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## **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**

*drawn up by the Permanent Bureau*

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## **20 ANS DE LA CONVENTION DE LA HAYE DE 1993**

### **ANALYSE DE L'IMPACT DE LA CONVENTION SUR LE DROIT ET LA PRATIQUE EN MATIERE D'ADOPTION INTERNATIONALE ET DE PROTECTION DES ENFANTS**

*établie par le Bureau Permanent*

*Preliminary Document No 3 of May 2015 for the attention of the  
Special Commission of June 2015 on the practical operation of the  
Hague Convention of 29 May 1993 on Protection of Children and  
Co-operation in Respect of Intercountry Adoption*

*Document préliminaire No 3 de mai 2015 à l'attention de la  
Commission spéciale de juin 2015 sur le fonctionnement pratique de la  
Convention de La Haye du 29 mai 1993 sur la protection des enfants et  
la coopération en matière d'adoption internationale*

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## INTRODUCTION<sup>1</sup>

1. The Fourth meeting of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (the “1993 Hague Convention” or the “Convention”) will commence with a special day on “20 years of the 1993 Hague Convention” (it was concluded on 29 May 1993 and entered into force<sup>2</sup> on 1 May 1995). This special day will be an opportunity to reflect upon and discuss the implementation and operation of the Convention over the 20 years it has been in force and to analyse what its impact has been on laws and practices relating to intercountry adoption, as well as child protection systems more generally.

2. With a view to eliciting information for this discussion, in July 2014, the Permanent Bureau of the Hague Conference on Private International Law (“Permanent Bureau”) circulated a Questionnaire (“Questionnaire No 1”)<sup>3</sup> to Contracting States to the Convention. At the time of publication of this document, the Permanent Bureau has received 54 responses<sup>4</sup> to Questionnaire No 1 from 50 different Contracting States, including the vast majority of the Contracting States which undertake (or have undertaken, in the past) the highest numbers of intercountry adoptions globally.<sup>5</sup> Moreover, answers have been received from all regions of the world (6 States from Africa,<sup>6</sup> 5 States from Asia-Pacific,<sup>7</sup> 13 States from America,<sup>8</sup> 3 from CIS<sup>9</sup> and 23 from Europe<sup>10</sup>). The Permanent Bureau wishes to express its sincere appreciation to all those who responded to this Questionnaire.

3. This document attempts to summarise and analyse the responses received in order to provide a basis for discussions at the 2015 Special Commission meeting. However, while a significant and geographically broad range of responses has been received, this document has the limitation that the views expressed are, for the most part,<sup>11</sup> attributable only to one group of stakeholders in relation to intercountry adoption: that is, Contracting States. As a result, this document is primarily an analysis of their views concerning the Convention’s implementation over the past 20 years.<sup>12</sup> Where possible, in some parts the Permanent Bureau has supplemented the information from the responses with its own research and information to provide some additional context.

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<sup>1</sup> Special thanks are due to Ms Jennifer Degeling (former Secretary) and Mr Hans van Loon (former Secretary General) for reading a previous draft of this document and providing valuable comments.

<sup>2</sup> Pursuant to Art. 46 (1).

<sup>3</sup> “20 years, 20 questions: A Questionnaire on the impact of the 1993 Hague Convention on laws and practices relating to intercountry adoption and the protection of children”, Prel. Doc. No 1 of July 2014 for the attention of the Special Commission of June 2015 on the practical operation of the 1993 Hague Convention. All Hague Conference documents on adoption mentioned in this document are available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Intercountry Adoption Section”.

<sup>4</sup> 49 from Contracting States; 4 from an association of adoption accredited bodies in Europe (EurAdopt) in relation to 4 different Contracting States (Belgium, Italy, Netherlands and Sweden) and a joint response from a Contracting State and EurAdopt.

<sup>5</sup> See Table 1 (p. 5 below) and the statistics available on the HCCH website. This includes the following States of origin: Bulgaria, China, Colombia, Guatemala, Philippines and Romania; and the following receiving States: Canada, France, Italy, Netherlands, Norway, Spain, Sweden and United States.

<sup>6</sup> Burkina Faso, Guinea, Lesotho, Madagascar, South Africa and Togo.

<sup>7</sup> Australia, China, New Zealand, Philippines and Viet Nam.

<sup>8</sup> Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Mexico, Panama, Peru and United States.

<sup>9</sup> Armenia, Azerbaijan and Moldova.

<sup>10</sup> Albania, Andorra, Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Germany, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Monaco, Netherlands, Norway, Romania, Slovenia, Spain, Sweden and Switzerland.

<sup>11</sup> Albeit not exclusively – see the Euradopt responses, *supra*, note 4.

<sup>12</sup> The Permanent Bureau has attempted to attribute clearly the views expressed in this document to the relevant State(s), usually in the footnotes of the document. References are usually made in footnotes to “Question X: State”, denoting the particular State which provided the information or expressed the view and the question in Questionnaire No 1 to which the State was responding.

4. The answers to Questionnaire No 1 have shaped the structure of this document which is as follows:

- **Chapter 1** begins with discussion of an important preliminary issue: that is, the status of the Convention in 2015 and, in particular, the continued high number of *non*-Convention intercountry adoptions<sup>13</sup> which are still taking place 20 years after the Convention's entry into force;
- **Chapter 2** looks at the key objectives of the 1993 Hague Convention and attempts to analyse whether, from a Contracting State perspective, it can be said that the Convention is meeting its aims 20 years after its entry into force;
- **Chapter 3** continues with an analysis of some significant changes which have taken place in the past 20 years in the intercountry adoption "landscape", as evidenced by the Questionnaire No 1 responses, and examines their inter-relationship with the Convention; and finally,
- **Chapter 4** draws together the preceding Chapters with some concluding thoughts.

## 1. THE STATUS OF THE 1993 HAGUE CONVENTION IN 2015

5. As of May 2015, the 1993 Hague Convention has 93 Contracting States, having attracted more Contracting States in less time than any other Hague Convention.<sup>14</sup> Moreover, the 93 Contracting States are geographically diverse, coming from all regions of the world in which adoption is an option for children in need of alternative care.<sup>15</sup> Importantly, these 93 Contracting States are also representative of *both* receiving States *and* States of origin, a factor which demonstrates its broad appeal and which has been crucial to the Convention's success.<sup>16</sup>

6. In terms of the States undertaking the highest number of intercountry adoptions in 2013 (the last complete year of statistics), all of the main<sup>17</sup> receiving States are Contracting States to the Convention. Regarding States of origin (see Table 1), while in 1998 only *two* of the "top ten" States of origin were party to the Convention (in bold capitals in the table), in 2013, this had risen to *five* of the "top ten" States of origin.

Table 1: MAIN STATES OF ORIGIN (1998-2013) AND NUMBER OF ICAs PER YEAR			
States Parties to the Convention shown in capitals (sources: P. Selman <sup>18</sup> and data provided by States to the Permanent Bureau)			
1998 <sup>19</sup>	2004	2008	2013
China Russia Viet Nam Korea <b>COLOMBIA</b>	China (13 405) Russia (9 384) Guatemala (3 427) Korea (2 242) Ukraine (2 019)	<b>CHINA (5 875)</b> <b>GUATEMALA (4 186)</b> Russia (4 132) Ethiopia (3 888) Viet Nam (1 721)	<b>CHINA (3 400)</b> Ethiopia (2 025) Russia (1 767) Ukraine (641) Congo DRC (583)
India Guatemala <b>ROMANIA</b> Brazil Ethiopia	<b>COLOMBIA (1 714)</b> Ethiopia (1 524) Haiti (1 159) <b>INDIA (1 079)</b> Kazakhstan (877)	<b>COLOMBIA (1 608)</b> Ukraine (1 569) Korea (1 367) Haiti (1 332) <b>INDIA (756)</b>	<b>COLOMBIA (566)</b> <b>PHILIPPINES (521)</b> Haiti (471) <sup>20</sup> <b>BULGARIA (419)</b> <b>POLAND (310)</b>

<sup>13</sup> In this document, "non-Convention intercountry adoptions" means intercountry adoptions to which the 1993 Hague Convention does not apply, usually because one of the States involved (most commonly, the State of origin) is not party to the Convention.

<sup>14</sup> After almost 54 years, the 1961 Apostille Convention has 108 Contracting States. In the case of the 1980 Hague Child Abduction Convention, concluded almost 35 years ago, there are 93 Contracting States.

<sup>15</sup> In States where the legal systems is based, in whole or in part, on Sharia law (e.g., in the Middle East and North Africa) adoption is not permitted and *kafala* is a child protection measure sometimes used for children deprived of parental care. *Kafala* falls within the scope of the 1996 Hague Child Protection Convention.

<sup>16</sup> A factor which is at least partially attributable to the crucial and active participation of many States of origin in the negotiations of the Convention. See further J.H.A van Loon, "International co-operation and protection of children with regard to intercountry adoption", *Recueil des cours*, Vol. 244 (1993-VII), Chapter V.

<sup>17</sup> References to "main" receiving States or States of origin in this document refer to the States with the highest number of incoming or outgoing intercountry adoptions. See further note 18 below.

<sup>18</sup> P. Selman, *Key Tables for Intercountry Adoption: Receiving States 2001-2013 and States of Origin 2003-2013*, UK, Newcastle University, 2014 (hereinafter, "Selman's statistics"), available on the Hague Conference website. All data are subject to further revision and correction.

<sup>19</sup> Figures not available.

<sup>20</sup> Haiti ratified the Convention on 16 December 2013 and the Convention entered into force for Haiti on 1 April 2014.

7. Despite these considerable achievements, however, in 2013, five of the “top ten” States of origin were not party to the 1993 Hague Convention.<sup>21</sup> The corollary of this situation is that, 20 years after the entry into force of the Convention, approximately half of current intercountry adoptions worldwide are still undertaken outside the Convention’s framework.<sup>22</sup> This means that the “largest number of adoptions is carried out where there are less rules and more possibilities of illegal trade”.<sup>23</sup> It would thus be remiss to begin an analysis of the impact of the 1993 Hague Convention on intercountry adoption worldwide without considering why, 20 years after the Convention’s entry into force, this remains the case.

8. The causes of this state of affairs are, however, complex and multifaceted.<sup>24</sup> This document will therefore only present a number of factors which might be said *generally* to contribute to this picture.

a) *The approaches of receiving States*

9. The answers to Questionnaire No 1 confirm that, in a majority of Contracting States, the Convention has had some influence on the choice of States with which Contracting States “partner” for intercountry adoption.<sup>25</sup> However, most receiving States, in practice, continue to permit intercountry adoptions from both Convention *and* non-Convention States of origin.<sup>26</sup> As a result, *non*-Convention intercountry adoptions usually take place between a State of origin that is *not* a Party to the Convention and a receiving State that *is* a Party.<sup>27</sup>

10. Just as joining the Convention is not a panacea and is, in itself, no guarantee that its safeguards will be properly implemented and applied by a State,<sup>28</sup> the fact that an intercountry adoption does not take place under the Convention is not, *in and of itself*, a reason to assume that the adoption does not conform with the Convention’s safeguards.<sup>29</sup> Indeed, many receiving States which co-operate with *non*-Contracting States of origin noted in their responses to Questionnaire No 1 that they apply the same or similar guarantees to intercountry adoptions from both Contracting *and non*-Contracting States of origin,<sup>30</sup> as long-established good practice guidance by the Hague Conference recommends.<sup>31</sup> They may also cease co-operation with States of origin if they determine

<sup>21</sup> It should be kept in mind that often it takes many years for States to join conventions.

<sup>22</sup> For example, in 2013, there were 10,703 intercountry adoptions in the “top ten” States of origin, 5,216 from States Party, and 5,487 from non-States party. See also International Social Service (“ISS”), *Monthly Reviews*, No 176 (October 2013) and No 186 (October 2014).

<sup>23</sup> Question 11: Italy (EurAdopt).

<sup>24</sup> *E.g.*, there will be, to a degree, different reasons as to why each *non*-Contracting State has not yet become party to the Convention.

<sup>25</sup> *E.g.*, using the standards and principles set forth in the Convention as the basis for determining with which States to partner. The following States responded in this manner to Question 9: Andorra, Armenia, Australia, Brazil, Burkina Faso, Chile, Colombia, Costa Rica, Dominican Republic, Finland, Ireland, Lesotho, Lithuania, Madagascar, Moldova, Monaco, Norway, Peru, South Africa, Sweden and Togo. In contrast, other States responded that the Convention has not directly affected their choice of partners: Belgium, Bulgaria, China, Italy (EurAdopt), France, Germany, Panama, Philippines, Romania and United States.

<sup>26</sup> Questions 6 and 9: Australia, Azerbaijan, Belgium, Canada, China (Hong Kong SAR), Denmark, Ecuador, France, Germany, Italy (EurAdopt), Monaco, Netherlands, New Zealand, Norway, Slovenia, Spain, Sweden and United States. However, a minority of Contracting States (both receiving States and States of origin) reported that they only co-operate with other *Contracting* States to the Convention - see Question 6: Andorra, Brazil, Lesotho, Lithuania and Madagascar.

<sup>27</sup> This is the case of almost all receiving States that answered Questionnaire No 1 (see Questions 6 and 9).

<sup>28</sup> As is apparent from the challenges outlined in this document which remain in the field of intercountry adoption even as between Contracting States.

<sup>29</sup> As expressed by Canada in response to Question 9.

<sup>30</sup> Question 1: Denmark, Dominican Republic and Germany. Question 2: Belgium. Questions 6 and 9: Australia, Azerbaijan, Belgium (see also Question 13 (a)), Canada, China (Hong Kong SAR), Denmark, Dominican Republic, Finland, France (the exception being that “independent adoptions” are still permitted in non-Convention States), Germany (see also Question 17 (a)), Italy (EurAdopt), Monaco, Netherlands (EurAdopt), New Zealand, Norway, Slovenia, South Africa, Spain, Sweden and United States.

<sup>31</sup> See, *e.g.*, the Conclusions and Recommendations of the previous meetings of the Special Commission on the practical operation of the 1993 Hague Convention (in 2000, Recommendation No 11; in 2005 Recommendation No 19; and, in 2010, Recommendation Nos 36 and 37). See also: HCCH, *Guide to Good Practice No 1: The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention*, Family Law (Jordan Publishing Ltd), 2008 (hereinafter, “Guide to Good Practice No 1”), Chapter 10.3, paras 635 to 637.

that those States cannot meet the standards of the Convention.<sup>32</sup> Some also encourage non-Contracting States to join the Convention<sup>33</sup> and provide technical assistance with a view to developing policies and practices in these States which are consistent with the Convention.<sup>34</sup> Indeed, sometimes working with such non-Contracting States and insisting on higher standards can lead to reform processes and ultimately, ratification of / accession to the Convention.<sup>35</sup> Such good practices are to be encouraged since, “if the best interests of every child are to be at the centre of the intercountry adoption process, receiving countries that have ratified the 1993 Hague Convention have an ethical responsibility to grant children from non-Hague countries the same legal guarantees and protection offered to children from Hague States”.<sup>36</sup>

11. Nevertheless, even with extensive efforts such as those described above, one can query whether intercountry adoptions undertaken outside the Convention framework can ever – at a systemic level - uphold the rights and interests of children in the same way as Convention adoptions.<sup>37</sup> The non-party status of a State of origin, combined with the fact it is undertaking high numbers of intercountry adoptions (and / or that there has been a sudden rise in the number of intercountry adoptions being undertaken in the State), can sometimes be indicative of a number of issues which make the situation particularly troubling from the perspective of children’s rights and best interests (e.g., the vulnerable situation of the State, an under-developed child protection system, combined with an inability to cope – resource and experience wise - with the pressures of the demand).<sup>38</sup> In these situations, it has been stated that, “it is untenable for countries of origin or receiving countries to affirm that intercountry adoptions under such conditions have been approved and undertaken with the best interest of the child as the ‘paramount consideration’”, as required by the 1993 Hague Convention and the 1989 *UN Convention on the Rights of the Child* (the “UNCRC”).<sup>39</sup> Indeed, one receiving State, in the context of a different study, expressed the view that, in non-Convention cases, “the onus is on [the receiving State] to ensure the Convention’s procedures and safeguards are effectively applied in those adoptions, which is not entirely possible”.<sup>40</sup> This can lead to a situation in which there is no consistent response from receiving States,<sup>41</sup> resulting in a confusing state of affairs for the State of origin and prospective adoptive parents.

12. In an effort to counter some of these concerns, some States reported that they have concluded bilateral agreements with certain *non*-Contracting States of origin in which they seek to apply and enforce the standards of the Convention.<sup>42</sup> While efforts to apply the Convention’s standards to these adoptions are to be encouraged, there is some evidence that the Convention’s safeguards have not been properly incorporated into some of these

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<sup>32</sup> Question 9: Germany and United States.

<sup>33</sup> Question 9: Finland, France and United States.

<sup>34</sup> E.g., through the Hague Conference Intercountry Adoption Technical Assistance Programme (“ICATAP”). Question 18 (a): Australia.

<sup>35</sup> Question 6: Italy (EurAdopt).

<sup>36</sup> See N. Cantwell, *The Best Interests of the Child in Intercountry Adoption*, Innocenti Insight, UNICEF, Florence, 2013 (hereinafter, the “UNICEF Best Interests Study”), p. 45. See also E. Pinderhughes *et al.*, *A changing world: shaping best practices through understanding of the new realities of intercountry adoption - Policy and Practice Perspective*, Donaldson Adoption Institute, October 2013 (hereinafter, the “Donaldson Study”), p. 90 which stated that the principle of consistency should be applied by receiving States working with non-Convention States of origin.

<sup>37</sup> Along these lines, see Question 11: Italy (Euradopt).

<sup>38</sup> See, e.g., Question 18 (b): Finland and Italy (EurAdopt) and the UNICEF Best Interests Study, *supra*, note 36, p. 76.

<sup>39</sup> UNICEF Best Interests Study, *supra*, note 36, p. 76.

<sup>40</sup> Reported in the Donaldson Study, *supra*, note 36, p. 143.

<sup>41</sup> E.g., the Donaldson Study, *supra*, note 36, p. 90 noted the difficulties resulting from, “the wide variation in the safeguards and processes for ensuring that children are legally available when receiving countries work with non-signatory countries of origin”.

<sup>42</sup> Question 6: Australia, Latvia and Slovenia. Question 9: Italy (EurAdopt). Question 18 (a): Spain. See the discussion concerning bilateral agreements at previous meetings of the Special Commission on the practical operation of the 1993 Hague Convention (2000 Report, paras 104-106; 2005 Report, para. 126; and 2010 Report, paras 72-74). The issue of bilateral agreements is on the Agenda for the 2015 Special Commission meeting.

bilateral agreements in the past.<sup>43</sup> Moreover, there is a risk that such bilateral agreements could have the negative effect of reducing the incentive for a State to join the Convention.<sup>44</sup>

b) The “shifting picture” of the “main” States of origin

13. As Table 1 indicates, another factor which might be said to contribute to the remaining high level of *non*-Convention intercountry adoptions is the fact that the “main” States of origin are not a fixed group but a fluctuating picture (*e.g.*, only four of the “top 10” States of origin in 1998 remain in the “top 10” in 2014).<sup>45</sup> An issue which therefore has to be considered is the paradoxical possible impact of the Convention on the incidence of *non*-Convention intercountry adoptions. This is because it has been suggested that, in some cases, the safeguards put in place in States of origin which are, or become, party to the Convention have led to efforts by some adoption actors to identify potential “substitute” States of origin which are *not* party to the Convention because, by definition, these States will often have fewer controls and restrictions. It has been stated that this practice illustrates, “a deliberate shift away from countries where ... [children’s] best interests should be better protected under the 1993 Hague Convention to countries where the kind of guarantees afforded by the treaty may well be absent and where experience and adequate resources are lacking.”<sup>46</sup>

14. The remainder of this document focuses on intercountry adoptions undertaken between *Contracting* States to the Convention.

## 2. MEETING THE AIMS OF THE CONVENTION: AN ANALYSIS OF HOW FAR THE CONVENTION IS MEETING ITS KEY OBJECTIVES, 20 YEARS AFTER ITS ENTRY INTO FORCE

15. This Chapter seeks to analyse whether, according to the views of *Contracting* States, the 1993 Hague Convention might be said to be achieving its aims 20 years after its entry into force. It does this by reference to the Convention’s objects,<sup>47</sup> highlighting in each Section some key improvements which States reported and which contribute to achieving each aim, while also acknowledging the sometimes significant challenges which remain.

16. When reading the following Section it should be borne in mind that the “impact” the Convention has had on the laws and practices of *Contracting* States will have varied depending upon how Convention-compliant their systems were prior to implementation of the Convention. For example, in some States, implementation may have required a “fundamental shift” in adoption practices and legislation,<sup>48</sup> while in other States very few changes, if any, might have been necessary. The Convention’s impact is therefore relative, and, as a result, comparisons can be difficult.

### 2.1 Have safeguards been established to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights? (Art. 1(a))<sup>49</sup>

17. This Section focuses on how much, in their responses to Questionnaire No 1, *Contracting* States considered that the implementation of the Convention, at a general

<sup>43</sup> *E.g.*, see the discussion in ISS, *Adoption from Viet Nam: Findings and recommendations of an assessment*, 2009, p.39 concerning the bilateral agreements several receiving States signed with Viet Nam in 2004 / 05. Upon later inspection by ISS, those agreements did not address key aspects of the 1993 Hague Convention safeguards.

<sup>44</sup> See UNICEF Best Interests Study, *supra*, note 36, p. 44.

<sup>45</sup> This has been the case for many years, see J.H.A. van Loon, Report on intercountry adoption, Prel. Doc. No 1 of April 1990, in HCCH, *Proceedings of the Seventeenth Session (1993)*, Tome II, *Adoption – co-operation*, pp. 11-119 (hereinafter, the “van Loon Report”), para. 56.

<sup>46</sup> UNICEF Best Interests Study, *supra*, note 36, p. 43: In this study, Democratic Republic of Congo, Ethiopia, Nigeria and Uganda are cited as possible “substitute” States of origin.

<sup>47</sup> Preamble and Art. 1.

<sup>48</sup> Question 18 (c): Canada.

<sup>49</sup> “Implementing the best interests principle in an intercountry adoption usually means [...] protecting the rights of the child, including, among others, the rights to an identity, to be raised by his or her parents wherever

level,<sup>50</sup> has contributed to ensuring that intercountry adoptions are taking place in children's best interests.

a) *The creation of a more orderly, rule-based and State-supervised global intercountry adoption system to strengthen safeguards*

18. Taking into account the assessment of intercountry adoption in 1990 as "chaotic, contradictory and unsatisfactory",<sup>51</sup> it is interesting to note that, following implementation of the Convention, several overarching improvements to this picture were mentioned by Contracting States in their Questionnaire No 1 responses.

19. First, many States reported that the Convention has established an internationally agreed, common foundation of basic safeguards and principles in intercountry adoption to which all States should be adhering,<sup>52</sup> with one State referring to it as the agreed "international benchmark"<sup>53</sup> today for intercountry adoption. Several States also reported that broad implementation of the Convention has led to a global evolution in perspective and, as a result, intercountry adoption is now viewed through the lens of child protection in Contracting States, with the child as the main focus.<sup>54</sup> In this vein, several States also reported that, as a result of the Convention, they consider that adoption professionals, and also the general public, have a better knowledge and understanding of the safeguards and principles required in intercountry adoption, as well as the good practices which should be complied with during the procedure.<sup>55</sup> This has led to a more consistent application of Convention safeguards across an increasing number of Contracting States.<sup>56</sup>

20. A second general improvement noted was the fact that, following implementation of the Convention, an area that was previously largely unregulated internationally has been transformed into a regulated, rule-based system, not only at the international level, but also at the domestic level in most Contracting States. Indeed, it was reported by the majority of Contracting States that their domestic legislation concerning intercountry adoption had been modified as a result of ratification of or accession to the Convention, in most cases before or soon after the Convention entered into force in the State.<sup>57</sup> Moreover, in some cases it was reported that the new legislation went further than the basic guarantees of the Convention.<sup>58</sup> In addition, demonstrating adherence to the key operating principle of "progressive implementation" of the Convention,<sup>59</sup> some States reported

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possible, and to be protected from all forms of exploitation". See the UNICEF Best Interests Study, *supra*, note 36, p. 60.

<sup>50</sup> This section takes a narrow approach to answering the question posed at 2.1 above because a complete assessment as to whether intercountry adoption, as a child protection measure, is operating today in the best interests of children and with respect for their rights would involve a broad and complex analysis including, among other things, consideration of national policies of States concerning intercountry adoption. Such analysis is beyond the scope of this document.

<sup>51</sup> See van Loon Report, *supra*, note 45, para. 188.

<sup>52</sup> Question 17 (a): Azerbaijan, China (Hong Kong SAR), Germany, Guatemala, Madagascar, Norway, Slovenia, South Africa and Spain. Question 18 (a): Andorra, Australia, Chile, Germany, Spain and Togo.

<sup>53</sup> Question 18 (a): Australia.

<sup>54</sup> Question 17 (a): Bulgaria, Chile, China, China (Hong Kong SAR), Ecuador and Sweden. Question 18 (a): Haiti, New Zealand and Sweden.

<sup>55</sup> Question 17 (a): France, Moldova and Spain.

<sup>56</sup> Question 18 (a): Australia, Bulgaria, Finland, Panama and Spain. Question 17 (a): Dominican Republic.

<sup>57</sup> Question 1: Albania, Andorra, Armenia, Australia, Azerbaijan, Belgium, Brazil, Bulgaria, Canada, Chile, China (Hong Kong SAR), Costa Rica, Cyprus, Denmark, Dominican Republic, France, Germany, Guatemala, Haiti, Ireland, Italy, Latvia, Lesotho, Lithuania, Madagascar, Mexico, Moldova, Netherlands, New Zealand, Panama, Peru, Philippines, Romania, South Africa, Spain, Sweden, Switzerland, Togo, United States and Viet Nam.

<sup>58</sup> Question 1: Azerbaijan, Belgium, Brazil, Bulgaria, Canada, Denmark, Dominican Republic, Finland, France, Germany, Guatemala, Haiti, Ireland, Italy, Latvia, Lesotho, Lithuania, Madagascar, Mexico (some states), Netherlands, Panama, Philippines, Romania, South Africa, Spain, Sweden, Togo and United States. However, a minority of States reported that they did not modify their legislation (Question 1: Burkina Faso, China (Macao SAR), Colombia, Ecuador, Hungary, Monaco, Norway and Slovenia) following the entry into force of the Convention in their jurisdictions. In some cases, the reason was that the State made changes to its legislation some years before the Convention entered into force in that country. Once the State became a Party to the Convention, it was therefore felt that further changes were unnecessary because the domestic legislation already incorporated the principles of the Convention.

<sup>59</sup> *I.e.*, all Contracting States are encouraged to view implementation of the Convention as a continuing process of development and improvement. See Guide to Good Practice No 1, *supra*, note 31, Chapter 3.1.



having undertaken several revisions of their domestic legislation, first when the Convention entered into force in the State and again years later in order to improve its operation.<sup>60</sup>

21. Thirdly, it was noted by many States that the Convention has had a clear, positive impact on the identity and functions of the authorities and bodies involved in the intercountry adoption process, frequently triggering a new division of responsibilities<sup>61</sup> and clarifying the procedure and roles of each in the adoption process.<sup>62</sup> Several States perceived this to be due to the increased role of public authorities in adoption procedures under the Convention,<sup>63</sup> monitoring and overseeing the intercountry adoption process.<sup>64</sup> Some commented that requiring State oversight of the process was a clear improvement<sup>65</sup> from the policies of the past when adoptions were often considered “private arrangements”<sup>66</sup> and, as a result, were mainly controlled by private agencies and child institutions.<sup>67</sup> In this way, the designation, or creation, of a Central Authority was identified by many States as an improvement which has provided better guarantees for children,<sup>68</sup> as was the fact that adoption bodies must be accredited, authorised and monitored.<sup>69</sup>

22. In addition, it is now compulsory in some States for intercountry adoptions to be undertaken with the assistance of an adoption accredited body<sup>70</sup> or (exceptionally) directly between Central Authorities.<sup>71</sup> In other words, these States have prohibited<sup>72</sup> private and / or independent adoptions,<sup>73</sup> including agreements between children’s homes and birth parents,<sup>74</sup> as inconsistent with the Convention.<sup>75</sup> This is a significant development for some of these States in which, prior to the entry into force of the Convention, private adoptions represented the vast majority of intercountry adoptions.<sup>76</sup>

23. Lastly, many States reported that the implementation of the Convention has, in general, improved the intercountry adoption *procedure* and it is now clearer<sup>77</sup> and more ethical,<sup>78</sup> transparent,<sup>79</sup> safe and smooth.<sup>80</sup> It was also reported that, following implementation of the Convention, the procedure generally follows a consistent course in Contracting States.<sup>81</sup> The result, according to several States, is that the procedure has more safeguards and there is greater legal security for the child.<sup>82</sup> The notable

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<sup>60</sup> Question 1: Andorra, Armenia, Chile, Costa Rica, Denmark, Finland, Madagascar, México, Moldova, Panama, Romania and Spain.

<sup>61</sup> Question 1: Bulgaria, Germany, Guatemala, Haiti, México, Panamá and United States. Question 2: Brazil, Bulgaria, Burkina Faso, Costa Rica, Latvia and New Zealand.

<sup>62</sup> Question 17 (a): Burkina Faso, Finland, Haiti, Mexico, Norway and Spain.

<sup>63</sup> Question 17 (a): Canada, Guatemala and Togo.

<sup>64</sup> Question 18 (a): Belgium and Spain.

<sup>65</sup> Question 18 (a): Canada, Belgium (EurAdopt) and Guatemala.

<sup>66</sup> Question 2: Canada.

<sup>67</sup> Question 1: Romania.

<sup>68</sup> Question 17 (a): Azerbaijan, Belgium, Brazil, Burkina Faso, Italy (EurAdopt), Haiti, Mexico and Spain. Question 18 (a): Lesotho and New Zealand.

<sup>69</sup> As required by the Convention. See Questions 1 and 2: Brazil, Bulgaria, Germany, New Zealand, Spain, Sweden and United States. Question 10 (a): Belgium. Question 17 (a): Denmark, Haiti, Mexico, Romania, South Africa and United States. Question 18 (a): Canada, South Africa and Spain.

<sup>70</sup> Questions 1 and 2: Belgium (French community), Canada, France (but only for children younger than 2 years old), and Italy.

<sup>71</sup> Question 1: Belgium (Flemish community) and Sweden. Question 2: Spain.

<sup>72</sup> Question 1: Costa Rica, Guatemala (this is a major change as before the Convention adoption was done in front of a Notary with no guarantees for the child), Haiti, Italy (EurAdopt), Philippines and Romania. Question 10 (a): Togo. Question 17 (a): Belgium, Italy (EurAdopt), Haiti and Panama. Question 18 (a): Canada and Italy (EurAdopt).

<sup>73</sup> See the definitions of “private” and “independent” adoptions provided in GGP No 1, *supra* note 36, Glossary.

<sup>74</sup> Question 10 (a): Togo.

<sup>75</sup> Question 18 (a): Norway.

<sup>76</sup> Question 1: Italy (EurAdopt) reported that before the Convention private adoptions represented about 87% of intercountry adoptions in Italy.

<sup>77</sup> Question 17 (a): Canada, Colombia, Ecuador, Latvia and Spain.

<sup>78</sup> Question 17 (a): France and Ireland. Question 18 (a): Ireland.

<sup>79</sup> Question 17 (a): Andorra, Dominican Republic, Hungary, Mexico and Moldova. Question 18 (a): Belgium, Hungary and Spain.

<sup>80</sup> Question 17 (a): Germany.

<sup>81</sup> Question 18 (a): Ireland and United States.

<sup>82</sup> Question 17 (a): Moldova and Monaco. Question 18 (a): Andorra, Chile, Colombia, France, Latvia, Spain and Togo.

improvements reported in relation to key stages of the intercountry adoption procedure are detailed further in **Annex A** below.

a) *The remaining challenges in relation to implementation of the Convention*

24. Despite this positive picture of a more orderly, harmonious and satisfactory intercountry adoption system today, many remaining challenges in relation to the implementation of the Convention were also commented upon by States.

25. First, in a minority of States, proper implementing legislation has not been put in place despite the entry into force of the Convention. This is often because the State does not have the capacity, resources and / or the political will to undertake the necessary changes.<sup>83</sup> This situation places the effectiveness of the Convention in danger.<sup>84</sup> As a result, several States commented that a significant and basic challenge remains to ensure that States review their domestic legislation and, if necessary, enact new legislation to make sure their system is compliant with the Convention.<sup>85</sup> Several responses also highlighted one of the most significant related challenges: in order to implement the Convention properly, States need at least a basic functioning child protection system<sup>86</sup> and this requires resources to develop and operate.<sup>87</sup> In this regard, one State commented that resources provided to improve intercountry adoption should not be provided at the expense of a State's national child protection system.<sup>88</sup>

26. A second challenge identified in the responses was that when States join the Convention before they are ready to properly implement it, the result can be "a long and agonising process of corrective action and capacity building".<sup>89</sup> Two receiving States commented that this can result in the suspension of intercountry adoption programmes in a State of origin which might have been avoided if implementation of the Convention had been properly undertaken *prior to* the entry into force of the Convention.<sup>90</sup> However, it is important to recall that, for some States, becoming party to the Convention has been the only tool available to stop abusive intercountry adoption practices. In such situations, technical assistance will usually be vital in order to ensure that the domestic legislation can be brought into line with the Convention as soon as possible, the necessary structures can be put in place and the concerned actors can be properly trained. In fact, an even more difficult issue in relation to the suspension of intercountry adoption programmes might be said to be finding consistency and agreement in the approaches of Contracting States to the basic safeguards that must be in place in a State of origin before intercountry adoptions can ethically and safely (re)-commence.<sup>91</sup> As one State commented, States of origin should not be pressured by receiving States to commence (or re-commence) intercountry adoptions before the State is ready.<sup>92</sup>

27. Another challenge relates to the trend noted above concerning the movement of adoption from the private to the public sphere. This evolution can be challenging for States to implement as it can represent a "fundamental shift" which permeates many aspects of a State's adoption system. For example, it will often mean that private agencies and child

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<sup>83</sup> This concern was expressed by Canada (Questions 9 and 18 (c)) and the United States (Question 10 (b)).

<sup>84</sup> Donaldson Study, *supra*, note 42, p. 143.

<sup>85</sup> Question 17 (c): Azerbaijan, China (Macao SAR) and Monaco. Question 18 (c): Dominican Republic and Mexico.

<sup>86</sup> Question 9: Canada. Question 10(b): United States. Question 17 (c): Guatemala.

<sup>87</sup> Question 10 (a): New Zealand. Question 10 (b): Ireland. Question 18 (c): Canada and Finland.

<sup>88</sup> Question 17 (b): Spain.

<sup>89</sup> Question 10 (b): United States. See also Question 9: Canada.

<sup>90</sup> Question 10 (b): Belgium and United States. See also the UNICEF Best Interests Study, *supra*, note 36, p.38 which states that moratoria, "are bound to affect children for whom intercountry adoption could be a valid response; but if the system in place cannot safeguard their rights and best interests, the risk involved in continuing adoptions under such a system is too high."

<sup>91</sup> Indeed, it has been stated that, "[t]he biggest and most obvious question revolves around the fact that, if the best interests of the child are to be the paramount consideration in adoptions, why do the competent authorities of receiving countries have such divergent views on whether or not those best interests are being safeguarded adequately at any given point in time?" See the UNICEF Best Interests Study, *supra*, note 36, p. 40 and more generally, Chapter 3.4.1. On moratoria, see also Guide to Good Practice No 1, *supra*, note 31, Chapter 8.4.2.

<sup>92</sup> Question 18 (b): Australia.

institutions with long-established and entrenched practices will be required to change their approach and submit to greater control and supervision.

28. Challenges were also described by some States in relation to the establishment and functioning of Central Authorities (as well as other competent authorities), with limited human and financial resources<sup>93</sup> (e.g., hindering the ability to have a well-functioning, effective and professional<sup>94</sup> Central Authority) and, sometimes, limited powers to comply with their responsibilities under the Convention, including their supervisory role.<sup>95</sup> Moreover, some responses also commented that if adoption is treated as a political issue, rather than a child protection matter, this can limit the independence of the Central Authority<sup>96</sup> and diminish the protection of children.<sup>97</sup>

29. Lastly, one response commented that, in some States, changes have not been made quickly enough<sup>98</sup> and several States also identified numerous remaining challenges in relation to key stages of the adoption procedure (set out in detail in **Annex A** below).

## **2.2 Has a system of co-operation amongst Contracting States been established to ensure that safeguards are respected and the abduction, the sale of, or traffic in children is thereby prevented? (Art. 1(b))**

### *a) General improvements concerning international co-operation*

30. In general, many States reported that the system of co-operation established by the Convention has brought about significant improvements, allowing Contracting States to work more efficiently together to ensure the protection of children.<sup>99</sup> Several States noted that co-operation is more effective because of the clear framework and standards<sup>100</sup> provided for in the Convention, as well as the fact that the Convention provides for co-operation to be carried out through official and well-established channels, such as Central Authorities and accredited, authorised and monitored bodies.<sup>101</sup>

31. A large number of States also commented on the improved communication (due, in part, to the “common language”<sup>102</sup> of the 1993 Hague Convention), collaboration and co-ordination<sup>103</sup> between Contracting States following implementation of the Convention, which has reportedly led to simpler, more direct and effective contacts.<sup>104</sup> This has also facilitated the sharing of experiences and good practices.<sup>105</sup> Some States commented that this improved co-operation has had a far-reaching effect, with many intercountry adoption procedures becoming more ethical and transparent as a result, and with actors also becoming more diligent.<sup>106</sup> The greater understanding of, and respect for, the domestic

<sup>93</sup> Regarding the importance generally of having sufficient resources, see Question 18 (c): Ecuador and Finland.

<sup>94</sup> Question 17 (b): Italy (EurAdopt). Question 17 (c): Burkina Faso. Question 18 (c): Finland, France and Mexico.

<sup>95</sup> Question 17 (b): Italy (EurAdopt). Question 17 (c): Guatemala, Finland, Italy (EurAdopt) and Mexico (this last country also Question 18 (c)).

<sup>96</sup> Question 17 (c): Guatemala.

<sup>97</sup> Question 18 (c): France.

<sup>98</sup> Question 8 (a)(ii): Sweden (EurAdopt).

<sup>99</sup> Question 10 (a): Belgium, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Lithuania, Norway and United States.

<sup>100</sup> Question 10 (a): Australia, Latvia and United States.

<sup>101</sup> Question 10 (a): Belgium, Burkina Faso, Canada, Ecuador, Germany, Haiti, Lesotho, Mexico, New Zealand, Norway, Romania, Spain and United States. Question 18 (a): Canada.

<sup>102</sup> Question 10 (a): Andorra.

<sup>103</sup> Question 10 (a): Australia, Brazil, Dominican Republic, France, Ireland, Moldova, Netherlands, Philippines, Romania, Sweden and United States. Question 17 (a): Australia, Dominican Republic, Germany, Latvia, Monaco and Spain. Question 18 (a): Australia, China, China (Macao SAR), Denmark, Finland, Latvia, Monaco, Philippines, Spain and United States.

<sup>104</sup> Question 10 (a): Burkina Faso, Canada and Dominican Republic. Question 18(a): Australia, China, China (Macao SAR), Denmark, Finland, Latvia, Spain, United States. The establishment of channels of communication between authorities and co-operation between countries were among the core objectives identified when a new adoption convention was being considered. See J.H.A. van Loon, “Note on the desirability of preparing a new convention on international co-operation in respect of intercountry adoption”, Prel. Doc. No 9 of December 1987, in HCCH, *Proceedings of the Sixteenth Session (1988)*, Tome I, *Miscellaneous matters*, p. 181.

<sup>105</sup> Question 10 (a): Azerbaijan, Canada and Philippines.

<sup>106</sup> Question 10 (a): Australia, Burkina Faso, Costa Rica, Dominican Republic and Lithuania. Question 18 (a): Denmark and France.

legislation of other Contracting States as a result of better co-operation and communication was also noted by some States.<sup>107</sup>

32. Some States reported that the Convention's co-operation provisions have inspired a sense of shared responsibility ("co-responsibility") between receiving States and States of origin in relation to intercountry adoption which often translates into mutual support.<sup>108</sup> Several examples of this "co-responsibility" were mentioned in the responses, such as: support being provided to States to help them become party to the Convention;<sup>109</sup> mutual support (while respecting the division of responsibilities in the Convention) in the determination of the suitability and eligibility of prospective adoptive parents and the adoptability of children (*e.g.*, the selection of prospective adoptive parents by receiving States according to the criteria established by States of origin);<sup>110</sup> and the receipt of fewer files by States of origin.<sup>111</sup>

33. Other States commented on the utility of the meetings organised between Central Authorities (*e.g.*, for European, Latin American, or Anglophone Central Authorities),<sup>112</sup> and the Hague Conference thematic groups (*e.g.*, the Experts' Group on the Financial Aspects of Intercountry Adoption) in order to work towards consistent approaches to difficult issues in intercountry adoption.<sup>113</sup>

*b) The remaining challenges in relation to international co-operation*

34. While numerous improvements in co-operation were therefore noted, many responses expressed the view that there is still variable practice between Contracting States and a lack of consistency in the extent to which Central Authorities facilitate co-operation.<sup>114</sup> Several States commented that the co-operation between authorities and bodies could be improved to avoid misunderstandings, establish common approaches,<sup>115</sup> minimise bureaucracy and ensure swift communication between authorities and bodies, including timely answers.<sup>116</sup> It was noted by some States that the number of meetings between actors to exchange information about the situation and requirements of other Contracting States could be increased.<sup>117</sup>

35. Another challenge identified was to ensure that the profiles of prospective adoptive parents sent to a State of origin match the changed profile of intercountry adoptable children in the State (*i.e.*, mainly children with special needs – as to which, see Section 3.2 below).<sup>118</sup> In addition, one State of origin noted that, on occasion, when it is not aware of particular Convention requirements, some receiving States refuse intercountry adoptions without assisting the State to understand and remedy the problem.<sup>119</sup>

36. There is also a need for a more co-ordinated, consistent and collaborative approach amongst Contracting States to support other Contracting States, or States considering becoming party (*e.g.*, the "coalitions of willing States" that have provided support to States of origin such as Cambodia, Guatemala, or Haiti). In such cases, States should ensure that efforts are not duplicated and are streamlined and effective, particularly when many

<sup>107</sup> Question 10 (a): Colombia and France (in respect to international *kafala*, which before could be converted into adoption, but not anymore).

<sup>108</sup> Question 10 (a): Dominican Republic. Question 18 (a): Belgium and Italy (EurAdopt).

<sup>109</sup> Question 10 (a): France vis-à-vis Haiti, Laos and Madagascar.

<sup>110</sup> Question 18 (a): Belgium.

<sup>111</sup> Question 9: Madagascar.

<sup>112</sup> Question 10 (a): Ireland and United States. Question 18 (a): Australia.

<sup>113</sup> Question 10 (a): United States. Question 18 (a): Australia.

<sup>114</sup> Question 18 (c): Finland and New Zealand.

<sup>115</sup> Question 10 (b): Belgium, Chile, Ecuador, Finland, Germany, Romania and United States. Some Latin American States mentioned regional cooperation as well.

<sup>116</sup> Question 10 (b): Andorra, Canada, Dominican Republic, Italy (EurAdopt), Finland, Germany, Monaco, Netherlands (EurAdopt) and Sweden (EurAdopt).

<sup>117</sup> Question 10 (b): Burkina Faso and Finland.

<sup>118</sup> Question 10 (b): Bulgaria.

<sup>119</sup> Question 10 (b): Lesotho.

receiving States, as well as international and non-governmental organisations are assisting the same State.<sup>120</sup>

37. Another issue which was raised by some States<sup>121</sup> was the fact that an apparently increasing number of Contracting States of origin are requiring bilateral agreements with other *Contracting* States in order to work together in relation to intercountry adoption.<sup>122</sup>

c) *Has the abduction, sale of and traffic<sup>123</sup> in children and other illicit practices been more effectively prevented as a result of implementation of the Convention?*

38. A central aim in establishing a system of co-operation under the Convention was to prevent the abduction, sale of and traffic in children in the context of intercountry adoption.<sup>124</sup> In the responses of States, most recognised that, prior to the implementation of the Convention, they had experienced problems in this regard in the intercountry adoption context,<sup>125</sup> whether in their State or in a partner State, such as: improper payments to birth family members, intermediaries, officials or others; other improper inducements of consent of the birth parents or family; fraud, such as misrepresentation of identity or false promises; forgery or falsification of documents; the abduction of children for the purposes of intercountry adoption; the abuse of guardianship orders (*i.e.*, using such orders to secure the transfer of the child out of the State of origin, following which the child is adopted domestically in the receiving State); bypassing the matching system of a State of origin; and other illicit practices.<sup>126</sup>

39. Many States indicated that, following implementation of the Convention, these problems no longer occur in their State<sup>127</sup> or are less frequent.<sup>128</sup> The majority of States thought that the Convention has had a positive influence on the identification and prevention of illicit practices, as well as the measures taken to address such practices.<sup>129</sup> Several States commented that they thought this was attributable to the following factors:

- Intercountry adoption procedures are now more rigorous and have more controls.<sup>130</sup> For example, in general, there are more guarantees at the stage of providing consent to the adoption;<sup>131</sup> there is better scrutiny of documentation;<sup>132</sup> there is better preparation of prospective adoptive parents;<sup>133</sup> the financial aspects of intercountry

<sup>120</sup> Question 10 (b): United States.

<sup>121</sup> Question 9: Sweden (EurAdopt). Question 10(b): Denmark, Norway and Sweden. Question 18 (c): Sweden.

<sup>122</sup> *E.g.*, Question 10 (a): Viet Nam. See Arts. 25 and 39. This issue will be discussed at the upcoming Special Commission meeting, see *supra*, note 42.

<sup>123</sup> Question 11: Brazil and United States made the remark that they do not use the term trafficking in this context as this implies the exploitation of the child, and in adoption, this is not usually the case.

<sup>124</sup> See Art. 1 (b).

<sup>125</sup> Question 12: Australia, Brazil, Bulgaria, Burkina Faso, Canada, Chile, Costa Rica, Denmark, Dominican Republic, Ecuador, France, Germany, Guatemala, Haiti, Ireland, Italy (EurAdopt), Lithuania, Mexico, New Zealand, Philippines, Romania, Spain (but not many cases as, before 1996, intercountry adoptions in Spain were rare), Sweden and United States.

<sup>126</sup> See answers to Question 12.

<sup>127</sup> Question 11: Viet Nam. Question 12: Burkina Faso, Colombia, Ecuador and Guatemala (it is presumed that they have disappeared). Question 17 (a): Guinea.

<sup>128</sup> Question 11: Peru. Question 12: Brazil, Bulgaria, Chile, Costa Rica, Denmark, Dominican Republic, France, Germany and Madagascar. Question 17 (a): Guinea. Question 18 (a): Ecuador.

<sup>129</sup> Question 10 (a): Chile. Question 11: Australia, Belgium, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, France, Germany, Guatemala, Haiti, Latvia, Lithuania, Madagascar, Mexico, New Zealand, Norway, Panama, Peru, Philippines, Romania, South Africa, Spain, Sweden, Togo and United States. Question 12: Australia, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, France, Germany, Italy (EurAdopt), Latvia, Lithuania, Netherlands (EurAdopt), New Zealand, Philippines, Romania, South Africa, Spain, Sweden and United States. Question 17 (a): Spain. Question 18 (a): Australia and Chile.

<sup>130</sup> Question 11: Australia, Belgium, Dominican Republic, France, Haiti, Latvia and Sweden. Question 12: Australia, Brazil and Colombia.

<sup>131</sup> Question 11: Spain.

<sup>132</sup> Question 11: United States.

<sup>133</sup> Question 11: Belgium.

- adoption are better regulated and supervised;<sup>134</sup> and there are specific procedures in many States for addressing illicit practices, including criminal sanctions.<sup>135</sup>
- The obligation to undertake adoptions through competent authorities and, if applicable, adoption accredited bodies has minimised such practices,<sup>136</sup> in particular because there is better regulation, control and supervision of accredited bodies and approved (non-accredited) persons.<sup>137</sup>
  - The Article 23 certificate of conformity<sup>138</sup> and improved controls regarding the child's exit from the State of origin and entry into the receiving State have also helped to combat the transfer of children abroad where illicit practices have occurred.<sup>139</sup>
  - Some States also highlighted the role of co-operation in general in helping to prevent and address problems and abuses.<sup>140</sup>

It was also recalled that guarantees and procedures have been improved by national legislation in some States.<sup>141</sup>

40. Some States reported that when abuses have occurred, the official, designated channels between States for communication and problem-solving (*i.e.*, the Central Authorities) have been crucial in responding to them.<sup>142</sup> Indeed, States described different approaches to *addressing* abuses, such as: establishing complaint mechanisms;<sup>143</sup> refusing child proposals or intercountry adoptions in cases where prospective adoptive parents have not followed proper processes or where reliable evidence of the child's adoptability has not been provided; or, in accordance with Article 24, refusing recognition of the adoption.<sup>144</sup> It was noted that taking steps to address abuses is a joint responsibility of receiving States and States of origin and must be approached as such.<sup>145</sup>

41. Other States reported that, following implementation of the Convention and in line with the well-established good practices flowing from it,<sup>146</sup> they now prohibit intercountry adoption in States if: there is an armed conflict or a natural catastrophe, a State does not have a specific authority to control and guarantee adoptions, or a State does not provide adequate guarantees and the adoption practices do not respect the best interests of the child or do not fulfil international ethical and legal principles.<sup>147</sup>

d) *A need for further co-operative efforts to prevent and address illicit practices*

42. Several States identified further steps that need to be taken in order to prevent and address illicit practices more effectively.<sup>148</sup> Co-operation between States to prevent and punish illegal actions, in particular those linked with financial issues and corruption,<sup>149</sup> and to avoid cases in which an intercountry adoption is completed but the Convention has not been respected, were areas which some States reported as requiring further work.<sup>150</sup> In addition, it was stated that there still remains a need to supervise adoption bodies more effectively and to better monitor procedures and money flows.<sup>151</sup> The engagement of governments in the fight against illicit practices was also stated to be essential in the face of pressures to adopt young and healthy children.<sup>152</sup>

<sup>134</sup> Question 11: Spain and United States.

<sup>135</sup> Question 11: Guatemala, Mexico, New Zealand, Togo and United States.

<sup>136</sup> Question 11: Belgium, Chile, Costa Rica, Haiti, Moldova, Panama and Romania. See also para. 22 above.

<sup>137</sup> Question 11: Belgium, Lithuania, Mexico, Spain and United States.

<sup>138</sup> Question 11: Burkina Faso, Germany, Madagascar, Moldova, and United States.

<sup>139</sup> Question 11: Colombia, Germany, Haiti and Moldova.

<sup>140</sup> Question 10 (a): Chile and Denmark. Question 18(a): Canada.

<sup>141</sup> Question 11: Bulgaria, Brazil, Chile, Colombia, Haiti, New Zealand, Panama, Spain and Sweden.

<sup>142</sup> Question 10 (a): Chile and Denmark. Question 18 (a): Canada and United States.

<sup>143</sup> Question 11: United States.

<sup>144</sup> Question 11: Mexico.

<sup>145</sup> Question 11: Canada.

<sup>146</sup> Guide to Good Practice No 1, *supra*, note 31, Annexes 5 and 9.

<sup>147</sup> Question 11: France (in relation to Cambodia, Central African Republic, Laos and Mauritius), Spain. Question 12: United States. Question 17 (a): Haiti. See also UNICEF's position on intercountry adoption, available at < [www.unicef.org/media/media\\_55412.html](http://www.unicef.org/media/media_55412.html) >.

<sup>148</sup> Question 10 (b): Chile and Italy. Question 17 (c): Panama. Question 18 (c): Spain.

<sup>149</sup> Question 10 (b): Italy (EurAdopt).

<sup>150</sup> Question 17 (c): Belgium. Question 18 (c): Belgium and Lesotho.

<sup>151</sup> Question 12: Italy (EurAdopt).

<sup>152</sup> Question 18 (c): Italy (EurAdopt).

43. It was noted by one State that, in some cases, there are limited avenues for recourse when the Convention has not been respected, which makes *enforcement* of the Convention's standards difficult, particularly where not all actors have the same objective.<sup>153</sup>

44. Acknowledging the need for further work in this area, the Working Group on Preventing and Addressing Illicit Practices was established following the 2010 Special Commission (see further the Fact Sheet on this topic prepared for the 2015 Special Commission).<sup>154</sup>

### **2.3 Has the recognition in Contracting States of adoptions made in accordance with the Convention been secured? (Art. 1(c))<sup>155</sup>**

#### *a) General improvements regarding the recognition of intercountry adoptions*

45. Many States commented that the "automatic recognition" (*i.e.*, recognition "by operation of law") of intercountry adoptions as between Contracting States is a clear improvement for families on the situation which existed prior to implementation of the Convention.<sup>156</sup> This is because, in general, adoptive parents no longer have to: (1) go to court in the receiving State to seek recognition of the adoption order; (2) follow any exequatur procedures; or (3) "re-adopt" their children in the receiving State.<sup>157</sup> Automatic recognition therefore provides certainty, security, greater stability and quicker, less expensive procedures for families.<sup>158</sup>

#### *b) Remaining challenges regarding the recognition provisions of the Convention*

46. There are still two central and significant challenges in relation to the implementation of "automatic recognition", however, neither of which are new:<sup>159</sup>

- Several States reported that work still needs to be done to improve the quality of Article 23 certificates since they do not always include all the necessary information or they contain incorrect information.<sup>160</sup> This hinders automatic recognition and means that there is often a need for further communication and collaboration to try to resolve the defects in the certificates. It therefore causes delays and legal insecurity for families.

<sup>153</sup> Question 18 (c): Germany. In addition, the Donaldson Study, *supra*, note 36, p. 11, noted that policies need to be developed so that anyone who is victimised by documented abuses of intercountry adoption has some form of redress.

<sup>154</sup> "Preventing and Addressing Illicit Practices in Intercountry Adoption", Fact Sheet No 3 of May 2015 for the attention of the Special Commission of June 2015 on the practical operation of the 1993 Hague Convention.

<sup>155</sup> The need for additional procedures to be completed in order to recognise an adoption made in accordance with the Convention should be clearly distinguished from cases where the adoption takes place after the transfer of the child to the receiving State. The latter is permitted under the Convention (see Art. 21). It is the case regarding adoptions from the Philippines and Thailand, where the child is placed for a trial period with the prospective adoptive parents in the receiving State. If the trial period is positive, then the adoption is granted.

<sup>156</sup> Question 13 (a): Andorra, Armenia, Australia, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, China (Hong Kong SAR), Costa Rica, Cyprus, Denmark, Dominican Republic, Ecuador, Italy (EurAdopt), Finland, France, Germany, Guinea, Ireland, Latvia, Lesotho, Lithuania, Madagascar, Moldova, Monaco, the Netherlands, New Zealand, Panama, Philippines, Romania, South Africa, Spain, Sweden, Switzerland, Togo United States and Viet Nam. Question 17 (a): Australia, Haiti and Hungary. Question 18 (a): Canada, Romania and Spain.

<sup>157</sup> Question 13 (a): Australia and Monaco.

<sup>158</sup> Question 13 (a): Belgium, Canada (in some provinces), Chile, Finland, France, Germany, Ireland, Mexico, New Zealand, Spain, Switzerland and United States.

<sup>159</sup> Despite attention being devoted to this topic at previous Special Commission meetings, and recommended guidance and a recommended model form for Art. 23 certificates having been developed and published, there is still much work to be done to "secure", in all cases, the legal status of intercountry adopted children (per Art. 1 (c)). See documentation from previous meetings of the Special Commission on the practical operation of the 1993 Hague Convention (in 2000: Recommendations Nos 17-19, and Report, paras 73-76; in 2005: Recommendation No 3, and Report, paras 67, 105-106; and, in 2010: Recommendations Nos 15-18, and Report, paras 48-54).

<sup>160</sup> Question 13 (b): Belgium, Canada, and New Zealand. This could be easily resolved if States used the Recommended Model form approved by the Hague Conference and available on the HCCH website.

- In some States, the Article 23 certificates do not lead to “automatic recognition” in the sense required by the Convention<sup>161</sup> because additional procedures are still necessary for the adoption to be recognised.<sup>162</sup> As an example, in some States, the adoption decision has to be transcribed into the civil registry in order for it to be recognised.<sup>163</sup> This can be particularly problematic if the transcription process takes a long time and, while waiting for the transcription, the intercountry adopted child is neither a national of that State nor, according to the State’s domestic law, the legal child of the adoptive parents.<sup>164</sup> Moreover, it appears that, in practice, some adoptive parents in some cases may still request that a court recognise the adoption decision, even if it is not legally required, because experience has shown that difficulties can occur when the Article 23 certificate is relied upon in daily life (due to the unfamiliarity of some authorities with the Convention).<sup>165</sup> Lastly, even if automatic recognition of the adoption decision occurs, some responses indicated that additional, sometimes lengthy, procedures can be required, for example, to obtain a new birth certificate for the adopted child<sup>166</sup> or for the child to obtain the nationality of adoptive parents.<sup>167</sup>

#### **2.4 Has the availability and quality of measures to promote family preservation and reunification, as well as domestic measures of alternative care, improved? (Preamble and Art. 4(1)(b))**

47. The “subsidiarity principle” of intercountry adoption is a key principle of the Convention in ensuring that intercountry adoptions take place in the best interests of the child and with respect for their rights (Art. 1 (a)). Implicit in this principle is that “efforts should be made to assist families in remaining intact or in being reunited” and, where this is not possible, “to ensure that a child has the opportunity to be adopted or cared for nationally”.<sup>168</sup> Moreover, to be compliant with the subsidiarity principle, intercountry adoption must be “set within an integrated child protection and care system, which maintains these priorities”.<sup>169</sup>

48. It was with these Convention principles in mind that Questionnaire No 1 sought to elicit information from Contracting States as to whether implementation of the Convention had affected: (1) the availability and quality of measures to promote family reunification / preservation and domestic alternative care; and (2) the number of cases in which family preservation / reunification or the domestic placement of a child had been achieved in States. It was anticipated that such data would also help to evaluate whether the argument used by some at the time of the drafting of the Convention - that intercountry adoption could actually negatively affect the (political) willingness of some governments to invest, as a matter of priority, in the development of an effective domestic alternative care system - has been borne out some 20 years later.<sup>170</sup>

##### *a) Measures to preserve or reunify families*

49. While some States reported that measures of family preservation or reunification existed before implementation of the Convention or that it was impossible to establish a

<sup>161</sup> See Guide to Good Practice No 1, *supra*, note 31, Chapters 7.2.12 and 7.4.11.

<sup>162</sup> This concern was expressed in responses to Question 13(b) by Canada, Chile, Colombia, Latvia, Mexico, Norway, Philippines and Viet Nam, and also to Question 18 (c) by Peru. The following States acknowledged that additional procedures are required in their jurisdictions: Question 13 (b): Belgium, Brazil (also Question 17 (c)), France and Italy (EurAdopt). See also Question 1: France and Germany.

<sup>163</sup> Question 1: Belgium (this is done by the federal Central Authority), France and Italy.

<sup>164</sup> This is the case in Italy - see Question 13 (b): Italy (EurAdopt).

<sup>165</sup> Question 13 (a): Germany.

<sup>166</sup> Question 13 (b): Australia.

<sup>167</sup> Question 13 (b): France.

<sup>168</sup> Guide to Good Practice No 1, *supra*, note 31, Chapter 2.1.1, para. 48.

<sup>169</sup> *Ibid.* Consequently, in addition to having adequate systems and structures in place in a State to promote family preservation and reunification where possible, “the availability and quality of [alternative care] options determines whether or not the subsidiarity of intercountry adoption to domestic solutions can be adhered to in practice”. See the UNICEF Best Interests Study, *supra*, note 36, p.74.

<sup>170</sup> This argument was reported by J. Doek in J. E. Doek, “Protecting Children Globally: Pros and Cons of International Adoption”, Harvard Law School, 10 November 2005, *Child Advocacy Policy Workshop*, section 2 c).



clear link between the development of such measures and the Convention,<sup>171</sup> a significant number of other States commented that the Convention has positively influenced their development and implementation.<sup>172</sup> For example, in several States it was reported that national adoption legislation, drafted as a result of the Convention, enshrined in law the principle that, prior to removing a child from his / her birth family, measures must have been taken to try to strengthen and preserve the family unit.<sup>173</sup> In addition, one State commented that administrative measures to strengthen family support programmes have been drawn up as a result of implementation of the Convention.<sup>174</sup> Another example provided was that, following implementation of the Convention, more non-governmental organisations are working in this field in the State and, as a result, more training on this subject is provided, particularly to social workers.<sup>175</sup>

50. In light of these developments, as well as improved domestic adoption programmes, a few States reported that a link could be made between implementation of the Convention and a reduction in the *number* of children in institutions in the State.<sup>176</sup> For example, in Romania, it was reported that the number of children in institutions decreased following the Convention's implementation as a result of the development of support services for birth families, as well as more varied alternative care options, including domestic adoption.<sup>177</sup> In addition, Chile reported that intercountry adoption had led to a reduction in the number of children in institutional care because it provided a permanent family for children who could not be adopted domestically and who would have otherwise been left in institutional settings or foster care.<sup>178</sup> Interestingly, in contrast, in Guatemala it was reported that the suspension of intercountry adoption following the Convention's entry into force did not result in an increase in the number of children living in institutions. This was due to the fact that most of the children being adopted intercountry prior to that time were not children in institutional care. In 2007, just after the suspension commenced, there were around 5,600 children in institutions and, three years later, the number had *dropped* to around 5,295. This might be said to be indicative of the problems prevalent in intercountry adoption in Guatemala prior to the suspension.<sup>179</sup>

b) Domestic adoption

51. Several States of origin reported that the number of domestic adoptions undertaken in their State had increased after the entry into force of the Convention.<sup>180</sup> In describing the reasons for the increase, several States referred to their implementation of the Convention's subsidiarity principle,<sup>181</sup> with some reporting that this had led to adoption becoming culturally more accepted in the State.<sup>182</sup> In some cases, this resulted in domestic

<sup>171</sup> Question 16: Australia, Brazil, Bulgaria, Canada, Italy (EurAdopt), France, Latvia, Lesotho, Monaco, Netherlands, Panama, Philippines, Slovenia, Spain, Sweden, Switzerland and Togo.

<sup>172</sup> Question 3 (b): Netherlands. Question 16: Chile, Colombia, Costa Rica, Dominican Republic, Guatemala, Haiti, Madagascar, Moldova, Romania and the United States.

<sup>173</sup> Question 16: Chile, Colombia, Costa Rica and Romania.

<sup>174</sup> Question 16: Haiti.

<sup>175</sup> Question 16: Madagascar.

<sup>176</sup> Question 15 (a): Chile, China, Dominican Republic, Guinea, Moldova, Philippines, Romania and Viet Nam.

<sup>177</sup> Question 15 (a): Romania.

<sup>178</sup> Question 15 (a): Chile.

<sup>179</sup> Children adopted at that time were not necessarily abandoned children nor adoptable children. Regarding the number of children in institutions, in 2014 the number had declined further to 4,868. See responses from Guatemala to Questions 3 (b) and 15 (a).

<sup>180</sup> In some States this was immediately after the entry into force of the Convention (Question 14 (a) and (b): Chile, Colombia, United States and Viet Nam); other States did not have data for the period prior to entry into force but presented numbers demonstrating a trend upward, in certain cases some years after entry into force (Question 14 (a) and (b): Lithuania, Mexico and Romania); and finally, some reported an upward trend in domestic adoption but did not provide figures (Question 14 (b): Peru and Philippines).

<sup>181</sup> Question 14 (b): Chile, Peru and Philippines. Question 14(c): Romania.

<sup>182</sup> Question 14 (b): Peru. Question 18 (a): New Zealand. This limited data correlates with the information provided in the Donaldson Study, *supra*, note 36, p. 68 et seq., in which it was reported that domestic adoption was available as an alternative care option for children in a far higher percentage of *Contracting* States of origin interviewed, than in *non-Contracting* States of origin (86%, as opposed to 50%). In 50% of the *non-Contracting* States of origin domestic adoption was said to be not available at all in the State, whereas this was the case in only 14% of *Contracting* States of origin. As to the reasons why domestic adoption is still not available in some States, many opined that it was not part of their culture or there was no central authority to manage domestic adoption and / or a lack of resources.

prospective adoptive parents openly adopting children instead of “simulating a birth” (*i.e.*, pretending that they had given birth to the child), as had been the case previously.<sup>183</sup>

52. In contrast, in some States there was a decline in the number of domestic adoptions undertaken in the period immediately after entry into force of the Convention (although in some cases the drop was relatively modest).<sup>184</sup> For some States of origin, the number of domestic adoptions undertaken may remain low because their domestic adoption systems are not developed.<sup>185</sup>

53. In relation to the impact of the Convention on domestic adoption *procedures* and hence the *quality* of domestic adoption, some States reported that the Convention has had a positive impact on this, leading to improvements in their domestic adoption systems.<sup>186</sup> For example, some States reported:

- the enactment of new legislation for domestic adoption based on the Convention principles and international good practices,<sup>187</sup> including in relation to the selection and preparation of prospective adoptive parents, the adoptability (including how the consents of the birth family are obtained) and preparation of the child, the reports on prospective adoptive parents and on the child and post-adoption services provided;<sup>188</sup>
- the establishment of a centralised matching committee for domestic adoption, as well as intercountry adoption;<sup>189</sup> and
- improved licensing and supervision of bodies working on domestic adoption matters.<sup>190</sup>

54. Nonetheless, other States (including many receiving States) reported that the Convention has not had an impact on these procedures.<sup>191</sup> Whether this is problematic from a child rights perspective is obviously dependent upon the condition of the domestic adoption system prior to implementation of the Convention. In some States, domestic procedures were already well-regulated prior to the implementation of the Convention.<sup>192</sup> However, in other States, the fact that such procedures have not been changed following implementation of the Convention may be problematic since the domestic adoption procedures may provide fewer guarantees than intercountry procedures, contrary to established good practice guidance.<sup>193</sup> As an example, the response of one State indicated that domestic adoption procedures do not provide for any compulsory training for prospective adoptive parents or any kind of evaluation of their suitability to adopt in contrast to the requirements placed on those applying for *intercountry* adoption.<sup>194</sup>

c) Other domestic alternative care options

55. Some States thought that the *availability*<sup>195</sup> and *quality*<sup>196</sup> of other alternative care options had been positively affected by implementation of the Convention. For example, some States reported that foster care had been developed and promoted following

<sup>183</sup> Question 14 (b): Guatemala and Philippines.

<sup>184</sup> In comparison to the number of domestic adoptions in the period just prior to entry into force. Question 14 (a) and (b): Burkina Faso, China, Dominican Republic, Hungary, Latvia, Slovenia and South Africa.

<sup>185</sup> Question 14 (b): Madagascar.

<sup>186</sup> Question 1: Dominican Republic and Germany. Question 2: Philippines. Question 14 (c): Andorra, Guinea and Ireland. See also the UNICEF Best Interests Study, *supra*, note 36, p. 74: “Many countries of origin have been inspired to develop in-country options on becoming a State party to the 1993 Hague Convention”.

<sup>187</sup> Question 14 (c): Andorra, Costa Rica, Dominican Republic, Finland, Guatemala, Guinea, Moldova and Romania. Question 17 (c): Ecuador.

<sup>188</sup> Question 14 (c): Lithuania, Moldova, Romania and Togo.

<sup>189</sup> Question 14 (c): Burkina Faso.

<sup>190</sup> Question 14 (c): Finland, Romania and South Africa.

<sup>191</sup> Question 14 (c): Australia, Azerbaijan, Brazil, Canada, China, Colombia, Germany, Hungary, Lesotho, Mexico, Monaco, Netherlands, New Zealand, Norway, Panama, Slovenia, Spain, Sweden, Switzerland, United States and Viet Nam.

<sup>192</sup> *E.g.*, see Question 14 (c): Australia, Canada and Colombia.

<sup>193</sup> See Guide to Good Practice No 1, *supra*, note 31, Chapter 6.

<sup>194</sup> Question 14 (c): Italy (EurAdopt).

<sup>195</sup> Question 15 (a): China, Dominican Republic, Guinea, Moldova, Philippines, Romania and Viet Nam.

<sup>196</sup> Question 15 (a) and (b): Burkina Faso, Colombia, Haiti and the Philippines.

implementation of the Convention (e.g., instead of institutionalisation).<sup>197</sup> This correlates with the report in one Study that a benefit of the Convention described by professionals was increased awareness of different forms of alternative care options for children.<sup>198</sup> One State commented that, where institutional care is still utilised, the experience and knowledge acquired through post-adoption services has helped to improve the care provided by the institutions.<sup>199</sup>

### 3. CHANGES IN THE INTERCOUNTRY ADOPTION LANDSCAPE IN THE PAST 20 YEARS: ANALYSING THE INTER-RELATIONSHIP WITH THE CONVENTION

56. When analysing the impact of the 1993 Hague Convention on laws and practices concerning intercountry adoption, it cannot be ignored that the “landscape” of intercountry adoption has changed considerably from that which was considered by the drafters more than 20 years ago.<sup>200</sup> Commenting on these developments in 2013, one author wrote that: “[t]he combined and interrelated ramifications of these developments have created, within the space of no more than a decade, an ‘adoption landscape’ for which no-one was prepared”.<sup>201</sup> While there has been ample commentary regarding this evolution, there has not been as much analysis of the inter-relationship between these developments and the Convention. This Chapter attempts to undertake this analysis in relation to four key developments of the past 20 years evident from the responses.

#### 3.1 The global decline in the number of intercountry adoptions

57. It is well-known that, since 2004, there has been a decline in the number of intercountry adoptions undertaken worldwide. The following table demonstrates this:

Table 2: Statistics of MAJOR RECEIVING STATES (sources: P. Selman <sup>202</sup> and data provided by States to the Permanent Bureau)					
State	Year e.i.f.	1998	2004	2008	2013
USA (FY)	2008	15 774	22 884	17 438	7 094
Italy	2000	2 233	3 402	3 977	2 825
	1998	3 777	4 079	3 271	1 343
France	1997	2 222	1 949	1 916	1 242
Canada	1995	1 487	5 541	3 156	1 188
Spain					
Netherlands	1998	825	1 307	767	401
Sweden	1997	928	1 109	793	341
Norway	1998	643	706	304	144
<b>23 leading Receiving States</b>		<b>31 710</b> (21 States)	<b>45 281</b>	<b>34 485</b>	<b>16 100</b> (21 States)

58. However, what has been less clear, to date, is to what extent the Convention might be, in whole or in part, responsible for this decline in numbers. Many views have been expressed on this subject, some holding the Convention (wholly or partly) responsible either in a positive manner, stating that it is due to the implementation of the principle of subsidiarity,<sup>203</sup> or in a negative fashion, stating that the Convention has “shut down” States to intercountry adoption or caused additional bureaucracy thus hindering the ability of prospective adoptive parents to adopt.<sup>204</sup>

<sup>197</sup> Question 15 (b): Mexico, Peru, Philippines and Spain.

<sup>198</sup> The Donaldson Study, *supra* note 41, at p. 79.

<sup>199</sup> Question 15 (b): Colombia.

<sup>200</sup> *E.g.*, it is now well accepted and evidenced that, since 2004, there has been a global decline in the number of intercountry adoptions. In addition, the profile of children being adopted intercountry has evolved and we are now seeing increasing numbers of children with special needs being adopted intercountry. Moreover, intercountry adoptions seem to be taking longer and costing more than was the case 20 years ago. Finally, as mentioned in Chapter 1 above, we also continue to see a fluctuating picture in terms of the States of origin with the highest number of intercountry adoptions, including *non*-Contracting States of origin.

<sup>201</sup> The UNICEF Best Interests Study, *supra*, note 36, p.30.

<sup>202</sup> Selman's statistics, *supra*, note 18.

<sup>203</sup> UNICEF Best Interests Study, *supra*, note 36, p. 30, states that there is a link with the principle of subsidiarity.

<sup>204</sup> *E.g.*, the Donaldson study, *supra*, note 36, p. 131 reported that the general public and adoptive parents in Canada had the general perception that in some cases the application of Convention procedures and safeguards is hindering the ability to adopt internationally.

59. In order to try to analyse whether a direct causal link exists between the implementation of the Convention in States and the global decline in numbers, Questionnaire No 1 requested that States provide data in relation to the number of intercountry adoptions which took place in their State three years immediately before the Convention entered into force in the State, as well as three years immediately after. The data provided in response to these questions is presented and analysed below.

60. A preliminary point which should be noted is that some States were not able to provide specific figures in relation to the number of intercountry adoptions undertaken *prior to* the entry into force of the Convention in the State because either no records were kept at that time, or the available data was incomplete or an estimation<sup>205</sup> (e.g., official records only cover the adoptions undertaken with the assistance of the adoption authorities and not the private adoptions). In contrast, today States usually collect statistics in a more systematic manner, in line with Article 7 (2)(a) of the Convention, and this might therefore be considered an improvement brought about by the Convention.

a) The data received from the State responses to Questionnaire No 1<sup>206</sup>

States of origin

61. Table 3 below shows that in some of the States of origin which provided data, the entry into force of the Convention led to an *increase* in the number of intercountry adoptions undertaken.

Table 3: STATES OF ORIGIN with an <b>INCREASE</b> in ICA (intercountry adoptions) after the Convention entered into force (e.i.f.)			
State	Year e.i.f.	Total for the 3 years prior e.i.f.	Total for the 3 years after e.i.f.
Burkina Faso	1996	81	101
Colombia	1998	2,267	3,172
Moldova	1998	199	350
South Africa	2003	454	735
Hungary	2005	265	348

62. On the other hand, Table 4 shows that other States of origin experienced a *decline* in intercountry adoptions immediately after the Convention's entry into force in their State.<sup>207</sup>

Table 4: STATES OF ORIGIN with a <b>DECREASE</b> in ICA after the Convention entered into force (e.i.f.)			
State	Year e.i.f.	Total for the 3 years prior e.i.f.	Total for the 3 years after e.i.f.
Chile	1999	509	187
Albania	2001	125	78
Latvia	2002	417	329
China <sup>208</sup>	2006	35,830	23,625
Dominican Republic	2007	130	58
Viet Nam	2012	2,479	1,130

Receiving States

63. Table 5 below shows the receiving States that experienced an *increase* in the number of intercountry adoptions undertaken after the Convention's entry into force in the State.

<sup>205</sup> See some of the responses to Question 3.

<sup>206</sup> See the responses to Question 3. Please note that the figures included in Tables 3 to 6 are those provided by States in their Questionnaire No 1 responses which were not reported to be estimates or incomplete, and those where it was possible to identify the number of intercountry adoptions undertaken in the 3 years prior to and after the entry into force of the Convention in that particular State.

<sup>207</sup> Question 3: Madagascar and Togo cite a decline but did not provide any statistics for the period before entry into force.

<sup>208</sup> China (Hong Kong SAR) reported a small decrease: 74 intercountry adoptions in the 3 years before the entry into force of the Convention (2006), and 71 in the 3 years following.

Table 5: RECEIVING STATES with an <b>INCREASE</b> in ICA after the Convention entered into force (e.i.f.)			
State	Year e.i.f.	Total for the 3 years prior e.i.f.	Total for the 3 years after e.i.f.
Spain	1995	1,336	2,429 [only 2 yrs.]
Andorra	1997	0	12
Denmark	1997	1,579	2,037
Finland	1997	373	528
Sweden	1997	2,637	2,851
Australia	1998	788	834
Netherlands	1998	2,031	3,308
Norway	1998	1,593	1,822
Italy	2000	6,387	6,794
Switzerland	2003	1,392	1,602

64. In comparison, as indicated in Table 6 below, some receiving States experienced a *decrease* in the number of intercountry adoptions after the Convention's entry into force.

Table 6: RECEIVING STATES with a <b>DECREASE</b> in ICA after the Convention entered into force (e.i.f.)			
State	Year e.i.f.	Total for the 3 years prior e.i.f.	Total for the 3 years after e.i.f.
Monaco	1999	15	2
New Zealand	1999	1,369	1,099
USA	2008	57,744	33,132
Ireland	2010	904	377

b) What has the impact of the Convention been on the numbers of intercountry adoptions undertaken?

#### In States

65. In relation to receiving States, Tables 5 and 6 seem to indicate two trends: (1) the receiving States which joined the Convention in the 1990s and early 2000s generally<sup>209</sup> experienced an *increase* in the number of intercountry adoptions undertaken in the three years following the Convention's entry into force in their State; and (2) in contrast, the two receiving States which joined the Convention after 2004<sup>210</sup> (in 2008 and 2010) experienced a substantial *decline* in numbers. If we compare this information with the data in Table 2 (the global picture), it shows that, in most receiving States included in Tables 5 and 6, the rise or decline in intercountry adoption following the Convention's entry into force in the State is in line with the global pattern of rise or decline (*i.e.*, numbers rose until 2004, and decreased thereafter). It might therefore be cautiously suggested that the rise or decline in receiving States could be *reflective of the global pattern of rise and decline*, rather than being directly attributable to a State's implementation of the Convention. Indeed, this is consistent with the explanations provided by some receiving States in their responses to Questionnaire No 1, in which they stated that the rise and decline in intercountry adoption in the State was attributable to many different factors, including socio-political and cultural factors unrelated to the Convention (*e.g.*, attitudes towards intercountry adoption, the limited availability of domestic adoption in the State and the number of accredited bodies working in the State).<sup>211</sup>

66. In relation to States of origin, there is not such a clear correlation between the figures provided (see Tables 3 and 4) and the global pattern. This is because, while Table 3 shows that the States of origin which experienced an increase in numbers following the Convention's entry into force did tend to be those which joined the Convention earlier (*i.e.*, pre-2004<sup>212</sup>), Table 4 shows that several other States of origin which also joined the Convention pre-2004 experienced, in contrast, a *decline* in numbers. However, the fact that the correlation is not so strong is perhaps explicable because the statistics from States

<sup>209</sup> As Table 6 shows, this was not the case for Monaco and New Zealand. The Convention entered into force in 1999 in both these States and yet they experienced a decrease thereafter in the number of intercountry adoptions undertaken.

<sup>210</sup> The year in which the number of intercountry adoptions being undertaken globally "peaked": see Table 2 above.

<sup>211</sup> Question 18 (b): Spain and Question 3: Canada.

<sup>212</sup> The only State deviating from this pattern being Hungary (see Table 3).

of origin reflect the situation in that particular State alone, whereas the statistics from receiving States are reflective of the number of children being adopted intercountry from *different* States of origin.

67. Importantly, however, a clear trend evident from all the Tables above, and hence common to receiving States and States of origin, is that in all cases bar one,<sup>213</sup> States which joined the Convention after 2004 experienced a significant *decrease* in the number of intercountry adoptions undertaken, and this is *in line with the global picture of decline* evidenced in Table 2.

### Globally

68. In light of the above, the legitimate question remains, what has caused the *overall global decline from 2004 onwards* which has been felt by many States,<sup>214</sup> regardless of when they became party to the Convention? Is the Convention responsible for this *global decline*?

69. It would be overly simplistic to say that implementation of the Convention's principle of subsidiarity is the primary cause for this overall global decline. For example, the responses of States set out in Section 2.4 above illustrate that there is not a clear, universal trend of States of origin increasing domestic adoption following implementation of the Convention. It is also not clear that any increase in domestic adoption in States of origin which has occurred, even if directly attributable to the Convention, has been accompanied by a *corresponding and related decrease* in the number of *intercountry* adoptions.<sup>215</sup> However, it seems that the implementation of the principle of subsidiarity in some States of origin might have been *one* contributing factor to the global decline in intercountry adoption.<sup>216</sup>

70. In addition, several *positive* factors which might have contributed to the global decline were suggested in the State responses, some of which might be said to be related to the implementation of the Convention and some of which are attributable to extraneous factors. For example, some States mentioned the increased control of the demand by States of origin with many now able to establish limits on the number of files which are permitted to be sent to them, as well as on the number of counterparts (both accredited bodies and States) with whom they work.<sup>217</sup> Others mentioned the changes in the socio-economic conditions in some States of origin which have made it easier for families to take care of their children.<sup>218</sup>

71. Nonetheless, some States recognised that there are also *negative* factors which have contributed to the global decline. Some stated that it is more difficult to find eligible and suitable parents who are prepared to adopt children with special needs (see Section 3.2 below), and this has affected numbers.<sup>219</sup> Others mentioned the higher costs of the intercountry adoption procedure today as a contributing factor, stating that it is now simply unaffordable for some prospective adoptive parents (see Section 3.4 below),<sup>220</sup> particularly in light of the global economic crisis.<sup>221</sup> Other States commented on the fact that the

<sup>213</sup> All except Hungary (see Table 3).

<sup>214</sup> Question 3: Belgium, Brazil, Bulgaria, Canada, Chile, Denmark, Finland, France, Germany, Guatemala, Italy, Monaco, Philippines, Romania, Togo and United States.

<sup>215</sup> More information and investigation would be required to see if this causal link exists.

<sup>216</sup> *E.g.*, see the States listed at note 180 above which responded that the implementation of the Convention's principle of subsidiarity has led to an increase in domestic adoption in their State. In several of these States, there has been, at the same time, a decrease in the number of intercountry adoptions undertaken (though note the caveat mentioned in note 215 above in relation to establishing a causal link between these phenomena). In addition, as noted in paras 49 and 50 above, some States have reported that the Convention's implementation has positively influenced the development of measures of family preservation and reunification. This may have also contributed to the decline in numbers of intercountry adoptions (although, again, more information and study would be needed to conclusively establish this causal link).

<sup>217</sup> Question 3: Madagascar and Togo.

<sup>218</sup> Question 3: Canada, Italy (EurAdopt) and the Netherlands.

<sup>219</sup> Question 3: Canada, Italy (EurAdopt) and the Netherlands.

<sup>220</sup> Question 3: Brazil and Italy (EurAdopt). Question 17 (b): Italy (EurAdopt).

<sup>221</sup> Question 3: Brazil, Italy (EurAdopt), the Netherlands and United States. Question 7 (b): Peru.

intercountry adoption procedure is seen by many as too long, too complicated and too uncertain in terms of its outcome (see Section 3.3 below) and this affects the number of prospective adoptive parents willing to apply.<sup>222</sup>

72. Moreover, several States mentioned that another important factor contributing to the global decline in numbers has been the suspension of, or moratorium on, intercountry adoptions in specific States of origin, often following abuses, corruption, crime, irregular adoptions and traffic in children for adoption.<sup>223</sup> Such moratoria have had an important impact on global figures because they often take place in States which had, prior to the closure, high numbers of intercountry adoptions.<sup>224</sup> In some cases, the closure is maintained on a long-term basis because the abuses have caused a change in the cultural attitude towards intercountry adoption, with it subsequently being perceived as connected with crime and trafficking in children. As it is well known, these illicit practices affect the reputation of intercountry adoption as a legitimate child protection measure.<sup>225</sup>

73. Some factors mentioned by States as affecting numbers, such as the existence of a well-regulated and supervised intercountry adoption procedure and a better ability to select partners for intercountry adoption, were mentioned by some States as a cause of the decline in the numbers,<sup>226</sup> and by other States as a factor leading to an increase in the number of intercountry adoptions (due to the increased security which results).<sup>227</sup> This indicates how complex it can be to generalise about the causes of the overall global decline.

74. Therefore, it would appear that the global decline in the number of intercountry adoptions cannot be attributed solely to the increasing global implementation of the Convention by States. Rather, it appears that a complex mix of societal, economic, political and legal factors have contributed to the picture we see today. As commentators have stated, “domestic political dynamics exercise a significant influence on whether and under what conditions countries participate in intercountry adoption”<sup>228</sup> and “States’ policies on the intercountry adoption of their children vary [...] and may change either temporarily or permanently over time. The foundations of the approach taken always lie in a combination of numerous socio-cultural, political and sometimes financial factors.”<sup>229</sup> These domestic policies inevitably have a significant impact on the global number of intercountry adoptions undertaken and they cannot be attributed to the Convention alone.

75. Nonetheless, as mentioned at paragraph 71 above, there are a number of possible contributing factors to the global decline in numbers which might be linked with the implementation of the Convention in some States. These issues are examined more closely in the Sections which follow.

### **3.2 The changed profile of children adopted intercountry**

76. Most State responses acknowledged that, in the past 20 years, in combination with the declining global numbers of intercountry adoptions, in many States (but not all<sup>230</sup>) the profile of children being adopted intercountry has changed. The children are now frequently

<sup>222</sup> Question 3: Italy (EurAdopt).

<sup>223</sup> Question 3: France, Guatemala Romania and Switzerland.

<sup>224</sup> In line with this, M. Breuning has suggested that it may be possible to highlight two key factors which might be said to have played a particularly important role in the global decline in numbers, neither of which are directly attributable to the Convention: (1) the particular socio-economic and political factors in key States of origin (e.g., China, Korea and Russia) which have caused declines in numbers in those countries; and (2) the so-called “boom and bust” cycles in certain States of origin – where the State is overwhelmed by demand, abuses result and this leads to closures (as described at para. 72 of this document). See M. Breuning, “Samaritans, Family Builders, and the Politics of Intercountry Adoption”, *International Studies Perspectives*, ISA, 2013, pp. 8-12.

<sup>225</sup> “Note on the Financial Aspects of Intercountry Adoption”, drawn up by the Experts’ Group on the Financial Aspects of the Intercountry Adoption, Permanent Bureau, 2014, para. 39.

<sup>226</sup> Question 3: Azerbaijan, Bulgaria, Guatemala, Guinea, Luxembourg, Monaco and Romania (for this last State see also Question 1).

<sup>227</sup> Question 3: Burkina Faso, Colombia, Costa Rica and Spain.

<sup>228</sup> See M. Breuning, *supra*, note 224, p. 17.

<sup>229</sup> UNICEF Best Interests Study, *supra*, note 36, p. 50.

<sup>230</sup> Question 7 (c)(i): South Africa stated that most of the adoptable children are still below the age of 18 months.

older children, siblings and / or have special medical needs.<sup>231</sup> As a study reported: “[i]n the past, parents had been motivated to adopt internationally because of the relative speed of the process and the availability of young, healthy children compared to domestic adoption; in recent years, however, these two conditions have been changing”.<sup>232</sup> This study concluded that intercountry adoption has changed comprehensively during last few decades and is still in the midst of transformation into “a smaller but better-regulated system serving primarily children who are older and / or have special needs”.<sup>233</sup>

a) Has the Convention caused or contributed to this change?

77. An interesting question remains as to whether this changed profile of children being adopted intercountry has been caused by the implementation of the Convention. The responses to Questionnaire No 1 revealed that, for some States, this change could be said to be attributable to the Convention in two different and positive ways. First, some States reported that implementation of the principle of subsidiarity<sup>234</sup> was a key contributing factor since, today, children without special needs are more likely to be placed in families in-country (instead of remaining in institutions). Other States mentioned that the Convention has also stimulated the development of measures which promote the intercountry adoption of special needs children such as the “reversal of the flow of the files” (*i.e.*, States of origin sending to receiving States the files of adoptable children for whom they cannot find families in-country – often children with special needs).<sup>235</sup>

78. However, while for some States the causal link between the changed profile and the Convention was clear, for other States this change was not attributable to the Convention,<sup>236</sup> either because special needs children were already the main group of children in need of intercountry adoption in their State *prior to* the Convention’s entry into force,<sup>237</sup> or because they considered that the change was attributable to *domestic* measures rather than implementation of the Convention *per se*.<sup>238</sup> As a result, it seems to be the case that while the Convention may have been a factor contributing to this change in some States, in others States, extraneous factors are responsible and there is no clear causal link.

### 3.3 The increase in the duration of many intercountry adoption procedures

a) The length of time taken to complete an intercountry adoption today<sup>239</sup>

79. While the Questionnaire No 1 responses revealed that intercountry adoption procedures are quicker today in a minority of States (often because these States have enacted regulations which establish clear deadlines for certain stages of the procedure),<sup>240</sup> many States expressed concerns regarding the perceived overall increase in the duration of intercountry adoption procedures when compared with 20 years ago.<sup>241</sup> Some States

<sup>231</sup> Question 7 (b): Bulgaria, Chile, Colombia, Costa Rica, Guatemala, Latvia, Madagascar, Mexico, Netherlands (EurAdopt), Panama, Philippines and Romania. Question 17(a): Viet Nam.

<sup>232</sup> Donaldson Report, *supra*, note 36, p. 129, referring to Spain.

<sup>233</sup> Donaldson Report, *supra*, note 36, p. 12.

<sup>234</sup> Question 7 (b): Bulgaria, Chile, China, Costa Rica, Moldova, Netherlands (EurAdopt) and Romania (not in the first years of the implementation, but thereafter).

<sup>235</sup> Question 7 (b): Dominican Republic. See also Guide to Good Practice No 1, *supra*, note 31, p. 394.

<sup>236</sup> Question 7 (b): Brazil, Burkina Faso, Guinea, Hungary, South Africa, Togo and United States.

<sup>237</sup> Question 7 (b): Brazil.

<sup>238</sup> Question 7 (b): Belgium (EurAdopt), Colombia and Latvia.

<sup>239</sup> See the Donaldson Report, *supra*, note 36, pp. 79 to 80: “More children are remaining in orphanages for longer periods of time, thereby incurring the increased developmental and psychic harm that comes from being institutionalised, while also diminishing their prospects for moving into a permanent family”.

<sup>240</sup> Question 5: Albania, Brazil, Ecuador, Lithuania and Mexico.

<sup>241</sup> Question 5: Australia, Bulgaria, Burkina Faso, Canada, Chile, China, Finland, France, Germany, Guatemala, Italy (EurAdopt), Moldova, Monaco, Norway, Philippines, Spain, Switzerland, and Viet Nam. Question 17 (b): France and Guatemala. Although, another group of States reported that the average time taken to complete an intercountry adoption is more or less the same today as before the Convention entered into force in the State (Question 5: Azerbaijan, Canada (for the part of the procedure in Canada), Colombia, Costa Rica, Dominican Republic, Latvia, Lesotho and Panama).



provided statistics which illustrate the increase in the length of the process over the past few years:

Table 7: Average time which it takes to complete an intercountry adoption				
State	Year 1993 HC e.i.f.	Average time from ... to ...	Year Average time	Year Average time
Australia <sup>242</sup>	1998	approval of an applicant to placement of a child	2007/08 – 37 months (approx. 3 years)	2012/13 – 61 months (approx. 5 years)
Denmark <sup>243</sup>	1997	approval of an applicant to the time the child is brought home	2009 – 26 months	2013 – 35 months
United States of America <sup>244</sup>	2008	the day that the Central Authority received the application to the day the child received an immigrant visa to travel to the U.S.	2008 – 88 days	2013 – 310 days

80. Precisely how much longer the process takes today varies significantly depending on the State, the year<sup>245</sup> and / or the particular stage of the adoption procedure being considered.<sup>246</sup> For example, the declaration of adoptability of the child;<sup>247</sup> the declaration of the eligibility and suitability of prospective adoptive parents and their preparation and counselling are cited by two States<sup>248</sup> as taking longer today, while another State reports that the timeframe for undertaking this has been shortened.<sup>249</sup> The same applies to the final stages of the adoption procedure: in some countries, this is reportedly quicker today,<sup>250</sup> while in others it takes longer.<sup>251</sup>

b) Are the generally longer timeframes the result of implementation of the Convention?

81. Article 35 of the 1993 Hague Convention requires that the competent authorities of Contracting States “act expeditiously in the process of adoption”: that is, “as quickly as a proper consideration of the issues will allow.”<sup>252</sup> Moreover, good practice guidance provides that, “States should use procedures which seek to fulfil the purposes of the Convention but which do not cause unnecessary delay that could affect the health and well-being of children.”<sup>253</sup> While there may therefore be “necessary delay” as a result of following the Convention’s procedures,<sup>254</sup> unnecessary delay “such as that created by cumbersome procedures or inadequate resources” is contrary to the Convention.<sup>255</sup> In light of these Convention requirements for expeditious action, it is interesting to consider whether Contracting States considered that implementation of the Convention has caused intercountry adoption procedures to lengthen.

82. In responding to Questionnaire No 1, a couple of States did not see any causal link between the increased length of procedures and the implementation of the Convention.<sup>256</sup> However, the clear majority of States expressed the view that the lengthier procedures are, at least partially, attributable to implementation of the Convention.<sup>257</sup>

83. In examining *why* the Convention may have brought about lengthier procedures, some States suggested that it is a “side effect” of the *positive* fact that the intercountry adoption procedure is more rigorous, transparent, regulated and monitored today, as

<sup>242</sup> Question 5: Australia (source: Australian Institute of Health and Welfare).

<sup>243</sup> Question 5: Denmark.

<sup>244</sup> Question 5: United States (source: U.S. Department of State annual reports to Congress).

<sup>245</sup> Question 5: United States.

<sup>246</sup> Question 5: Australia, Belgium (French community), Canada and Moldova.

<sup>247</sup> Question 17 (c): Andorra. Question 18 (b): Canada, France, Norway, Spain and Switzerland.

<sup>248</sup> Question 5: Belgium (French community) and France.

<sup>249</sup> Question 5: Italy (EurAdopt).

<sup>250</sup> Question 5: Belgium (French community).

<sup>251</sup> Question 5: Italy (EurAdopt).

<sup>252</sup> Guide to Good Practice No 1, *supra*, note 31, para. 133.

<sup>253</sup> *Ibid.*, para. 132.

<sup>254</sup> *E.g.*, such as due diligence in the adoption preparations for both the child and the prospective adoptive parents.

<sup>255</sup> Guide to Good Practice No 1, *supra*, note 31, para. 133.

<sup>256</sup> Question 5: Australia and Sweden.

<sup>257</sup> Question 5: Belgium, Burkina Faso, Bulgaria, Canada, Chile, China, France, Germany, Guatemala, Italy (EurAdopt), Latvia, Mexico, Norway, Spain, Switzerland, Togo, United States and Viet Nam.

between Contracting States.<sup>258</sup> For example, the subsidiarity principle has to be applied,<sup>259</sup> the determination of a child's adoptability is more thorough,<sup>260</sup> agreements under Article 17 of the Convention have to be provided and an Article 23 certificate of conformity must be issued.<sup>261</sup> Therefore, as one State described it: "the increase in the timing should not be considered as delay ("lateness") but as necessary times" to complete an intercountry adoption properly with all the required guarantees.<sup>262</sup> Indeed, the lengthier processing times reported by some States as occurring in certain States of origin<sup>263</sup> following implementation of the Convention (in particular, regarding the period between when a dossier is sent to a State of origin and when the matching is completed), could, in some cases, also be attributable to such positive post-implementation developments (e.g., if the longer time period is reflective of more thorough and well-regulated practices in relation to determinations of adoptability and / or matching). However, as was pointed out in other responses, lengthier processing times in some of those States might also result from the poor practices of *others* (e.g., if the length of time is instead reflective of the number of files sent by receiving States and the State of origin's inability to manage the high demand due to the overload of work and the under-resourcing of the Central Authority).<sup>264</sup>

84. Lastly, it was commented that the procedure after the matching has taken place can sometimes be too slow as a result of bureaucratic hurdles which do not add anything to the protection of the child (e.g., if States require certificates or documents to be provided, in addition to the adoption documents, before the child can leave the country).<sup>265</sup> Connected with this, some States commented that the intercountry adoption process today may generally involve more paperwork and more bureaucracy.<sup>266</sup>

### 3.4 The increase in the costs of many intercountry adoption procedures

85. Regarding the costs and fees, States commented on two main changes over the past 20 years which, in their view, have taken place: 1) Costs have become more transparent and they are more closely regulated and monitored,<sup>267</sup> but 2) there has been a general increase in these costs.<sup>268</sup>

#### a) Is this situation a result of implementation of the Convention?

*Regarding transparency and better-monitored costs and fees*

86. States differed in their views as to whether the changes noted above are a consequence of the implementation of the Convention. On the one hand, the majority of the responding States thought that although costs are now generally more transparent and there is increased supervision, there is no evidence that this is a result of the

<sup>258</sup> Question 5: Bulgaria, Burkina Faso, Chile, Costa Rica (the procedure has more guarantees but it is not necessary longer), France, Guatemala, Germany, Latvia, Netherlands (EurAdopt), New Zealand and Peru.

<sup>259</sup> Question 5: Ireland. In order to apply this principle properly, States of origin have to strike a difficult balance at two stages: first, in ensuring that sufficient efforts are made to preserve / reunify the family before considering adoption and, secondly, in devoting sufficient time to exploring *domestic* alternatives before considering *intercountry* adoption. At both these stages, there is an obligation for efforts to be made but a solution must still be found in a timely manner for the child. In fact, how to correctly strike the first balance is an issue which many States (including many receiving States) still struggle with in relation to *domestic* adoption.

<sup>260</sup> See Annex A below. Question 5: Burkina Faso, France, Germany, Guatemala and Netherlands (EurAdopt).

<sup>261</sup> Question 5: China and Togo.

<sup>262</sup> Question 5: Peru and Spain.

<sup>263</sup> Question 5: Australia, Canada, Germany and Italy (EurAdopt).

<sup>264</sup> This concern was expressed in responses to Question 5 by Germany, Monaco, New Zealand, Norway, Philippines and Spain.

<sup>265</sup> Question 18 (c): Norway.

<sup>266</sup> Questions 10 (b) and 18 (b): Sweden (EurAdopt).

<sup>267</sup> Question 4: Belgium (Flemish community), Brazil, Bulgaria, Burkina Faso, Canada, Colombia, Denmark, Dominican Republic, Ecuador, France, Germany, Haiti, Lithuania, Madagascar, Spain, Togo and United States. Question 17 (a): Burkina Faso and United States.

<sup>268</sup> Question 4: Albania, Australia, Canada, Italy (EurAdopt), Netherlands (EurAdopt) and Sweden (EurAdopt).

implementation of the Convention,<sup>269</sup> primarily because these changes took place before the Convention was in force in light of already-existing domestic rules.<sup>270</sup>

87. On the other hand, some States thought that the Convention has helped to regulate costs,<sup>271</sup> making them more transparent, easier to access (*e.g.*, they are now published on websites), easier to compare (*e.g.*, a breakdown of costs is now more commonly provided), and better controlled and supervised.<sup>272</sup> Accordingly, these States felt that prospective adoptive parents can now make a more informed decision on whether and how to proceed with an intercountry adoption. In addition, the clear rule established in Article 32 of the Convention (that no one shall derive improper financial or other gain from an activity related to an intercountry adoption)<sup>273</sup> and the fact that States have established sanctions for improper financial or other gain<sup>274</sup> were mentioned by some States as definite achievements of the Convention. The same applies to the requirement of the Convention that accredited bodies can pursue only non-profit objectives.<sup>275</sup>

#### *Regarding the higher amounts*

88. While several States indicated that, following implementation of the Convention, their Central Authority does not charge any fees for intercountry adoption<sup>276</sup> (and hence the Convention is not responsible for an increase in costs) or that no clear causal link can be drawn,<sup>277</sup> many other States reported that there has been a clear increase in the costs since they began to implement the Convention.<sup>278</sup> In relation to *why* the Convention has caused an increase in costs, in general, States reported that the Convention's procedures and guarantees, while benefitting children, also mean higher costs.<sup>279</sup> More specifically:

- Following implementation of the Convention, the intercountry adoption procedure is more professionalised in order to better respond to the needs of intercountry adoptable children. However, this has cost implications.
- There are increased controls and monitoring (*e.g.*, of accredited bodies) following implementation of the Convention which also involves additional costs.
- In addition, linked with Section 3.3 above, the increased length of procedures and the waiting times at various stages of the intercountry adoption procedure can cause additional costs for parents.
- The increased post-adoption monitoring of children also has financial implications.<sup>280</sup>
- Fewer adoptable children combined with an increase in applications by prospective adoptive parents may also contribute to increased costs.<sup>281</sup>

89. One other possible contributing factor unrelated to the Convention might be the general rise in the cost of living (and hence the cost of services).

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<sup>269</sup> Question 4: Australia, Belgium (French community), Brazil, China, China (Macao SAR), Finland, Germany, Hungary, Latvia, Mexico, Monaco, Netherlands, Norway, Panama, Philippines, Slovenia and Sweden.

<sup>270</sup> Question 4: Australia, Belgium (French community), Germany, Norway and Philippines.

<sup>271</sup> Question 17 (a): Burkina Faso.

<sup>272</sup> Question 4: Belgium (Flemish community), Colombia, Denmark, Dominican Republic, Ecuador, France, Haiti, Lithuania, Madagascar, Spain and United States. Question 17 (a): Burkina Faso and United States. Question 18 (a): Guatemala. For example, EurAdopt Belgium explained that its Central Authority does not allow it to work in a country where costs are not transparent, or where too much money is asked for the adoption procedure.

<sup>273</sup> Question 18 (a): Azerbaijan and Canada.

<sup>274</sup> Question 17 (a): Guatemala.

<sup>275</sup> Question 18 (a): Canada and Spain.

<sup>276</sup> Question 4: Azerbaijan, Chile, Mexico, Panama and Slovenia. Guatemala mentioned that domestic adoption procedures are free of charge. Question 17 (a): Guatemala.

<sup>277</sup> Question 4: Australia.

<sup>278</sup> Question 4: Canada, Italy (EurAdopt), Netherlands (EurAdopt) and Sweden (EurAdopt). Question 17 (b): Italy (EurAdopt).

<sup>279</sup> Question 17 (b): Italy (EurAdopt).

<sup>280</sup> Question 4: Australia.

<sup>281</sup> Question 4: Australia.

b) Contributions, co-operation projects and donations

90. With regard to contributions, co-operation projects and donations, opinions were again divided. Several States responded that they had not seen an obvious correlation between implementation of the Convention and the requirements regarding, or levels of, these payments.<sup>282</sup> However, other States thought that the Convention had had the effect of increasing transparency regarding the payments and controls on such payments,<sup>283</sup> including the prohibition of donations and / or co-operation projects directly linked with intercountry adoption.<sup>284</sup>

91. In relation to these payments more generally, several States mentioned that there remains a clear correlation between the contributions and donations made by an adoption accredited body and the number of intercountry adoptions it undertakes.<sup>285</sup> In particular, concerns were expressed that this can lead to a situation in which accredited bodies feel "forced" to accept requests for contributions to increase the likelihood of child proposals and to play a game of "one-upmanship" with each other, thereby increasing the risks of improper or undue financial gain. In some cases, it can also contribute to the pattern identified in Chapter 1 above of accredited bodies looking for viable intercountry adoption programmes in *non*-Contracting States of origin which may be less well-structured and safeguarded but where more children are likely to be in need of intercountry adoption. These States therefore saw the separation of contributions and donations and the intercountry adoption process as a good practice under the Convention.<sup>286</sup>

92. One State of origin expressed its concern that co-operation projects sponsored by other States, while important to help address the needs of the population, make it difficult for the recipient State to be impartial in considering its intercountry adoption relations with these particular receiving States.<sup>287</sup> At the same time, however, another State of origin mentioned its positive attitude toward economic assistance,<sup>288</sup> and a receiving State explained that co-operation projects are obligatory for adoption accredited bodies.<sup>289</sup> In this latter case, the view is that in application of the principle of subsidiarity, adoption accredited bodies have to carry out activities to promote children's rights, and co-operation projects are a preferred method of doing this.

93. In view of the increase in costs, as well as the other aspects of the changing landscape of intercountry adoption, some States raised concerns regarding the sustainability of adoption accredited bodies.<sup>290</sup> As a result of the changed profile of children adopted intercountry in recent years, accredited bodies have inevitably had to provide more specialised services. However, at the same time, many of these bodies have seen their funding diminished due to, amongst other things, the decline in the number of intercountry adoptions being undertaken. In addition, the large number of accredited bodies and the competition between them as a result of the declining numbers can also present a challenge. These bodies therefore now face a difficult and potentially uncertain future.

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<sup>282</sup> Question 4: Andorra, Belgium (French community), China, China (Macao SAR), Germany (not immediate effect, but afterwards yes with the work of the Group on Financial Aspects), Guatemala, Hungary, Latvia, Monaco, Norway, Netherlands, Panama, Slovenia and United States.

<sup>283</sup> Question 4: Belgium (Flemish community), Burkina Faso, Costa Rica, Ecuador, France, Haiti, Lesotho, Madagascar, Spain and Sweden.

<sup>284</sup> Question 4: Andorra, Brazil, Bulgaria (in this country, while not prohibited, they are "not required"), China (Hong Kong SAR), Colombia, Mexico ("not requested") and Romania.

<sup>285</sup> Question 4: France, Philippines and Romania. In contrast, Canada reported that "the effectiveness of such projects on intercountry adoption programmes and their possible impact on the number of child proposals received by contributing States are unknown".

<sup>286</sup> The work done by the Experts' Group on Financial Aspects of Intercountry Adoption was mentioned as having had an impact in promoting that separation.

<sup>287</sup> Question 18 (c): Guatemala.

<sup>288</sup> Question 4: Dominican Republic.

<sup>289</sup> Question 4: Italy (EurAdopt).

<sup>290</sup> Question 4: Denmark. Question 17 (b): Canada. Question 17 (c): Finland and Switzerland.

#### 4. CONCLUSION

94. This assessment of the impact of the 1993 Hague Convention on intercountry adoption over the past 20 years has demonstrated that the Convention has had an important and positive impact on both laws and practices relating to intercountry adoption. Whether one is speaking of the creation of a more orderly, rule-based international system, the improvement in key stages of the intercountry adoption procedure, the reports of better and closer international co-operation, the efforts undertaken to prevent and address illicit practices, the improvements for children and families in relation to the automatic recognition of intercountry adoptions or the increased efforts in many States to implement subsidiarity, it is clear that Contracting States have seen significant positive developments as a result of the implementation of the Convention in an ever-increasing number of Contracting States. Of course, as the responses demonstrate, the Convention has not always been the sole factor in bringing about these positive changes, but it is clear that it has played a central role in many cases.

95. Nonetheless, it is also apparent from the responses of Contracting States that now is not the time for complacency. 20 years after the entry into force of the Convention, Contracting States reported many challenges which remain in relation to the full and proper implementation and operation of the Convention, and these are challenges which must be addressed before it can be said with any certainty that the Convention is fully meeting its key objectives. While identification of these challenges is a first step, they now require further consideration and work by Contracting States. In particular, as discussed in Chapter 3, Contracting States need to consider how practice under the Convention can better address the challenges resulting from the changing landscape of intercountry adoption.<sup>291</sup>

96. Despite all this, in considering what the impact of the Convention has been on intercountry adoption in the past 20 years, a question might be posed as to whether too much has been asked or expected of the Convention by some. As has been apparent throughout this paper, while the Convention is a vitally important international law, with internationally-agreed normative principles and a crucial co-operative framework, it is not the only factor influencing intercountry adoption policy and practice in Contracting States and is certainly not a panacea for all the challenges connected with intercountry adoption. While it might have brought about significant positive changes in attitudes in some States in relation to intercountry adoption, it cannot alone bring about the economic, political, social and cultural conditions which would be required in *all* States to ensure that intercountry adoptions, and indeed any actions concerning children, always take place “in their best interests” and “with respect for their rights”. As has long been recognised, the Convention has to be complemented by the political will, the economic conditions, the support and the capacity-building to strengthen the child protection systems of States. As another study has recently pointed out, in this regard, *all* States need to ensure that their national policies on intercountry adoption are regularly and holistically reviewed (*e.g.*, undertaking a “Child Rights Impact Assessment”<sup>292</sup>) to ensure that the rights of children are at the forefront and heart of these policies.

97. In 2005, Jaap Doek, former chair of the UN Committee on the Rights of the Child, stated that intercountry adoption represents a “globalisation of child protection” and is an “important keystone that completes that structure of alternative care for children who need that care”.<sup>293</sup> With this in mind, the Permanent Bureau of the Hague Conference looks forward to working with States for another 20 years and beyond in order to keep improving the implementation and operation of this important Convention.

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<sup>291</sup> This is in keeping with the key principle of progressive implementation of the Convention, see para. 20 .

<sup>292</sup> See the UNICEF Best Interests Study, *supra*, note 36, p.52 (the assessment derives from the CRC Committee’s General Comment on Art. 3 UNCRC).

<sup>293</sup> See J. Doek, *supra*, note 170, section 2 c).

## **A N N E X E S**

## ANNEX A

### THE IMPROVEMENTS AND CHALLENGES REPORTED IN RELATION TO KEY STAGES OF THE INTERCOUNTRY ADOPTION PROCEDURE

*“There is greater transparency and consistency in the international adoption process, as well as an increased focus on the best interests of and protections for children who need families”<sup>294</sup>*

#### 1. The improvements reported

##### The decision regarding a child's adoptability

1. A notable stage of the intercountry adoption procedure *in States of origin* which has reportedly improved in several States following implementation of the Convention is the determination of the adoptability of the child,<sup>295</sup> including, where appropriate, how consents are obtained from the birth parents, the child<sup>296</sup> and other legal guardians.<sup>297</sup> For example, several States of origin cited important developments prompted by implementation of the Convention, such as: the provision of compulsory counselling to birth parents<sup>298</sup> or legal guardians (facilitating “free” and “informed” consent),<sup>299</sup> the fact that consent is now provided in judicial proceedings (or procedures before competent authorities rather than before private practitioners),<sup>300</sup> and the introduction of provisions which mandate that children are heard and / or that their consent to an adoption is obtained.<sup>301</sup> Confirming that there have been improvements in this regard, two *receiving* States commented that the establishment of more secure procedures regarding adoptability in States of origin was one of the most significant improvements brought about by the Convention.<sup>302</sup>

2. The fact that implementation of the Convention has improved adoptability processes was also confirmed in a recent study in which professionals from Contracting and non-Contracting States to the Convention responded that, “the outside and advance evaluation of a child's legal availability and eligibility for adoption is one of the top benefits” of the 1993 Hague Convention.<sup>303</sup>

##### Reports on adoptable children

3. Many Contracting States mentioned that, following the entry into force of the Convention, the provision of information concerning the child to prospective adoptive parents is, overall, better structured and organised and the reports of the child are more detailed and complete.<sup>304</sup>

<sup>294</sup> The Donaldson Study, *supra*, note 36, p. 8.

<sup>295</sup> Interestingly, in the majority of States, the main reasons for children becoming adoptable were reported *not* to have changed following implementation of the Convention because their internal laws already regulated the different scenarios in which children could be declared adoptable (see Question 7 (a): Albania, Burkina Faso, Chile, China, Colombia, Hungary, Latvia, Lesotho, Mexico, Panama, Philippines, South Africa and United States). However, four States mentioned that their criteria for adoptability had expanded under the Convention (Question 7 (a): Bulgaria, Costa Rica, Ecuador and Guatemala).

<sup>296</sup> The age at which consent of the child is required by law ranged from 8 to 15 years in the State responses.

<sup>297</sup> Question 7 (c)(i): Bulgaria, Chile, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Madagascar, Mexico, Moldova, Panama, Romania and Togo. Question 17 (a): Guatemala and Haiti. However, a number of States responded that these issues were regulated internally before the Convention entered into force and that no major change occurred after such entry into force: Question 7 (c)(i): Brazil, China, Colombia, Guinea, Hungary, Latvia, Lesotho, Philippines and South Africa (thus demonstrating the point made at para. 15 above).

<sup>298</sup> Despite these notable improvements, one State response recommended that further work needs to be done in relation to ensuring that the consent of the biological *father* has been provided to the adoption, where appropriate (Question 17 (c): Chile).

<sup>299</sup> Question 7(c) i): Bulgaria and Romania.

<sup>300</sup> Question 7(c) i): Chile, Haiti, Madagascar and Romania.

<sup>301</sup> Question 7(c) i): Azerbaijan, Bulgaria, Haiti and Romania.

<sup>302</sup> Question 18 (a): Australia and Norway (commenting on improvements in States of origin in this regard).

<sup>303</sup> See the Donaldson Study, *supra*, note 36, p. 71.

<sup>304</sup> Question 7 (c)(iii): Brazil, Bulgaria, Burkina Faso, Chile, China, Costa Rica, Ecuador, Haiti, Hungary, Lesotho, Madagascar, Mexico, Moldova, Panama, Peru, Philippines and Togo. Only a few States did not think that the

### The preparation of children for adoption

4. Many States reported that implementation of the Convention has had a positive effect on the development of procedures for preparing children for adoption, and in some cases the measures instituted may exceed the basic Convention requirements (see Art. 4 (d)). Some States highlighted the right of the child to be heard and the need to take into account the child's views.<sup>305</sup> Others mentioned the importance of providing the child information about the prospective adoptive parents and preparing the child to meet them.<sup>306</sup> Several States noted that doctors, psychologists, social workers and other professionals are involved in counselling the child.<sup>307</sup>

### Applications by prospective adoption parents

5. An important change brought about by the Convention in some *receiving States* was reported to be that prospective adoptive parents must now apply to the Central Authority in the State of their habitual residence<sup>308</sup> (or a public authority or accredited body, where this responsibility has been delegated in a Contracting State). Previously, in some receiving States, the prospective adoptive parents could send an application to another State without the intervention of any authority or body, thus meaning that the receiving State had no oversight or ability to control the applications sent.<sup>309</sup> Other related improvements reported by some receiving States included the compulsory intervention of an accredited body at this stage in some States,<sup>310</sup> and a better structured and ordered system for applications.<sup>311</sup>

### Selection, counselling and preparation of prospective adoptive parents

6. The selection, counselling and preparation of prospective adoptive parents was reported to have improved over the years in general as a consequence of the implementation of the Convention.<sup>312</sup> Some States commented that the Convention was instrumental in bringing about the following positive developments: making the preparation of prospective adoptive parents compulsory;<sup>313</sup> improving it<sup>314</sup> (e.g., now covering not only the preparation for the adoption process but also life after adoption);<sup>315</sup> ensuring that specific training was also provided to prospective adoptive parents taking into account the needs of a specific child;<sup>316</sup> providing training to prospective adoptive parents before the declaration of suitability;<sup>317</sup> introducing a "three-phase approval" process for prospective adoptive parents;<sup>318</sup> and, investing in "training the trainers" so that professionals are able to train accredited bodies, competent authorities and courts.<sup>319</sup>

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Convention had had an influence on this (see Question 7 (c)(iii): Azerbaijan, China (Macao SAR), Latvia and South Africa).

<sup>305</sup> Question 1: Denmark. Question 7 (c)(ii): Colombia and Peru.

<sup>306</sup> Question 7 (c)(ii): Azerbaijan, Burkina Faso and Romania.

<sup>307</sup> Question 7 (c)(ii): Bulgaria, Chile, Ecuador, Mexico, Peru and Romania.

<sup>308</sup> Art. 14 of the Convention. Question 2: Belgium.

<sup>309</sup> Question 8 (b)(i): Germany, New Zealand and Spain.

<sup>310</sup> Question 8 (b)(i): Belgium. See also para. 22 of this document.

<sup>311</sup> Question 8 (b)(i): Denmark, Dominican Republic, Germany and United States.

<sup>312</sup> Question 1: Belgium (now only the Court can declare prospective adoptive parents suitable), France and Italy.

<sup>313</sup> Question 1: Belgium (by the Court) and Italy (by the Court). Question 8 (a): Australia ("National Consistent Core Curriculum"), Belgium, Denmark, France, Italy, New Zealand, Spain and United States.

<sup>314</sup> Question 17 (a): Belgium and Finland. Question 8 (a): Andorra, Canada (but only in some provinces, in others the changes were not a result of the implementation of the Convention), Denmark, Finland, France, Germany, Ireland, New Zealand and Spain.

<sup>315</sup> Question 8 (a): Australia and France.

<sup>316</sup> Question 8 (a): United States.

<sup>317</sup> Question 8 (a): Belgium.

<sup>318</sup> Question 17 (a): Denmark.

<sup>319</sup> Question 8 (a)(i): Italy (EurAdopt). However, in some other States, where the preparation was already well developed before the Convention, there has been no major change due to the Convention in this area (Question 8 (a)(i): Germany, Netherlands (an independent organization with employees with specialized knowledge has been in charge of the preparation since 1991) and Norway).



7. Almost all States agreed that the change in the profile of the children being adopted intercountry (discussed further in Section 4.2 above) has also clearly influenced the counselling, selection and preparation of prospective adoptive parents. For example, special courses taught by a wide range of specialists, including from the medical sector, are provided in many States.<sup>320</sup>

#### Reports on prospective adoptive parents

8. The provision of information to the State of origin concerning prospective adoptive parents, in particular in reports, was reported to have improved in many Contracting States following implementation of the Convention<sup>321</sup> because of the Convention requirements regarding the contents of the report,<sup>322</sup> and the general obligation of co-operation which facilitates the exchange of information. Better understanding of the needs of adoptable children has also seemingly helped to improve the reports.<sup>323</sup>

#### Matching

9. Despite the fact that the Convention does not expressly use the term “matching”, several States reported that they were prompted to improve this important stage of the intercountry adoption procedure as a result of the implementation of the Convention and in line with the established international good practice<sup>324</sup> by,<sup>325</sup> for example: creating a matching committee<sup>326</sup> composed of a multidisciplinary team,<sup>327</sup> improving co-operation between the different actors taking part in the matching<sup>328</sup> and prohibiting actors other than the Central Authority from undertaking the matching.<sup>329</sup>

10. The need for the Central Authorities (and, if applicable, adoption accredited bodies) to agree that the intercountry adoption may proceed (and hence the matching),<sup>330</sup> was reported as a significant, positive change (since before the Convention the authorities in charge of adoption, if they existed, were not usually informed about a match before the child arrived in the receiving State).<sup>331</sup> One State mentioned that now its Central Authority has to give its agreement to the proposed matching *before* the proposal is *presented* to the prospective adoptive parents.<sup>332</sup>

#### Final adoption decisions

11. While in some Contracting States there were reportedly no changes in relation to the identity of the authorities responsible for granting the final adoption decision,<sup>333</sup> in other Contracting States it was reported that an important development in their State prompted

<sup>320</sup> Question 8 (a)(i): Australia, Belgium, Denmark, Italy (EurAdopt), France, Germany, Spain and United States.

<sup>321</sup> Some specific examples of the reported improvements are: two States explained that, in addition to the judicial decision on suitability by the court and the reports by specialised public services, the relevant accredited body will now also prepare a complementary report on the prospective adoptive parents if the State of origin requires it (Question 8 (b)(ii): Belgium and Italy (EurAdopt)); one State mentioned that the Ministry publishes a guide for the preparation of the home study / social reports (Question 8 (b)(ii): Norway); and another State mentioned that new regulations which incorporated additional requirements for the home study preparation, content and transmission have been developed (Question 8 (b)(ii): United States).

<sup>322</sup> Question 8 (b)(ii): Belgium, Canada (some provinces only), Denmark, Dominican Republic, Germany (not immediately after the implementation of the Convention, but over time), Italy (EurAdopt), Finland, Norway, Spain, Sweden (Central Authority and EurAdopt) and United States. In contrast, Australia, Brazil, Cyprus and Guinea said that this has not changed with the Convention.

<sup>323</sup> Question 8 (a): Spain. Question 8(b)(ii): Denmark, Germany and New Zealand.

<sup>324</sup> Guide to Good Practice No 1, *supra*, note 31, Chapters 7.2.5 and 7.4.6.

<sup>325</sup> Question 7 (c)(iv): Bulgaria, Burkina Faso, Chile, China, Costa Rica, Ecuador, Guatemala, Haiti, Hungary, Lesotho, Madagascar, Philippines and Togo.

<sup>326</sup> Question 7 (c)(iv): Bulgaria, Burkina Faso and Ecuador. Question 17 (a): Burkina Faso and Haiti.

<sup>327</sup> Question 17 (a): Burkina Faso and Haiti.

<sup>328</sup> Question 17 (a): Haiti.

<sup>329</sup> Question 7 (c)(iv): Bulgaria and Madagascar. Question 8(b)(iii): Switzerland.

<sup>330</sup> Art. 17 of the Convention.

<sup>331</sup> Question 2: China. Question 8 (b)(iii): Australia, Belgium, Canada (some provinces), Italy, France, Germany, Monaco, New Zealand, Norway, Spain, Sweden and United States.

<sup>332</sup> Question 8 (b)(iii): Belgium (French community).

<sup>333</sup> Question 7 (c)(vi): Armenia, Brazil, Burkina Faso, China, Colombia, Guinea, Hungary, Latvia and South Africa.

by implementation of the Convention was that only a competent authority (in many cases a court) may now issue the adoption decree.<sup>334</sup>

### Migration procedures

12. Several States commented on the important improvements they had implemented, or seen implemented in other Contracting States, in relation to the way in which children are taken to the receiving State and the way migration procedures are handled.<sup>335</sup> For example, prospective adoptive parents must usually now travel to the State of origin personally (escorts are no longer permitted in most Contracting States) and adoptive parents generally receive more assistance from their accredited body in relation to this process.<sup>336</sup> Moreover, migration procedures for the child are reportedly easier,<sup>337</sup> in particular due to the issuance of the Article 23 certificate and the resulting automatic recognition of Convention adoptions. This appears to have facilitated the speedy acquisition of the nationality of the receiving State by the child, in some cases while the child is still in the State of origin.<sup>338</sup>

### Post-adoption matters

13. The increasing importance of post-adoption services was emphasised in the responses of many Contracting States due to both the large number of intercountry adoptions in previous years, and the fact that many adopted children now have special needs.<sup>339</sup> Many States recalled that post-adoption services have grown in response to the post-adoption needs of families who have adopted intercountry.<sup>340</sup> Some States reported that the Convention has promoted a greater focus on the provision of these services and they have been developed and improved over the years,<sup>341</sup> making them, in some cases, compulsory.<sup>342</sup>

14. In relation to an adoptee's *access* to information concerning his / her origins, it was reported in some States in which this was not regulated before implementation of the Convention, that the minimum rules of the Convention on this issue have improved this aspect of the intercountry adoption process.<sup>343</sup> Finally, the *preservation* of information regarding the child's origin was another improvement attributed by several States to implementation of the Convention<sup>344</sup> and, in this regard, it was commented that the Convention has promoted the creation of registries for adoptable children,<sup>345</sup> parents,<sup>346</sup> or adoption decisions.<sup>347</sup>

## **2. Some remaining challenges reported**

15. Although important advances have been made in relation to many of the key stages of the intercountry adoption procedure as a result of implementation of the Convention, several States identified numerous *remaining* challenges, the most commonly reported of which are set out below.

<sup>334</sup> Question 7 (c)(vi): Bulgaria, Chile, Ecuador, Haiti, Madagascar and Mexico.

<sup>335</sup> A few States said that the Convention did not have an influence in this area (Question 7 (c)(vii): Azerbaijan, China, Colombia, Hungary, Latvia and Panama).

<sup>336</sup> Question 7 (c)(vii): Bulgaria, Burkina Faso, Ecuador, Madagascar and South Africa.

<sup>337</sup> Question 8 (b)(iv): Australia, Finland, Germany, Monaco, Norway, Spain, Sweden, Switzerland and United States. However, Canada and Denmark said that the migration procedures have not changed as they were already in line with the Convention.

<sup>338</sup> Question 8 (b)(iv): Australia.

<sup>339</sup> Question 8 (b)(v): Australia, Belgium, Canada, Denmark, Italy, Germany and Spain.

<sup>340</sup> Question 1: Brazil and Italy. Question 2: Spain. Question 8 (b)(v): Canada.

<sup>341</sup> Question 8 (b)(v): Australia, Dominican Republic, Germany, Switzerland and United States.

<sup>342</sup> Question 8 (b)(v): Belgium.

<sup>343</sup> Question 7 (c)(viii): Bulgaria, Burkina Faso, Costa Rica, Ecuador, Guatemala, Haiti, Hungary, Madagascar, Peru, Philippines, Romania and Togo. Other States answered that this was already regulated and there was not substantial change due to the Convention: Azerbaijan, Brazil, China, Latvia, Lesotho and Panama.

<sup>344</sup> Question 1: Germany. Question 2: Canada. Question 17 (a): New Zealand. Question 18 (a): Canada.

<sup>345</sup> Question 1: Azerbaijan.

<sup>346</sup> Question 1: Bulgaria.

<sup>347</sup> Question 1: Bulgaria and Romania.



### Reports on adoptable children

16. Some States noted that it remains a challenge to ensure that reports on the child are prepared in a timely manner<sup>348</sup> and are complete<sup>349</sup> (*i.e.*, with accurate and adequate information included).<sup>350</sup> This is a particularly important issue to remedy in light of the fact that an increasing number of intercountry adoptable children have special needs. The information provided in these reports can help to determine whether prospective adoptive parents can appropriately meet the needs of a particular child,<sup>351</sup> and knowledge of the child's condition can assist with the preparation of the prospective adoptive parents.<sup>352</sup> In this way, these reports also have an important role to play in preventing the breakdown of intercountry adoptions. A study confirmed this issue, emphasising that there is a need for more accurate and complete diagnoses concerning the special needs of intercountry adoptable children, particularly in relation to physical and mental health issues.<sup>353</sup>

### Preparation of prospective adoptive parents

17. Another challenge reported was that the mandatory nature, as well as the level, of preparation and counselling of prospective adoptive parents differs greatly among receiving States. In one receiving State, it was reported that such preparation is obligatory only if the State of origin so requires.<sup>354</sup> Some responses also opined that the preparation provided by some States still needs to focus more on the reality of intercountry adoption today<sup>355</sup> and the current profile of intercountry adoptable children<sup>356</sup> (who, more frequently than in the past, have special needs).<sup>357</sup> A recent study confirmed these challenges commenting that, in general, prospective adoptive parents should receive "more and better preparation" and accredited bodies should address the current realities of intercountry adoption more openly with prospective adoptive parents.<sup>358</sup>

18. One response expressed the view that receiving States could do more to share tools designed to support prospective adoptive parents and children during the waiting period between the match and the final adoption decision (see also Section 3.3 on the increasing length of intercountry adoption procedures).<sup>359</sup>

### Communication of matching

19. A couple of receiving States commented that there is room for improvement in relation to the matching procedure as the exchange of information between Contracting States is sometimes superficial and inadequate, particularly if information is exchanged by fax or e-mail.<sup>360</sup> It was opined that, by working in a truly complementary manner, competent authorities in the State of origin and the receiving State can optimize the chances of successfully matching a child with prospective adoptive parents suited to respond to the child's needs.<sup>361</sup>

### Post-adoption matters

20. It was noted by some States that while the Convention establishes only basic standards in relation to post-adoption services,<sup>362</sup> and hence States should raise those

<sup>348</sup> Question 17 (c): Burkina Faso.

<sup>349</sup> Question 10 (b): Germany.

<sup>350</sup> Question 17 (c): New Zealand.

<sup>351</sup> Question 10 (b): United States.

<sup>352</sup> Donaldson Study, *supra*, note 36, p. 8.

<sup>353</sup> *Ibid.*

<sup>354</sup> Question 8 (a)(ii): France.

<sup>355</sup> Question 10 (b): Dominican Republic. Question 17 (c): Colombia, France and Sweden. Question 18(c): Colombia and France.

<sup>356</sup> Question 10 (b): Bulgaria.

<sup>357</sup> Question 10 (b): Colombia and United States.

<sup>358</sup> Donaldson Study, *supra*, note 36, p. 10.

<sup>359</sup> Question 10 (b): Italy (EurAdopt).

<sup>360</sup> Question 8 (b)(iii): Italy (EurAdopt).

<sup>361</sup> Question 18(c): Canada

<sup>362</sup> Question 8 (b)(v): Finland.

standards,<sup>363</sup> this is not always happening in practice.<sup>364</sup> It was reported by one State, for example, that adoptive parents sometimes raise concerns over the lack of support to help them acclimatise to the needs of their newly expanded family.<sup>365</sup> It was stated that there is a need for more specialised, in addition to general, services.<sup>366</sup> This was confirmed in a recent study in which it was noted that there is a need for a “continuum of services and supports” and “families too often do not know where to turn for help and [...] the assistance they need sometimes is not available”.<sup>367</sup>

21. The issue of post-adoption reports is still challenging according to some responses. A couple of States commented that, as this issue is not directly addressed in the Convention,<sup>368</sup> there is no uniform understanding of the reporting requirements or the limits of the receiving State’s ability to enforce these requirements.<sup>369</sup> Some States remarked that they would like to improve co-operation in relation to post-adoption reports and to establish an agreed framework for co-operation in relation to this issue,<sup>370</sup> particularly in view of the fact that, in some cases, the enforcement of post-adoption reporting requirements may ultimately affect co-operative relationships between Contracting States.<sup>371</sup>

22. Some States noted that further work is required to preserve information relating to the origins of children and to allow adoptees to access this information with the necessary counselling and support.<sup>372</sup>

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<sup>363</sup> Question 17 (c): Finland and Guatemala.

<sup>364</sup> Question 8 (b)(v): Italy (EurAdopt).

<sup>365</sup> Question 10 (b): United States.

<sup>366</sup> Question 17 (c): Finland.

<sup>367</sup> Donaldson Study, *supra*, note 36, p. 9.

<sup>368</sup> However, see Guide to Good Practice No 1, *supra*, note 31, Chapter 9.3; Conclusions and Recommendations of the 2005 Special Commission on the practical operation of the 1993 Hague Convention, Recommendation No 18; and Conclusions and Recommendations of the 2010 Special Commission on the practical operation of the 1993 Hague Convention, Recommendation No 27.

<sup>369</sup> Question 10 (b): Canada and United States. It was pointed out that the receiving State may have no authority or mechanism to compel adoptive parents to comply with reporting requirements.

<sup>370</sup> Question 18 (c): Latvia. Question 10 (b): United States.

<sup>371</sup> Question 10 (b): Canada and United States.

<sup>372</sup> Question 7 (c)(viii): Guatemala, Madagascar and Togo. Question 10 (b): France. Question 17 (c): Guatemala and Ireland. This was also confirmed in the Donaldson Study, *supra*, note 36, in which it was stated that an absence of information concerning birth parents and other aspects of children’s origins in some States of origin makes it difficult for adoption professionals and adoptive parents to respect children’s rights and meet their needs in this regard. This study noted that more consistent practices are required regarding the collection and preservation of information and should be a goal of all concerned.

## ANNEX B

**MONITORING AND REVIEWING THE IMPLEMENTATION AND OPERATION OF  
THE CONVENTION: SUCCESSES, CHALLENGES AND POSSIBILITIES FOR THE  
FUTURE**

1. In the responses to Questionnaire No 1, Contracting States reported that the current mechanisms used to monitor and review the implementation and operation of the 1993 Hague Convention were generally satisfactory.<sup>373</sup> Many States reported that they have benefitted from the services provided by, or the assistance of, the Permanent Bureau in relation to the implementation and / or operation of the Convention. For example:

- several States mentioned the value of the Guides to Good Practice;<sup>374</sup>
- some mentioned their use of the information on the Hague Conference website;<sup>375</sup>
- others reported the utility of the information provided by the Permanent Bureau in response to specific inquiries;<sup>376</sup>
- the Country Profiles and other tools were also reported to be useful;<sup>377</sup> and
- technical assistance and training, including the organisation of regional workshops, were reported to be of central importance.<sup>378</sup>

2. Nevertheless, States had numerous suggestions in relation to *additional* services or assistance which the Permanent Bureau might provide, resources permitting. The most common recommendation was to provide more technical assistance to specific States, more training and more seminars.<sup>379</sup> However, as one State noted, the services which can be provided by the Permanent Bureau are limited to those directly relating to the implementation and proper operation of the Convention and, in relation to “post-convention assistance”, any assistance must meet the conditions and criteria of the “Strategic Framework for Post-Convention Assistance”, once adopted.<sup>380</sup>

3. Other recommendations for possible future work made by States included:

- Special Commission meetings: one State commented that it would welcome more frequent Special Commission meetings (*e.g.*, every three to four years), focusing on specific themes rather than on the operation of the entire Convention.<sup>381</sup>
- Organising and facilitating other meetings and exchanges: some States commented on the need for more meetings between States to be organised so that they can exchange experiences, including increased opportunities for exchanges between States of origin and receiving States.<sup>382</sup> In this regard, one State reported that it would like to see annual review meetings at the regional level, including both States of origin and receiving States, with the results sent to the Permanent Bureau for the compilation of recommendations for the Special Commission.<sup>383</sup> Another State

<sup>373</sup> Question 19: Andorra, Armenia, Australia, Belgium, Brazil, Bulgaria, Burkina Faso, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, Finland, France, Germany, Guatemala, Haiti, Latvia, Lesotho, Lithuania, Madagascar, Mexico, Moldova, Monaco, Netherlands, Norway, Panama, Peru, Philippines, Romania, Slovenia, South Africa, Spain, Switzerland, Togo, United States and Viet Nam.

<sup>374</sup> Question 18 (a): Guinea. Question 19: Colombia, Ecuador, Finland, Mexico, Norway, Romania and Slovenia.

<sup>375</sup> Question 20 (a): Australia and Ecuador.

<sup>376</sup> Question 18 (a): Australia. Question 20 (a): Australia, Colombia, Costa Rica, Denmark, Finland, Germany, Monaco, New Zealand, Norway and Spain.

<sup>377</sup> Question 18(a): Australia. Question 20 (a): Chile, China, China (Hong Kong SAR), China (Macao SAR), Denmark, Germany, Lithuania, South Africa and Spain.

<sup>378</sup> Question 20 (a): China (Macao SAR), Dominican Republic, Guatemala, Guinea, Haiti, Madagascar, Mexico, Spain and Togo.

<sup>379</sup> Question 19: Mexico. Question 20 (b): China, China (Macao SAR), Dominican Republic, Lesotho, Mexico, Norway, Panama, Peru, Philippines, Romania, Spain, Sweden and Togo.

<sup>380</sup> Question 20 (b): Canada.

<sup>381</sup> Question 19: Canada.

<sup>382</sup> Question 19: France. Question 20 (b): Guinea.

<sup>383</sup> Question 19: Haiti.

commented on the utility of stronger and more frequent contacts between States of origin.<sup>384</sup>

- Monitoring compliance with the Convention: there were a number of suggestions which amounted to recommending an increased role for the Permanent Bureau in relation to monitoring compliance with the 1993 Hague Convention. For example, one State reported that it would like the Permanent Bureau to have a more active role in upholding the effective operation of the Convention generally,<sup>385</sup> another stated that the Permanent Bureau might visit Central Authorities to monitor their compliance with the Convention<sup>386</sup> and another favoured having the Permanent Bureau issue reports on States' practices with individual recommendations.<sup>387</sup> Some States recommended a more active advisory role for the Permanent Bureau in relation to States that do not respect the principles of the Convention in specific scenarios (*e.g.*, in situations in which States treat *intercountry* adoptions as *domestic* adoptions,<sup>388</sup> and / or where Article 23 certificates are not issued properly by a State on a regular basis).<sup>389</sup>
- Development of new Guides or other tools: some States mentioned that the Permanent Bureau should develop additional Guides to Good Practice or other tools to improve the functioning of the Convention,<sup>390</sup> including in relation to issues that involve difficult questions of interpretation (*e.g.*, special needs children<sup>391</sup> and relative adoptions<sup>392</sup>).
- Provision of updating information: some States also mentioned that they would like the Permanent Bureau to provide up-to-date information on developments relating to intercountry adoption in Contracting States, and recommendations in relation to working with particular States.<sup>393</sup>
- New Contracting States: the need for more assistance to be provided to States that have recently become Parties to the Convention<sup>394</sup> was also mentioned.
- Promotion of the Convention: in relation to the promotion of the Convention, one State mentioned the need for the Permanent Bureau to provide greater incentives to African countries, in particular, to accede to or ratify the Convention.<sup>395</sup>

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<sup>384</sup> Question 19: Madagascar.

<sup>385</sup> Question 19: Sweden. In a similar vein, Peru recommended (Question 19) that specialised working groups visit States to help implement new techniques and tools and help deal with problems that arise.

<sup>386</sup> Question 20 (b): Ecuador.

<sup>387</sup> Question 19: Spain.

<sup>388</sup> Question 20 (b): Belgium.

<sup>389</sup> Question 20 (b): Germany.

<sup>390</sup> Question 20 (b): Bulgaria, China (Hong Kong SAR) and South Africa.

<sup>391</sup> Question 20 (b): Guatemala.

<sup>392</sup> Question 20 (b): United States.

<sup>393</sup> Question 20 (b): Chile, Costa Rica and Spain. In a similar vein, Guinea recommended (Question 19) the establishment of a consolidated database on intercountry adoptions.

<sup>394</sup> Question 19: Guatemala.

<sup>395</sup> Question 20 (b): France. On this issue, see "Africa Strategy", Prel. Doc. No 6 of March 2015 for the attention of the Council of March 2015 on General Affairs and Policy of the Conference, available on the website of the Hague Conference at < [www.hcch.net](http://www.hcch.net) > under "Work on Progress" and "General Affairs".