2008)

Chapters 2 and 3 address the principle of co-operation between Central Authorities and with other authorities.

HCCH - Guide to Good Practice No 2 (2012)

Chapter 12 clarifies the principle of co-operation between States, authorities and accredited bodies.

HCCH - Note on Habitual Residence and the Scope of the 1993 Hague Convention (2018)

Clarifies the scope of the Convention and the concept of habitual residence.

Promotes greater consistency in determinations of habitual residence in Contracting States through case scenarios.

Provides guidance on prevention of, and response to, problems arising due to the determination of the habitual residence.





HCCH - Country Profiles

Provides contact details, a description of the manner in which the Convention's safeguards are applied, and information on legislation, role of the authorities, requirements, and procedure applicable to adoption in a specific State.

Updated by the Central Authorities of each State.

ISS/IRC - Country Situations

Provides an in-depth analysis of over 100 countries in terms of alternative care and adoption procedures, detailing protective measures in place in the country to support families to remain together.

Researched and published by the ISS/IRC team and confirmed in principle by in-country experts.

Specifically intended for Central Authorities who finance the ISS/IRC.

Available on the ISS website to those with credentials.

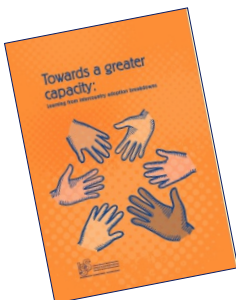


ISS/IRC - Towards a Greater Capacity: Learning from Intercountry Adoption Breakdowns (2018)

Provides an in-depth analysis of the issue of adoptions breakdowns.

Identifies needs and ways to satisfy them:

- o the need for a common definition based on specific indicators and statistics;
- o the need to strengthen all stages of the adoption procedure;
- o the need for a legal framework and for a strong co-operation between all actors involved; and
- o the need for additional support provided by trained, creative, caring and supportive professionals.



Automatic recognition of adoption decisions

The 1993 Hague Convention achieved a major breakthrough in establishing a system of automatic recognition of adoptions made in accordance with the Convention.

Every adoption, whether a simple or full adoption, which is certified to be made in accordance with the Convention, is recognised “by operation of law” in all other Contracting States (Art. 23).

In other words, the Convention gives immediate certainty to the status of the child, and eliminates the need for a procedure for recognition of adoption decisions, or re-adoption, in the receiving country.

The automatic recognition has been even more facilitated by using a model form for the certificate of Article 23, which attests the conformity of an intercountry adoption with the 1993 Hague Convention requirements.

A model form is available to facilitate the automatic recognition:



HCCH - Recommended Model Form for the Certificate of Article 23

States are encouraged to use the HCCH Recommended Model Form for the Certificate of Article 23.

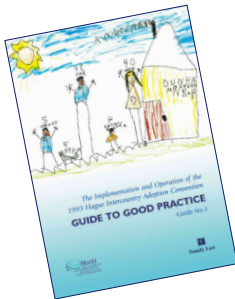
Post-adoption matters

Although the 1993 Hague Convention only applies until the adoption procedure is finalised, it still takes into account the fact that what happens during the adoption procedure will be relevant to the adopted child at a later stage in his or her life. The Convention thus provides for the preservation of any information concerning the child, including the identity of his or her parents and his or her medical history, and the right to have access to this information.

The 1993 Hague Convention also provides for the promotion of post-adoption services. Post-adoption services may include:

- counselling and support;
- search for origins;
- post-adoption reports to the State of origin; and
- remedies for breakdown or disruption of the adoption.

For further information on *post-adoption matters*, refer to:



HCCH - Guide to Good Practice No 1 (2008)

Chapter 9 addresses post-adoption matters, including the child's right to know his or her origins and promotion of post-adoption services.

ISS/IRC - Intercountry Adoption and Search for Origins: A Guide for Adoptees (2018)

Provides concrete information on each and every stage of a search for origins process, with signals that adopted persons might encounter on their way.

Signals are punctually complemented with questions that adopted persons need to ask themselves, the Central Authorities or adoption accredited bodies to avoid risks.



INFORMATION ABOUT LATEST DEVELOPMENTS

ISS/IRC - "Monthly Review"

To be kept informed about the latest developments in intercountry adoption, see the **ISS/IRC "Monthly Review"**:



- A multi-disciplinary publication covering cutting edge laws, policies and practices, written by external experts as well as staff.
- An international tool for progress in the protection of children who are deprived, or are at risk of being deprived, of a family.
- For professionals in States of origin and in receiving States financing the ISS.
- Available on the ISS website to those with credentials.

WORKING WITH STATES...

The Permanent Bureau of the HCCH assists States Parties to the 1993 Hague Convention and States seeking to become a Party to properly implement it through different means.

Approximately every five years, a **Special Commission meeting** is held in The Hague with the objective of reviewing the practical operation of the 1993 Hague Convention and addressing any topics of interest for the States Parties in relation to intercountry adoptions.

Each Contracting State is invited to send representatives of its Central Authority and competent authorities. States not yet Party to the Convention and some international NGOs working in the field may also be invited to participate as Observers.

There were previously Special Commission meetings on this Convention in 1994, 2000, 2005, 2010 and 2015. At the conclusion of each Special Commission meeting, the delegates agree to a number of Conclusions and Recommendations to improve the implementation of the 1993 Hague Convention.



Participants in the Fourth Meeting of the Special Commission on the practical operation of the 1993 Hague Intercountry Adoption Convention, 8-12 June 2015, the Hague Academy of International Law (Peace Palace), The Hague (the Netherlands)

...TO IMPLEMENT THE 1993 HAGUE CONVENTION

Members of the HCCH can also decide to establish **Working Groups** to discuss on a topic particularly relevant to intercountry adoptions. A Working Group is currently working on the topic of preventing and addressing illicit practices.



Participants in the meeting of the Working Group on Preventing and Addressing Illicit Practices in Intercountry Adoption, 13-15 October 2016, Permanent Bureau, The Hague (the Netherlands)



Participants in the meeting of the Expert Group on the Financial Aspects of Intercountry Adoption, 8-9 October 2012, Permanent Bureau, The Hague (the Netherlands)

The Permanent Bureau of the HCCH may also provide technical assistance to States in order to assist them in implementing the 1993 Hague Convention. This is done through the **Inter-country Adoption Technical Assistance Programme (ICATAP)**. Technical assistance is provided to governments of certain States which have already ratified or acceded to the Convention but are experiencing challenges with implementing it, or to States which are planning to ratify or accede to the Convention. Technical assistance may include:

- assisting with the development and implementation of legislation and regulations;
- giving recommendations on how to improve practices;
- providing advice on the establishment and functions of Central Authorities and other competent authorities; and
- providing training and other operational assistance to Central Authorities and other relevant actors.

Technical assistance is usually provided by the Permanent Bureau itself, by Central Authorities of States with good practices, and/or by an external consultant. On many occasions, technical assistance is also provided in co-operation with Unicef and ISS.



Personnel of the Cambodian Central Authority, and members of Unicef, the HCCH, and ISS who provided technical assistance, 28 August-6 September 2016, Phnom Penh (Cambodia)

Personnel of the Honduran authorities working on adoption and the Consultant who provided technical assistance, 2-10 November 2017, Tegucigalpa (Honduras)



The Permanent Bureau also organises **regional workshops** for States Parties and for States considering becoming Parties. These workshops are a good opportunity to foster the implementation of the Convention through the sharing of experience, good practices and ways to overcome challenges in a specific region.



Participants in the regional workshop *Experience sharing on the implementation of the 1993 Intercountry Adoption Convention in West Africa*, 17-19 January 2017, Ouagadougou (Burkina Faso)



Participants in the regional workshop *Implementation of the 1993 Intercountry Adoption Convention in Asia: state of play and experience sharing*, 11-13 December 2017, Hanoi (Vietnam)

THE 1993 HAGUE CONVENTION

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

(Concluded 29 May 1993)

The States signatory to the present Convention,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions -

CHAPTER I - SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are -

- a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;
- b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

- (1) The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.
- (2) The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, subparagraph c, have not been given before the child attains the age of eighteen years.

CHAPTER II - REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin -

- a) have established that the child is adoptable;
- b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- c) have ensured that
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and

- d) have ensured, having regard to the age and degree of maturity of the child, that
 - (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child's wishes and opinions,
 - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State -

- a) have determined that the prospective adoptive parents are eligible and suited to adopt;
- b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- c) have determined that the child is or will be authorised to enter and reside permanently in that State.

CHAPTER III - CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

- (1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

- (1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

- (2) They shall take directly all appropriate measures to -
- a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
 - b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to -

- a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- c) promote the development of adoption counselling and post-adoption services in their States;
- d) provide each other with general evaluation reports about experience with intercountry adoption;
- e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall -

- a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

- c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV - PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

- (1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.
- (2) It shall transmit the report to the Central Authority of the State of origin.

Article 16

- (1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall -
 - a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
 - b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

- c) ensure that consents have been obtained in accordance with Article 4; and
 - d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.
- (2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if -

- a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c) the Central Authorities of both States have agreed that the adoption may proceed; and
- d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

- (1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
- (2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
- (3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

- (1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular -
 - a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
 - b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
 - c) as a last resort, to arrange the return of the child, if his or her interests so require.
- (2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

- (1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
- (2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who -
 - a) meet the requirements of integrity, professional competence, experience and accountability of that State; and
 - b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

- (3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.
- (4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.
- (5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V - RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

- (1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c), were given.
- (2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

- (1) The recognition of an adoption includes recognition of
 - a) the legal parent-child relationship between the child and his or her adoptive parents;
 - b) parental responsibility of the adoptive parents for the child;

- c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
- (2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.
- (3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

Article 27

- (1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect -
 - a) if the law of the receiving State so permits; and
 - b) if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.
- (2) Article 23 applies to the decision converting the adoption.

CHAPTER VI - GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a) to c), and Article 5, sub-paragraph a), have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

- (1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.
- (2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

- (1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
- (2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
- (3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units -

- a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;
- d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

- (1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.
- (2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII - FINAL CLAUSES**Article 43**

- (1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.
- (2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

- (1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.
- (2) The instrument of accession shall be deposited with the depositary.
- (3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in subparagraph b) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

- (2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- (3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

- (1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.
- (2) Thereafter the Convention shall enter into force -
 - a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

- (1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.
- (2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following -

- a) the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b) the accessions and objections raised to accessions referred to in Article 44;
- c) the date on which the Convention enters into force in accordance with Article 46;
- d) the declarations and designations referred to in Articles 22, 23, 25 and 45;

- e) the agreements referred to in Article 39;
- f) the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

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