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GUIDANCE NOTE ON

INTERCOUNTRY ADOPTION

IN THE CEE/CIS/BALTICS REGION

This Guidance Note is primarily intended to provide assistance to UNICEF offices and National Committees in the CEE/CIS/Baltics region in dealing with policy and practice issues regarding intercountry adoption and its abuses.

A. THE NATURE, PURPOSE AND CONTEXT OF INTERCOUNTRY ADOPTION

Intercountry adoption involves the transfer of a child from his or her country of origin (or of habitual residence) to another country where he or she will live with the adoptive parents, and implies the total and definitive rupture of his or her relationship with the biological family.

Because it involves physical displacement across borders and a complete change in identity (name, family ties and, invariably, nationality), almost always without the child's consent because of his or her age, decisions on intercountry adoption are of extraordinary significance in relation to the rights of the child. With that proviso, it is a practice that is foreseen, subject to a number of stringent conditions, in international human rights law (CRC Art. 21).

Intercountry adoption is intended solely as an individualised child welfare measure. It is designed to provide a long-term care solution for a child who cannot, for whatever reason, be brought up by his or her parents, and for whom no suitable care can be identified and arranged in his or her country of origin.

Intercountry adoption is therefore to be considered as both a very exceptional measure and one that cannot be looked at in isolation. It is one possible option in an overall child welfare and protection policy covering the whole spectrum of responses to children actually or potentially in need of substitute care. In addition to adoption, whether national or intercountry, these range from – as a priority – provision of support to maintain them in or return them to their biological family, through to various types of foster-care and placement in group homes or other institutions.

It is widely agreed that three principles should guide decisions regarding long-term substitute care for children, once the need for such care has been demonstrated:

- family-based solutions are generally preferable to institutional placements,
- permanent solutions are generally preferable to inherently temporary ones,
- national (domestic) solutions are generally preferable to those involving another country.

Intercountry adoption fulfils the first two but not the third. It is therefore invariably to be considered "subsidiary" to any foreseeable solution that corresponds to all three, and must be weighed carefully against any others that also meet two of these basic principles.

Naturally, the solution chosen and the manner in which it is effected must always fully respect the rights and best interests of the child. In this regard, it should be borne in mind that adoption is the only sphere covered by the CRC where the best interests of the child are to be ***the*** primary consideration, as opposed to being simply ***a*** primary consideration in all other fields. This clearly demonstrates the absolute primacy of a "child-driven" approach to adoption issues.

The practical procedures and safeguards for ensuring optimal respect for the rights and best interests of children concerned are contained in the 1993 Hague Convention **(see Annex 1).**

B. INTERCOUNTRY ADOPTION IN THE REGION

Intercountry adoption is a highly significant issue in the region:

- In the year 2000, over 12,000 – probably between 25 and 30 per cent of the world total – intercountry adoptees came from the region;
- With the sole exception of China, by 2000 Russia and Romania had become overall the most important countries of origin of intercountry adoptees, and for certain receiving States they had in fact become the two major "source" countries;
- there have constantly been, and continue to be, clear indications and evidence of undue financial gain and illegal, illicit and/or unprofessional activity around intercountry adoption, and violations of children's rights in that regard, in many countries of the region. This is evidenced by, inter alia, the fact that no less than eight countries in the region found it necessary to resort to moratoria at given moments between 1991 and 2001 in view of the scale of abuse.[1] In addition, the Committee on the Rights of the Child has expressed preoccupations – sometimes grave – regarding the practice in several countries of the region **(see Annex 2)**.

C. UNICEF'S POSITION ON INTERCOUNTRY ADOPTION

Although UNICEF currently has no official, general and explicit policy in regard to intercountry adoption, it naturally founds its approach to this, as to all other child-related questions, on the CRC. The CRC's major thrusts on this issue are (Article 21):

- the best interests of the child are the paramount consideration in decisions concerning adoption;
- competent authorities ensure that an adoption is allowable and undertaken in a legal manner, with free and informed consent on the part of those responsible for the child;
- intercountry adoption should only take place if the child cannot be suitably cared for in his or her country of origin;
- no improper gain should result for any party to an adoption.

Furthermore:

- UNICEF's overall policy and efforts are actively and systematically directed towards bringing about conditions whereby all children can be properly cared for by their families or, where necessary, others in their country of origin;
- UNICEF therefore promotes and facilitates national (domestic) solutions whilst recognising, in accordance with international standards, that in certain individual cases intercountry adoption can constitute a measure that is most suited to ensuring the rights and best interests of the child concerned,
- By direct implication, UNICEF could never promote intercountry adoption as such; at the same time, it necessarily promotes and defends the rigorous application of international standards when intercountry adoption is contemplated or takes place;
- UNICEF has joined other organisations, such as UNHCR and International Social Service, in calling for intercountry adoption to be prohibited in certain circumstances, including: emergency or post-emergency situations; from countries where safeguards are demonstrably insufficient; and in instances where a child's removal abroad was not initially and ostensibly motivated or justified by intercountry adoption plans (e.g. evacuation, respite care, medical treatment).

D. THE MAIN ISSUES AND CONCERNS

Many realities, issues and concerns regarding intercountry adoption in the region are common to other regions where the practice exists, or even universally. Others are more specific to the region, its characteristics and recent history.

[1] *Albania (1992), Belarus (1997), Georgia (199?), Kazakhstan (1998, 2001), Moldova (2001), Romania (1992, 2001), Russia (1995) and Ukraine (1994).*

D.1. General issues and concerns

- intercountry adoption has become seen increasingly as a means for couples (and sometimes others) to secure a child, and no longer as a welfare measure decided on a case-by-case basis and necessitated by the special circumstances, needs and interests of a child, i.e. it has tended to become parent-driven rather than child-driven;
- this effective "demand" for children has increasingly spawned a "market" response: a range of actors – from adoption agencies, "orphanages" and middle-men to lawyers, civil servants, judges and in some cases high-ranking government officials – frequently take advantage of the determination and relative wealth of those wishing to adopt, for their (substantial) financial gain;
- intercountry adoption is too rarely approached as a facet of an integrated child welfare and protection system, and too often in isolation;
- it is difficult to combat abuses of intercountry adoption by action in the country of origin alone – reduction of effective demand is also required in the receiving countries;
- there is a lack of trustworthy and up-to-date data at world level.

D.2. Additional issues and concerns specific to the region

- the great majority of countries in the region had very little experience, if any, of intercountry adoption prior to the start of the transition, and have therefore been unprepared in every way to cope with "demand" from abroad;
- in recent years, more and more countries in the region have become involved in intercountry adoption
- most countries in the region are not yet Parties to the 1993 Hague Convention that regulates intercountry adoption, including many of those that are the most concerned **(see Annex 1);**
- demand for children from the region is particularly high because of their physical characteristics, shored up by the relatively easy physical access of the region and the media attention that has been given to children's problems in certain of its countries;
- this demand has often taken advantage of the understandable lack of preparedness of the authorities of the countries concerned in terms of legislation, structures, procedures and training;
- when the authorities in one country restrict or halt intercountry adoptions because of gross irregularities, demand may suddenly become focused on one or more others in the region;
- in most countries there was – and in some cases continues to be – an over-reliance on the institutional placement of children which is now decried and has given weight to those promoting intercountry adoption;
- at the same time authorities may come under conflicting political pressures from outside as to the desirable attitude to adopt towards intercountry adoption;
- there is evidence that adoption is not being used as an alternative to institutionalisation in the region: increases in the number of adoptions are often accompanied by a rise in institutional placements (indeed requirements that adoptions take place only from among institutionalised children have been known simply to lead to a rise in relinquishments to institutions);
- there is unfamiliarity with, or resistance to, domestic adoption and other types of formal family-based substitute care in many countries of the region, often leaving a stark choice between institutionalisation and intercountry adoption;
- there is frequently a societal predisposition to emigration from the region, meaning less reservations about the idea of children being adopted abroad.

E. A UNICEF RESPONSE IN THE REGION: RECOGNISING AND COUNTERING RISKS

To be effective and credible interlocutors, all UNICEF bodies must have basic knowledge of intercountry adoption practice in their respective countries, and of issues relevant to this.

UNICEF's presence in the countries of the region varies from fully-fledged country programmes, small country offices and National Committees. This may cause complications for the development of a viable across-the-board policy and the systematic implementation of a preventive and remedial strategy as regards abuses of intercountry adoption. However, recent experience shows that virtually every country of the region must be considered as currently or potentially concerned, including those where intercountry adoption is ostensibly banned or discouraged at present for whatever reason (**see Annexes 3 and 4**).

The following constitutes a basic four-point plan for the minimum knowledge acquisition necessary to underpin an appropriate and credible preventive and remedial strategy. It sets out both what needs to be known and, invariably, what signs or indications of risk need to be looked out for.

E.1. Assessment and monitoring of the significance and nature of the practice

ISSUE	INDICATION OF RISK
Rates of abandonment/relinquishment since 1989[2]	High rates; increasing rates over time
Annual absolute figures for intercountry adoption since 1989	Sudden substantial changes – especially increases – in numbers adopted abroad; lack of the relevant centralised data
Breakdown of intercountry adoptions by age of the child: 0-3 months, 4-6 months, 6-11months, and by year groupings thereafter	High proportion in the first two groupings, which may indicate "babies to order", inadequate opportunity to express/withdraw consent or to seek domestic solutions, etc.; high proportion of children over 5 years, which may indicate potential exploitation; significant changes in these ratios over time
Breakdown of intercountry adoptions by child's sex	Significant gender skew; significant changes over time
Breakdown of intercountry adoptions by place of birth or residence	Unusual concentrations of intercountry adoptees in certain areas
Proportion of children adopted from institutions and directly from families	Significant proportion from families; changes in this proportion over time
Ratio of intercountry adoptions to domestic substitute care measures: fostering, adoption, residential placement	High ratio; increase in ratio over time, especially between intercountry and domestic adoptions
Breakdown of numbers by receiving country	Sudden changes in "distribution" over time
Breakdown of destinations within receiving countries	High concentrations in certain localities

E.2. Assessment and monitoring of the role of government

ISSUE	INDICATION OF RISK
Is intercountry adoption a recognised practice?	---
If so, is there specific legislation covering abandonment, adoption and intercountry adoption?	No such legislation
As regards abandonment, what conditions are required for a child to be recognised as abandoned and what time-scales for decision-making are set out?	Inadequate opportunities for preventing abandonment, inadequate safeguards regarding free and informed consent, inadequate opportunities and time for reversing consent
As regards intercountry adoption, does legislation comply with the 1993 Hague Convention?	Non-compliance
Do policy and legislation set intercountry adoption within an overall child welfare and protection framework?	No such framework
Has governmental policy and approach regarding intercountry adoption changed over time?	Sudden "u-turns" or significant re-orientation of attitude
Is there a designated and specialised public body in charge of intercountry adoptions?	No such body
What is the level of staffing, required training, and staff turnover rate in this body?	Inadequate or superfluous staffing, inadequate training, high turnover rate
Is there an established and functioning mechanism for co-operation between the authorities and those of receiving countries?	No such mechanism

[2] "Relinquishment" differs from "abandonment" in that it involves handing the child into the care of a specific person or institution. The term "abandonment" is widely used to describe both acts, however.

Are there bilateral agreements on intercountry adoption with receiving countries, and if so which?	Adoptions take place without or outside such agreements, unless they fall under the 1993 Hague Convention
Is there a criteria-based system for authorising, accrediting or otherwise regulating national and foreign agencies and persons involved at any stage of the intercountry adoption process?	No such system; incomplete coverage, inadequate or inappropriate criteria
Have the authorities ratified the 1993 Hague Convention and, if not, how do they view this Convention?	Non-ratification; no knowledge; lack of interest; no concrete steps to achieve ratification; concern over budgetary implications of ratification; refusal of Convention's principles
Are there reliable, centralised disaggregated data on intercountry adoption?	Lack of, or poor, data at central government level

E.3. Assessment and monitoring of the role of other actors

ISSUE	**INDICATION OF RISK**
What functions are authorised/accredited non-State bodies and individuals (including lawyers) allowed to carry out in the intercountry adoption process?	Involvement in identifying and matching potential adoptees and adoptive parents, decisions on solutions for a given child, contact with potential relinquishing parents, role of lawyers other than representational in court
How many such bodies are authorised/accredited?	Large number in relation to number of adoptees
Are non-accredited/non-authorised bodies involved at any stage in the intercountry adoption process?	Such involvement
What is the average total amount of monies paid to any State or non-State body or person in the country – i.e. excluding foreign agencies – in relation to an intercountry adoption?	Amount does not correspond to actual expenditures or services rendered
Are there any limitations set on fees, costs and/or contributions and donations requested or solicited by State or non-State bodies, institutions and/or individuals providing intercountry adoption services?	No limitations, amounts set abnormally high in relation to actual expenditures or services rendered, donations as a condition for adopting a child

E.4. Other relevant factors

ISSUE	**INDICATION OF RISK**
What level of pre-/post-natal and family support (psycho-social, educational, financial) is provided?	Lack or low level of any or all aspects of such support
What efforts are made to re-integrate children with their families once they have been placed in alternative care?	Lack or low level of such efforts
Have the media, professionals or others, within or outside the country, reported on alleged abuses of intercountry adoption?	Existence of such reports; lack of investigation/action as a result
Has the Committee on the Rights of the Child expressed concern on the issue?	Concern expressed; Committee's recommendations not acted upon
Are external bodies – agencies, foreign government representatives, regional or international bodies – suggesting or pressuring for increased intercountry adoption from the country?	Existence of such pressures

F. ADVOCACY AND POLICY RESPONSES

F.1. At country level

Carrying out the data-collection exercise above as completely and in as detailed a manner as possible is fundamental to effective advocacy.

The data, seen in the light of the policy and other considerations discussed under sections A-D of this Note, provide a basis for developing – as a first step at least – an advocacy and monitoring strategy, with a region-wide coherence but country-specific thrusts. The aim would be two-fold: to prevent abuses and to tackle identified problems regarding intercountry adoption.

The framework of the advocacy and monitoring strategy can be set out as follows:

- The listing under section E can be used as a check-list of issues for discussion with governmental partners, in particular those areas where indications of risk have been identified, and with an emphasis on up-grading preventive and in-country responses, the latter to include in particular the promotion of domestic adoption;
- Regularly monitoring government response and other developments on the basis of that listing;
- In countries which are not yet Parties to the 1993 Hague Convention and which allow and/or recognise the practice of intercountry adoption (even if numbers are low), active encouragement must be given (including the offer of facilitating or providing technical assistance if necessary) to bringing about the conditions enabling the authorities to proceed with ratification;
- In countries which are already States Parties, it is desirable to recall the Recommendation of the Contracting States to the 1993 Hague Convention, at a December 2001 Special Commission, that "States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States"
- Ensuring that the issue is covered adequately (according to its nature and importance in the country concerned) in Situation Assessments and Analyses and in Country Programmes;
- Encouraging full consideration of this issue in State Party reports to the CRC Committee;
- Ensuring provision of additional relevant information to the CRC Committee when it considers the State Party report in question;
- Contacting the diplomatic missions of receiving countries to ascertain their experience and viewpoint on the issue, and explaining the UNICEF stance;
- Contacting the representatives of sister agencies (e.g. UNHCR, UNHCHR, IOM), regional bodies (particularly European Union, Council of Europe, OSCE), child-focused NGOs and any agencies involved in intercountry adoptions to ascertain their experience and viewpoint on this issue, and explaining the UNICEF stance.

F.2. At regional level

The Regional Office will support country-level efforts – and be kept fully informed of these efforts and of all relevant developments in country situations – by ensuring liaison and, where appropriate, advocacy with the Council of Europe and its Parliamentary Assembly, the European Union and the European Parliament, and the Hague Conference on Private International Law.

G. GUIDANCE ON SELECTED KEY ISSUES

G.1. "The last resort": intercountry adoption or institutionalisation?

The general principle determining the optimal long-term goal in the provision of substitute care for children is for that care to be family-based, permanent and in-country. Neither institutional placements nor intercountry adoption fulfil all three of these "conditions" (nor, in most cases, does foster-care, for that matter). This general principle, however, is not a hard and fast rule, but a guide for evaluating the suitability of solutions in relation to an individual child's circumstances, characteristics and needs. The key concept here is "suitable individualised care responses".

"Suitable" responses can, as noted in the CRC, include institutional placement "if necessary". This may, for example, be appropriate for children whose families are in principle only temporarily unable to care for them for whatever reason and where foster-care is not available, for children who are unable

to function in a family environment, or for those with certain special needs that cannot be catered to outside an institutional setting. Such suitability may be all the greater if the "institution" is – as is increasingly the case – a "group home" or other small, well-staffed facility, integrated in the community and as close to a family environment as possible. If decided, such a placement should be foreseen as an integral part of an individual care plan for the child, with a timetable for reunification efforts.

According to international standards, intercountry adoption may be considered and proposed as an option only if no in-country family-based form of care can be secured and no other "suitable" care is available to meet the needs of the child in question. In principle, therefore, the subsidiarity of intercountry adoption does not apply when the only alternative is long-term institutionalisation.

The clear implication is, however, once again that every effort must be made to develop and promote the use of in-country solutions as a priority, since they are a key element of the most desirable forms of long-term care. These efforts should first and foremost be directed towards support for parents who would otherwise abandon their child or relinquish him or her to a third party or into public care, but they also need to involve the creation or expansion of national adoption and foster-care opportunities.

G.2. The role of foster-care and other domestic alternatives to adoption

If national adoption is not suitable, or cannot be arranged, for a child for whatever reason – including the need for more time to identify suitable adoptive parents – there are several short- or long-term alternatives that can be considered before intercountry adoption should be envisaged.

Formal foster-care – placement of a child with another family by the competent public authority or service – is essentially designed as a temporary child welfare measure pending either the child's return to his or her family once the problem provoking the placement has been resolved or a more permanent care measure (notably adoption). In most countries of the region, formal foster-care is neither well-known nor widely used. It requires special training and skills on the part of the foster-parents (often including the ability to relate constructively with the biological parents) as well as effective back-up and monitoring by the public authority or service concerned. A foster-care system also requires financial provision to the foster-parents to enable them to cover the extra costs involved and provide some compensation for their activity, but not at a level that might constitute their main motivation for undertaking this role.

When well-conceived and resourced, such foster-care can provide an excellent short-term alternative care solution. But foster-care is often poorly prepared and misused, being seen as a cheap and easy form of substitute care, whereas it is neither. The consequences can be far-reaching for children: constant and increasingly destabilising changes of foster-home because foster-parents are ill-equipped for their role and/or the children themselves cannot function in a family environment; uncertainty over the future because the "temporary" placement becomes long-term in an unplanned manner; rejection; abuse; absconding, etc.

The inherent longer-term insecurity of foster-care – including the minimal formal obligations on the part of the foster-parents and the fact that it bestows no inheritance rights – means that it is best viewed as a planned, time-limited response to cover a period prior to stable care provision. However, there are special instances when foster-care can validly be envisaged as a longer-term solution, particularly for older children for whom adoption is no longer a realistic proposition.

Informal kinds of foster-care are prevalent in many countries of the region, notably though not only involving the extended family. Such informal arrangements can naturally be very positive for the child, and generally bring with them a higher level of moral responsibility for the long-term care of the child than formal placements with strangers. They should, however, at least be officially registered (as opposed to approved, as is the case for formal foster-care); a minimum level of monitoring may also be appropriate.

The appointment, through a legal process, of a guardian responsible for the child's welfare also constitutes a recognised practice in many countries of the region when fully-fledged adoption is not a viable option.

G.3. The role of private bodies in intercountry adoption

The 1993 Hague Convention allows considerable leeway in terms of the kinds of involvement of private bodies at various stages of the intercountry adoption process, in response to the very different viewpoints and realities of countries concerned.

"Accredited bodies" – which must be non-profit, competent and subject to State monitoring – may be allowed or mandated to carry out a wide range of tasks in facilitating, following and expediting adoption proceedings, as well as pre- and post-adoption counselling. However, accreditation by one country does not mean that the body may automatically act in another. The names of all such bodies are registered with the Hague Conference on Private International Law, and the list for each country can be consulted.

Other bodies and persons – again on condition of competence and integrity, but without the "non-profit" requirement – may also be authorised to perform these functions in a given State, but any other State may declare that it will not allow the adoption of children from its territory unless these functions are performed directly by the competent authorities (Central Authority or other public body) or by "accredited bodies". It is important that governments of "sending countries" be made fully aware of this possibility and encouraged to use it.

Despite this flexibility in international standards, it is widely felt that, in the light of experience, activities related to intercountry adoption in countries of origin are best carried out by State bodies at national and local levels. In particular, as a general rule, there are special concerns that private bodies should not be allowed to work on intercountry adoptions if they are also involved in other child care programmes that may give rise to a conflict of interests, e.g. running institutions. It is also felt that decisions on "matching" children with prospective adopters should never be made by such bodies. Final decisions on the child's future should always be made by a public body.

G.4. Financial issues

- ***reasonable fees***

  Whilst clearly no specific amounts can be cited as a general rule, it is agreed that fees charged by any body or person at any stage of the adoption process must correspond to those charged for similar kinds of services in the country concerned, taking account of remuneration levels there, and thus not result in "undue financial gain". The Contracting States to the 1993 Hague Convention agreed, in a December 2000 Special Commission, that prospective adoptive parents should be provided in advance with an itemised list of the costs and expenses that the process would likely involve, and that information on the costs, expenses and agency fees should be made available to the public.

- ***Donations and contributions***

  The December 2000 meeting of the Contracting States to the 1993 Hague Convention agreed on the following recommendation in regard to donations:

  "Donations by prospective adopters to bodies concerned in the adoption process must not be sought, offered or made."

  As concerns contributions that may be demanded of adopters and/or adoption agencies towards family or child protection services in the country of origin, that same meeting concluded that receiving countries should support the development of such services but in a manner which did not compromise the adoption process itself:

  "… this support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process, or creates a dependency on income deriving from intercountry adoption. In addition, decisions concerning the placement of children for intercountry adoption should not be influenced by levels of payment or contribution. These should have no bearing on the possibility of a child being made available, nor on the age, health or any characteristic of the child to be adopted."

H. TECHNICAL RESOURCES AVAILABLE

Further reading

- Intercountry Adoption, *Innocenti Digest*, UNICEF Innocenti Research Centre, 1998
  A global review of the history, incidence, international standards, abuses and good practice, giving links and bibliography

- Children in Public Care, *in* Regional Monitoring Report No. 4, UNICEF Innocenti Research Centre, 1997
  Chapter III of this Report looks at all forms of substitute care in the CEE/CIS/Baltics Region, including intercountry adoption as an option within that framework

Useful websites

Hague Conference on Private International Law (this site contains full text of the 1993 Hague Convention, ratification status, explanatory report, reports of Special Commissions, etc.):
http://www.hcch.net

International Social Service/International Resource Centre for the Protection of Children in Adoption (this site contains a library database and useful direct links):
http://www.iss-ssi.org/eng/index_IRC.html

US State Department (this site gives useful insight into the approach of the world's major adopting country to adoption developments in the region and elsewhere): http://travel.state.gov/adopt.html

UNICEF Innocenti Research Centre (TRANS-MONEE Database, containing data on various aspects of public care for children, can be accessed and downloaded from this site):
http://www.unicef-icdc.org/research/ESP/MC1.html#2
The Centre is currently also in the process of setting up a comprehensive "intercountry adoption portfolio" on its web-site, the operation of which will be announced in due course.

For advice or enquiries on specific issues arising from this Guidance Note and its implementation, Country Offices and National Committees in the region are also invited to contact, in the first instance:

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NC/Feb 03

ANNEX 1

1993 HAGUE CONVENTION ON INTERCOUNTRY ADOPTION

STATUS AND SUMMARY OF PROVISIONS

Status of the 1993 Hague Convention in the CEE/CIS/Baltics region
(as at 3 February 2003)

Ratified/acceded: **Romania** (1994), **Poland** (1995), **Moldova** (1998), **Lithuania** (1998), **Georgia** (1999), **Czech Rep** (2000), **Albania** (2000), **Slovakia** (2001), **Slovenia** (2002), **Estonia** (2002), **Bulgaria** (2002), **Latvia** (2002)

Signed: Belarus (1997), Russian Fed (2000)

One possible indicator of government attitudes - countries from the region represented (and by which entity) at the Special Commission on the Practical Operation of the 1993 Hague Convention, 28 November – 1 December 2000 (States Parties in bold type):

Albania (Embassy), Belarus (MFA), **Bulgaria*** (MoJ), Croatia (Embassy), Hungary (MiniSoc), **Lithuania** (MiniSoc), **Romania** (Embassy), **Slovakia** (ChildProt), **Slovenia*** (MoL), **Czech Rep** (ChildProt)

*ratified subsequent to the Special Commission meeting

The *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* was signed on 29 May 1993. It came into force for Contracting States on 1 May 1995. This Hague Convention establishes a series of formal procedures and safeguards to regulate intercountry adoptions, to ensure that intercountry adoptions are conducted in the best interests of the child and with respect for his or her fundamental rights, and to help prevent the abduction, sale, or trafficking of children. Thus it essentially seeks to put in place an system of international cooperation for implementing the substantive obligations and principles set out in the Convention on the Rights of the Child.

The Hague Convention reaffirms the primacy of the biological family and the subsidiary nature of intercountry adoptions to other child welfare and protection measures (the "subsidiarity rule"). But in recognition of the importance of a permanent parent-child relationship, and without denying or ignoring other alternatives (such as foster placement, *kafala* of Islamic law, and placement in suitable institutions) it refers to the advantages that intercountry adoption may provide when no permanent family is available in the child's country of origin.

In simplified terms, the process for an intercountry adoption under the Convention begins when prospective adoptive parents (PAPs) submit an application to the State where they reside, the receiving State. The receiving State determines the eligibility of the applicants to adopt, prepares a informational report on them, and transmits this report to the State of origin. In turn, the State of origin determines whether or not a child being considered for adoption is indeed adoptable and requires adoption abroad, prepares an informational report on the child and directly considers the best interests of the child, and transmits this report to the receiving State. The State of origin may approve the adoption only if both States agree that the adoption should proceed, and if it has been determined that the PAPs are eligible and suitable, among other stipulations. When an intercountry adoption is certified as having been made in accordance with the full provisions of the Convention, it is recognised under the law of the other Contracting States as well.

As reflected here, the Convention provides a framework for the relationship among Contracting States on intercountry adoptions, based primarily upon the full mutual agreement to an adoption between a given State of origin and the respective receiving State. This framework constitutes a set of minimum standards and procedures, and Contracting States are thus free to impose any further requirements for the granting of adoptions (e.g., that adoptions take place in the State of origin of the child). Furthermore, even at the very moment that the actual adoption is to take place, either the State of origin or the receiving State may terminate the adoption, without need for any justification whatsoever. Such safeguards, in addition to the observance of each State's procedural obligations, seek to pre-empt the possibility of abuses such as the abduction, sale, or trafficking of children.

The following is a selection of other key provisions from the Convention, which comprises a Preamble and seven Chapters:

Chapter III

- Establishes the terms and primary responsibilities of the Central Authority that each Contracting State must create as the principal body for organising and overseeing Convention implementation and as the focal point for intercountry liaison.
- Delineates secondary and other duties that the Central Authority may delegate either to other public authorities or to other bodies duly accredited in a given State.
- Establishes broad conditions for the certification of non-public bodies by a respective State, but also stipulates that such bodies may only act in other Contracting States when given explicit authorisation by the foreign state.

Chapter IV

- Creates procedures to redress a failed placement once the child has already been transferred to the receiving State.

Chapter V

- Stipulates the specific circumstances under which a Contracting State may refuse to recognise an intercountry adoption already certified by the State of the adoption.

Chapter VI

- In general, prohibits contacts between the PAPs and the child's parents or legal caretakers until specific requirements are met.
- Obligates the preservation of information concerning the child's origin, and the access to such information by the child, given appropriate guidance and legal permission.
- Forbids improper financial or other gain from activities related to an intercountry adoption, with only the payment of reasonable costs and expenses permitted.

The full text of the 1993 Hague Adoption Convention is available at http://www.hcch.net/e/index.html

10 April 2002

ANNEX 2

EXTRACTS FROM CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD REGARDING INTERCOUNTRY ADOPTION IN CEE/CIS/BALTICS

As at February 2003

NB: The Committee's Concluding Observations are issued from 1 to 2 years after the submission of the State Party Report. The comments below may therefore no longer be applicable, particularly regarding Reports drawn up and considered in the early and mid-1990s. Not all States in the region have yet submitted their respective Reports, moreover, hence they do not appear in this listing.

Armenia (2000): the Committee encouraged the State party to establish a comprehensive national policy and guidelines governing foster care and adoption, and to establish a central monitoring mechanism in this regard. The Committee recommended that the State party accede to the 1993 Hague Convention.

Azerbaijan (1997): the Committee was concerned about the lack of comprehensive legislation on adoption and at the fact that intercountry adoption seemed not to be a measure of last resort. The Committee strongly recommended that the legislation on adoption be brought into conformity with the provisions of article 21 and other related articles of the CRC. It further suggested that the State party consider ratifying the 1993 Hague Convention.

Belarus (1994): The Committee was concerned about the continuation of the practice of the institutionalization of children in spite of the policy adopted to the contrary and about the number of intercountry adoptions which, though still comparatively low, was on the increase. The Committee expressed the hope that the State party would become a party to the 1993 Hague Convention. **(2002):** the Committee welcomed the fact that the State party had signed the Hague Convention.

Bulgaria (1997): With regard to adoption, despite recent changes in the legislation regulating this practice, the Committee was concerned by the lack of compatibility of the current legal framework with the principles and provisions of the CRC, especially with regard to the principle of the best interests of the child (art. 3). The Committee recommended that appropriate legal and institutional steps be taken to fully harmonize law and procedures, both on national and international levels, with the principles and provisions of the CRC. In this regard, the Committee suggested that the State party pursue its consideration of the ratification of the 1993 Hague Convention.

Croatia (1996): no mention

Czech Republic (1997): The Committee welcomed the intention of the State party to accede to the 1993 Hague Convention and recommended that appropriate steps be taken to ensure its entry into force. **(2003):** no mention.

Estonia (2003): no mention.

Georgia (2000): The Committee recommended that the State party introduce proper monitoring procedures with respect to both domestic and intercountry adoptions. With reference to articles 3 and 7 of the CRC, the Committee recommended that the State party consider amending its legislation to ensure that information about the date and place of birth of adopted children and their genetic parents are preserved and, where possible, made available to these children upon request and when in their best interests. Additionally, the Committee encouraged the State party to consider the possibility of acceding to the 1993 Hague Convention.

Hungary (1998): The Committee recommended that the State party consider reviewing its legislation and practice relating to the possibility of placing a child up for adoption before birth. Furthermore, the Committee encourages the State party to consider accession to the 1993 Hague Convention.

Kyrgyzstan (2000): The Committee recommended that when the State party envisages lifting its suspension on intercountry adoptions, it accede to the 1993 Hague Convention.

Latvia (2001): the Committee encouraged the State party to continue the process for the ratification of the 1993 Hague Convention.

Lithuania (2001): the Committee noted with concern the large number of children involved in intercountry adoption, some of them without legal protection. The Committee recommended that the State party fully implement the 1993 Hague Convention.

Macedonia FYR (2000): no mention.

Moldova (2002): no mention.

Poland (1995): the Committee encouraged the Government of Poland to consider ratifying the 1993 Hague Convention. **(2002):** no mention.

Romania (1994): the Committee recommended that legislation on adoption be further amended and enforced to effectively prevent, in particular, intercountry adoptions in violation of the spirit and letter of the CRC and taking into account the 1993 Hague Convention, namely in view of the statement made by the delegation of the Government of Romania as to its intention to ratify this Convention. **(2003):** the Committee noted that adoption legislation is being revised. It further noted that intercountry adoptions were suspended in October 2001 but that this suspension was not absolute since more than 1,500 intercountry adoptions took place in 2002 and 600 such cases are under consideration. It recommended that the State party: a) expedite the adoption of the revised law on adoption and ensure that it complies with the CRC and Hague Convention; b) ensure that sufficient human and other resources are made available for effective implementation and monitoring; c) ensure that the cases of intercountry adoption still under consideration are dealt with in full accordance with the CRC and Hague Convention; d) explore ways to encourage national adoptions so recourse to intercountry adoption is a measure of last resort.

Russian Federation (1999): The Committee was concerned at the insufficient guarantees against the illicit transfer and the trafficking of children out of the State party and the potential misuse of intercountry adoption for purposes of trafficking, inter alia for economic and sexual exploitation. The Committee welcomed the information that the State party was considering ratification of the 1993 Hague Convention and urged the State party to expedite its efforts [in that regard]. In the light of article 21 of the CRC, the Committee recommends that efforts be strengthened to establish procedures regarding intercountry adoption with a view to protecting the best interests of the child.

Slovakia (2000): the Committee noted that the ratification process was under way

Tajikistan (2000): The Committee recommended that the State party establish a comprehensive national policy and guidelines governing adoption and screening capacity, and establish a central monitoring mechanism in this regard. The Committee also recommends that the State party consider acceding to the 1993 Hague Convention.

Slovenia (1996): The Committee was concerned that in some specific cases the rights of children may not be fully taken into account in intercountry adoption procedures. In relation to intercountry adoption, the State party was encouraged to ratify the 1993 Hague Convention.

Ukraine (1995): The Committee was worried by the high rate of abandonment of children, especially new-born babies, and the lack of a comprehensive strategy to assist vulnerable families. This situation could lead to illegal intercountry adoption or other forms of trafficking and sale of children. In this context the Committee was also concerned about the absence of any law prohibiting the sale and trafficking of children, and the fact that the right of the child to have his/her identity preserved is not guaranteed by the law. With regard to the sale and trafficking of children, the Committee encouraged the Government to clearly prohibit this illegal activity and to ensure that the right of the child to have his/her identity preserved is fully endorsed. The Committee also recommended that the State party consider the ratification of the 1993 Hague Convention.

Uzbekistan (2001): the Committee recommended that the State Party: establish a comprehensive national policy and guidelines governing foster care and adoption; establish a central monitoring mechanism in this regard; ensure that adopted children who have reached the age of majority have the right of access to the identity of their biological parents; and accede to the 1993 Hague Convention.

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ANNEX 3
INTERCOUNTRY ADOPTION AND THE CEE/CIS/BALTICS REGION

B. Background notes

1. Summary of developments since 1990

From the very start of the "transition", intercountry adoption from the region has posed fundamental problems in terms of the protection of the civil and social human rights of children.

Overall, **intercountry adoption of children from countries in the region was rare under the Socialist régimes**, with only Poland and, to a lesser extent, Hungary seemingly involved to any significant degree. Small numbers of children were also adopted from Bulgaria and Romania each year. In countries of the former Soviet Union the measure was virtually unknown and therefore not subject to specific legislation. The same applied, inter alia, to Albania.

However, **within weeks of the December 1989 revolution in Romania, couples and "agencies" were flocking to the country** in rapidly increasing waves to adopt the "orphans" from the country's suddenly much-publicised institutions. The existing structures and systems could not cope. Abuses were massive and too often "justified" on humanitarian and human rights grounds, viz.: children would automatically be "better off" in a Western country and freedom of movement across national borders had to be respected. However, the authorities finally declared a moratorium in July 1991, mainly as a result of the recommendations of a UNICEF-supported expert mission. One apparent effect of this was to divert "demand" to alternative countries in the region – notably Albania and, a little later, Bulgaria, Russia and Ukraine. They were equally unable to cope, totally lacking in legislation, procedures and experience in this sphere. Again abuses were legion.

These developments thus occurred immediately following **the adoption of the CRC**. The then USSR and certain other States from the region had had considerable impact on the drafting of that instrument, but in general (apart notably from Poland, the instigator of the CRC and a main actor throughout the drafting) had not felt directly concerned by the provisions on intercountry adoption. Work to draw up the **1993 Hague Convention** began the following year (1990). The problems in the region at that time – particularly in Romania, whose delegate became an increasingly key figure in the drafting as it progressed during the early Nineties – had a profound impact on the approach and content of the final text of the treaty.

By 1993, the CRC and Hague Convention together had thus created a detailed and appropriate normative background to intercountry adoption and the processes it should entail. Since that time, **more and more countries in the region have become implicated in intercountry adoptions**. In the majority of cases, newly-involved countries have been forced to adopt and/or review legislation and to set up processes and structures on a virtually emergency basis. The approach adopted may or may not take account of the spirit, standards and procedures set out in the Hague Convention (regardless of whether or not the country has ratified it). This has sometimes resulted in a patchwork of insufficiently thought-out and implemented systems that themselves have been open to abuse of various kinds, and that have usually not formed part of an overall child welfare and protection policy.

2. Current situation and trends

Country realities in terms of intercountry adoption vary from one extreme to the other in the region:

- intercountry adoption is ostensibly prohibited in Tajikistan;
- it is so far minimal and essentially discouraged in the other Central Asian Republics (with the recent exception of Kazakhstan), all countries of the former Yugoslavia, and the Czech and Slovak Republics;
- it is so far low in Armenia, Azerbaijan and, now, in Georgia;
- in the two countries from where intercountry adoptions were already significant prior to the transition – Poland and Hungary – it has now declined below 1990 levels after a relatively modest peak during the last decade;
- in the Baltic States, where it was unknown prior to transition, it has leveled out at a significant level in Latvia and Lithuania, but has so far remained low in Estonia;
- it has grown steadily and consistently throughout the transition period in Bulgaria, and now stands at a high level;
- it has reached very high levels in the Russian Federation and (prior to the 2001 moratorium) Romania.

Judging from official statistics for 2000, Belarus, Kazakhstan, Ukraine and (until the 2001 suspension) Moldova are the latest countries in the region to see sudden, massive and therefore disturbing increases in intercountry adoptions. Worryingly, of these only Moldova is already a State Party to the Hague Convention. The other three are among the majority of countries in the region that have not yet ratified that treaty.

The recent experience of Kazakhstan is a particularly vivid demonstration of the need for continuing vigilance, even in countries where intercountry adoptions are currently prohibited or virtually unknown. Numbers there rocketed from a total annual average of between 20 and 30 in 1994-1997 to, for the USA alone, 54 in 1998, 113 in 1999, 399 in 2000, 672 in 2001 and 818 in 2002.

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