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**Entry into force of the 1993 Hague Convention  
on Protection of Children and Co-operation in respect of Intercountry Adoption  
in the United States of America**

TABLE OF CONTENTS

Editorial

p. 1 [The 1993 Hague Convention and the United States of America](#)

Actors in adoption matters

p. 3 [China, Czech Republic, Switzerland](#)

Practice

p. 3 [Hague Intercountry Adoption Convention: The Process and the Benefits to the USA](#)

Interdisciplinary approach

p. 6 [Statistical overview of the main countries of origin of children adopted in the United States between 2000 and 2007](#)

Forthcoming conferences, seminars, symposia and courses

p. 8 [France](#)

EDITORIAL

**The 1993 Hague Convention and the United States of America **

*This month, the ISS/IRC wishes to address the benefits and the challenges flowing from the entry into force of the Hague Convention in the USA, and its potential implications for the domestic and global situation of intercountry adoption.*

**T**he 1993 Hague Convention on Intercountry Adoption entered into force with respect to the USA on 1 April 2008. This event will have an important impact, not just on American adoptions, but also on the wider situation of intercountry adoption, given that the USA remains the major adopting country worldwide. The process of ratification has

entailed the establishment of a new administrative structure, based on recent legislation, a comprehensive accreditation system for adoption bodies, as well as amendments to the immigration procedures for adoptees. These aspects and their implications will be the focus of the current issue of our Monthly Review.

## **Implications for the global situation of intercountry adoption**

Firstly, the US ratification is a milestone for the Hague Convention, as it will drastically increase the proportion of intercountry adoptions governed by the Convention, thereby offering greater safeguards to adopted children. However, considering the recent statistics issued by the US Department of State for the year 2007, seven out of the top-ten countries of origin are non-Hague countries, while the first two countries – China and Guatemala – count for more than half of the 2007 intercountry adoptions. If these figures are quite comparable with other receiving countries regarding the proportion of Hague and non-Hague adoptions, they also reflect the coming challenges as to how to harmonise and raise the quality of every procedure.

### **New set of rules**

The United States passed the Intercountry Adoption Act (IAA) on 6 October 2000, followed by the publication of the Final Rules on Accreditation of Agencies and Approval of Persons under the IAA 2000 in early 2006. Most relevant to this process were the provisions of the IAA stipulating that the State Department was to establish and oversee the process of accreditation/approval of US adoption service providers, and would designate at least one non-federal qualified accrediting entity to perform the actual Convention accreditation/approval function pursuant to published standards and procedures. Subsequently, the Final Rules established the requirements and procedures for the designation and monitoring of accrediting entities, as well as a framework for the monitoring and supervision of accrediting entities, agencies and personas. The standards, designed to ensure compliance with the Hague Convention and the IAA, intended to secure the best interests of the child and to prevent the abduction, sale and trafficking of children. In addition, new Department of Homeland Security rules require prospective adoptive parents to identify the country from which they will adopt in their initial application, and the forms will incorporate comprehensive requirements for home studies that are designed to protect children and ensure that the PAPs have the skills, capacity, knowledge, and training to parent a child, including, if applicable, a child

with any special needs. Finally, children adopted from a Convention country will now have to meet a new definition of a 'Convention adoptee'.

### **Positive developments and loopholes**

Legislative revisions are most of the time the result of a compromise among the different actors involved, and in the case of adoption in the USA, lobbying of agencies has probably played its role. In March 2006, the organisation Ethica issued a document<sup>1</sup> commenting the final regulations implementing the Hague Convention, which underlined the strengths and weaknesses of the new system. Among the latter, the organisation emphasised the fact that the regulations make it legal for agencies to pay prenatal and living expenses to birth parents overseas; that facilitators/attorneys may be exempt from being responsible for their supervised providers overseas and that the Department of State, in allowing this language to remain in the final regulations, might potentially have failed to prohibit active solicitation for children. However, good research on this subject, trying to understand fee exchanges pre-Hague and post-Hague implementation, would help to better understand whether the current guidelines will serve to reduce active solicitation of children or not. On the positive side, it is worth underlining that everyone who provides adoption services in the USA will have to be accredited or approved, thereby addressing the problem of 'unlicensed facilitators'. The new regulations also make it compulsory for agencies to provide every parent with pre-adoption training. In addition, they are responsible for providing extensive medical information on the child, and families have two weeks to consider a referral (matching proposal).

### **What about American adoptable children?**

The USA is also facing a paradox: on the one hand, they are the first adopting country, but on the other, some American children are adopted abroad as well. If some other countries are in the same situation, the number of children concerned makes the issue very sensitive: 20,000 foreign children are adopted by US families each year, while more than one hundred thousand adoptable children remain part of the child welfare system in the USA. Therefore, when an

American child is about to be adopted abroad, do the authorities of the receiving country have to consider the application of the principle of subsidiarity? In other words, can an American child be declared adoptable internationally, considering the high number of American prospective adoptive parents?

Actually, the US is entering the process of adaptation which is well-known by other receiving countries: the setting up of a new system calls for a strong involvement of the administrative bodies, in explaining the reasons lying behind the changes, in alleviating reluctances and in supporting the implementation of new rules.

In this regard, Julie Rosicky, Executive Director of ISS-USA, underlines that the Hague Convention has already shifted the historical way of thought to a more 'child-centered' and 'country-centered' approach, and this is truly a major shift in the philosophy about intercountry adoption. The fact that the Department of State is increasingly posting warnings on its website regarding risks and bad practices in some countries of origin – such as the one recommending potential adoptive parents and adoption service providers not to initiate new adoptions from Guatemala, given that the country has not yet

established the regulations and infrastructure necessary to meet its obligations under the Convention<sup>2</sup> – may, for instance, be considered as a positive illustration of this changing approach.

In this context, the forthcoming articles will address some of the technicalities of the newly implemented structure and procedure, as well as further issues that might arise from the ratification and entry into force of the 1993 Hague Convention on Intercountry Adoption in the USA.

The ISS/IRC team,  
in collaboration with Julie Rosicky,  
Executive Director of ISS-USA

Sources:

<sup>1</sup> *Ethica Comments on the final regulations implementing the Hague adoption Convention*, March 2006, available at: <http://www.ethicanet.org/HagueReqComments.pdf>

<sup>2</sup> U.S. Department of State, *Warning: Adoptions Initiated in Guatemala on or after April 1, 2008*, [http://www.travel.state.gov/family/adoption/country/country\\_4198.html](http://www.travel.state.gov/family/adoption/country/country_4198.html).

## ACTORS IN MATTERS OF ADOPTION

Source: Permanent Bureau of the Hague Conference: [http://hcch.e-vision.nl/index\\_en.php?act=conventions.authorities&cid=69](http://hcch.e-vision.nl/index_en.php?act=conventions.authorities&cid=69).

- **China:** This country has updated the contact details of its Accredited Bodies.
- **Czech Republic:** This country has named the contact person in its Central Authority.
- **Switzerland:** This country has updated the contact details of its Central and Competent Authorities.

## PRACTICE

### Hague Intercountry Adoption Convention: The Process and the Benefits to the USA

*Last February, in a conference in Tokyo, Julie Gilbert Rosicky, Executive Director of ISS-USA, described the evolution of intercountry adoption in the USA, in relation to the entry into force of the Hague Convention. This article is an extract of her presentation.*

**A**lmost 14 years after its signature, the Hague Convention of 29 May 1993 is entering into force in the USA, and will have a broad impact in significant ways within the US, in particular by creating a central authority, increasing the capacity,

accountability and transparency of the agencies providing intercountry adoption services through the new accreditation process and influencing positively the development of domestic adoptions.

## **Creating a Central Authority**

The adoption/child welfare system in the US is for the most part a “State” driven system. Although there are national laws which set basic standards for the 50 states to follow in practice, the welfare and adoption system is predominantly organized and overseen by each individual State’s Authority. To further complicate matters, the majority of States have child welfare systems that are largely run through individual counties within the state, in the case of California, 58 counties. This may lead to difficulties in disseminating information and facilitating productive communication between states and the federal government. Second, there are often inconsistencies in terms of how legislation is interpreted/implemented and subsequent procedures that are put in place by States. Third, inconsistencies in procedures can result in gaps in services between states/counties. Finally, it is very difficult to coordinate efforts and keep track of data.

Therefore, one of the greatest benefits of the Hague Convention is that it creates a Central Authority, in this case the US Department of State (DOS). The State Department has successfully been able to set up consistent standards of practice for intercountry adoption providers. It is able to facilitate communication between the central authority and all intercountry adoption services providers in all 50 states. Similarly, the central authority will be able to keep track of data like never before.

## **Challenges in the accreditation process of adoption agencies**

In July 2006, the Department of State named the Council on Accreditation (COA) and the Colorado Department of Human Services as the only two official accrediting entities. There are basically six major components of the accreditation approval process: submission of a written application; signature of an agreement between the COA and the agency being accredited; intake/technical assistance and the development of the self study; site visit or desk review; pre-commission review and commission decision<sup>1</sup>.

According to both the COA and Colorado Department of Human Resources, 324 adoption service providers applied for accreditation through COA and 11 adoption

service providers applied in Colorado<sup>2</sup>. The accreditation process is sensitive and flexible enough to create distinctions in the type of accreditation required based on the number of Hague adoption services provided (primary, supervised, and exempt). Similarly, the accreditation process distinguishes whether the services are being provided by an agency or an individual and whether the service provider wishes to seek accreditation vs. temporary accreditation<sup>3</sup>. The authorities in charge received an expected high volume of applicants all at once, but the Council on Accreditation quickly became overwhelmed and there were some delays. Second, there were some difficulties in recruiting and training evaluators and in 2007, the State Department several times made efforts to recruit more personnel. Evaluators are volunteers, who conduct the on-site reviews of the adoption agencies. Although they are not paid, they do receive reimbursement for travel costs. Third, there have been some challenges in interpreting and applying the new standards. Finally, the accreditation process is expensive. In general, the fees can range from US\$ 9,000 to US\$ 15,000. After the initial accreditation, each agency is also required to pay an annual fee of \$800 for monitoring and oversight<sup>4</sup>.

## **The Hague Convention will increase the capacity, accountability and transparency of adoption agencies**

Although some of the agencies providing intercountry adoption services are quite large, a significant percentage is smaller organizations with fewer resources and smaller capacity. Informal data provided by the Council on Accreditation revealed that 197 agencies self-reported that they had an operating budget under \$500,000, while 72 agencies reported that they had an operating budget of over \$500,000. In order to be accredited in the US, non profit agencies must fulfil all the fiscal and administrative requirements considered to be ‘best practice’ in non-profit administration. Specifically, non-profit organizations are required, regardless of operating budget size, to undergo an audit, which many small non-profit organizations may have never done before. Agencies are also required to have written fiscal policies and procedures, must demonstrate strong governance, showing who is on the board of directors, evidence of regular board

meetings, and written board policies. They must have a complaint reporting and quality improvement procedure in place. These measures will help to build the capacity of the agency to provide sound, ethical, transparent services that are monitored on a number of levels.

### **Implications for domestic and intercountry adoptions in the USA**

In 2006, there were close to 20,000 intercountry adoptions in the USA. In the same year, there were 52,000 domestic adoptions within the United States (public and private adoptions). In this context, emphasis should be drawn to the fact that only one-third of the children eligible to be publicly adopted were actually found new homes and some 115,000 children remained in foster care throughout the US awaiting adoption. Besides the numbers, there are also several other important differences between intercountry and domestic adoptions. First, the majority of children adopted from overseas are under five years old and half of them are younger than one year. By comparison, the average age of domestically adopted children is 6.6 years. The average time during which a child waits for an adoption within the US is 37 months while internationally, this waiting time is unknown. Another difference is that in an intercountry adoption, the children rarely have ties to their biological family. In domestic situations, open adoptions are more common and many adoptive children grow up having minimal or some contact with their biological families. In sum, it is clear that parents, who wish to adopt a younger child, without having contact with biological families, in an expedited manner, are more likely to seek intercountry adoption than domestic adoption.

However, there are a couple of factors that might cause some parents to think more about domestic adoptions. With the entry into force of the Hague Convention, it is likely that the cost of intercountry adoptions will increase (hefty fees for application and renewal of accreditation, corrective actions for accreditation, etc). These costs, coupled with a decreasing number of adoptions with other Hague countries could result in higher financial burdens being passed on to the prospective adoptive parents. It is possible therefore that a percentage of families who would ordinarily look to intercountry adoption, will seek out domestic solutions due to costs.

Ideally, this could result in a 'benign' rather than a 'vicious circle': with increased international financial obligations parents increasingly will concentrate on domestic adoption, increasing both the number of domestic solutions and probably reducing the number of children 'available' for international adoption, a prospective win-win situation.

In the near future it is likely that there will continue to be more children needing adoption than families available to take them in the USA. The entry into force of the Hague Convention could, however, alter some adoption patterns. For instance, although there are no current statistics available to chart the number of American children being adopted overseas, the US may work more closely with other countries on both incoming and outgoing adoptions and this could include placing more American children overseas, if domestic homes are not available. This may, however, raise issues of compliance with the principle of subsidiarity of intercountry adoption, as enshrined in article 4 of the HC-1993.

### **Challenges to Hague Implementation**

- High accreditation costs have already prevented some agencies from continuing international adoptions and these costs will continue to spiral without competition and increasing the number of accrediting bodies. The US economy has always thrived on competition, and clearly other accrediting options need to be found to lower the upfront and ongoing accreditation costs for the adoption services providers.
- Similarly, with the increase in required agency capacity, there will also be an increase in administrative costs for agencies making it very difficult for some of the smaller agencies to even survive. The latter will have a harder time competing and surviving under the Hague Convention. As they close, there will be a void in some of the personal services that only a small agency is able to provide.
- While the added levels of bureaucracy are put in place to protect the integrity of the process, they also add more work, and ultimately more time between the start of the process and the finalization of the adoption. Although the Hague Convention aims to protect children, it

could potentially prolong the process of placing children.

- Although the Hague Convention could have long-term positive effects on the domestic adoption system (see *Editorial*), the current system is very used to the status quo. The notion of a Central Authority and the necessity of raising the bar on adoption requirements in line with the Hague Convention will likely cause a lot of resentment and confusion and possibly resistance at first. It will take a long time to get people thinking about adoption whether it is international or domestic in the same way, using the same rules, criteria and procedures. While there are some challenges to be aware of, the Hague Adoption Convention's benefits to the receiving country far outweigh its challenges.

Sources:

<sup>1</sup> Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons and Intercountry Adoption—Preservation of Convention Records; Final

Rules; Federal Register Vol. 71, N° 31, 15, 2006, 22 CFR Parts 96, 97, and 8, <http://www.coanet.org/files/HagueFinalRule.pdf>.

Note from the ISS/IRC: It is important that an accreditation system take account of competences in the services provided and their adequacy with the interests and needs of the children. In particular, the accreditation process should take account of psychosocial criteria in the recruitment of multidisciplinary staff, and in relation to the services provided by the adoption agency, i.e. preparation of PAPs, intervention in the country of origin, post-adoption support, etc.

<sup>2</sup> Ibid

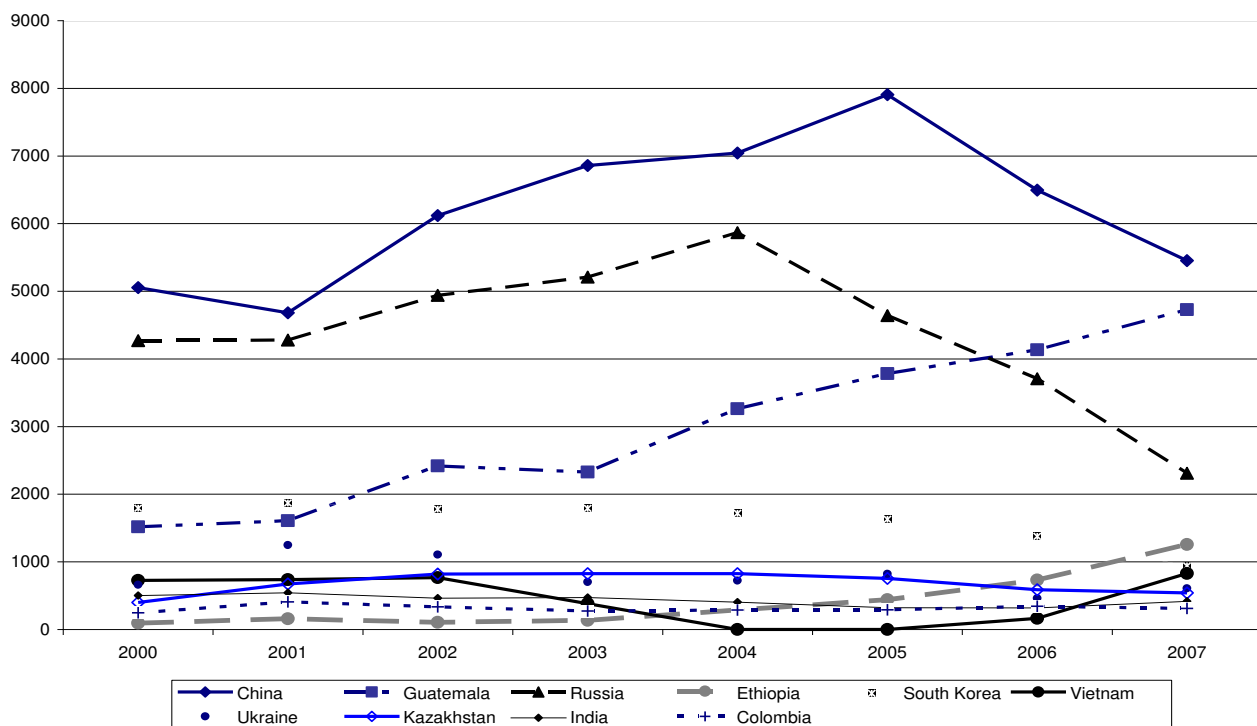
<sup>3</sup> Council of Accreditation, *Hague Accreditation/Approval – Self-paced training*, <http://www.coanet.org/Mod1/player.html>.

<sup>4</sup> Council of Accreditation, <http://www.coanet.org>.

## INTERDISCIPLINARY APPROACH

### Statistical overview of the main countries of origin of children adopted in the United States between 2000 and 2007

*China remains the first country of origin of children adopted in the USA. However, the situation is progressing rapidly and countries, which were quasi absent from the intercountry adoption 'scene' in 2000, such as Ethiopia, are now taking increasing importance.*



**T**he background of the children adopted in the USA is developing rapidly. This is reflected in the above-included graph, which traces the developments in the most important countries for the USA between 2000 and 2007. Thus, some very important States for the USA have experienced a radical decrease in the number of adoptions over this period. In parallel, others have appeared in the leading group, whilst the number of their adoptions was still very limited in 2000. In addition, it appears that the number of countries of origin has noticeably increased in the last few years. Available statistics, however, are not sufficiently detailed to prove this.

These fluctuations reflect the development of the needs, legislation and requirements of countries of origin and the existing risks linked to intercountry adoption in these countries, as well as the demand in receiving countries. However, the flows are unable to find a balance, and the global number of American intercountry adoptions has had a tendency to decrease in the last few years: after having reached record highs of 22,884 in 2004 and 22,728 in 2005, the country has experienced a decrease of approximately 15% in two years, and has 'only' carried out 19,613 intercountry adoptions in 2007.

These statistics are impressive by the importance of their numbers. However, the trends that emanate are comparable to those experienced by other receiving countries, except in relation to Guatemala. Indeed, an important number of countries have suspended adoptions with this country, due to the important risks of trafficking which still remained.

### **Radical decrease in adoptions with China and Russia**

In more details, China is the first country of origin of children adopted in the USA throughout the period under examination. However, after having undertaken a record high of 7,906 adoptions with the USA in 2005, adoptions between the two countries have decreased by over 30% in two years. This development follows the entry into force of the Hague Convention on Intercountry Adoption in early 2006, and new requirements in relation to prospective adoptive parents at the start of the following year.

Russia, which was the second country of origin of children adopted in the USA in 2000 and now finds itself in third position, has followed a trend similar to that of China: intercountry adoptions with this country increased until 2004, and then dramatically decreased due to the entry into force of new accreditation criteria affecting adoption bodies.

### **Constant but impressive progress of adoptions with Guatemala and Ethiopia**

On the other hand, Guatemala has experienced an important and continuous progress throughout the assessed period, thereby becoming the second country of origin of children adopted in the USA in 2006. Adoptions with this country may however decrease rapidly with the entry into force of the 1993 Hague Convention on its territory and in the USA. Indeed, Guatemala is currently reforming its legislative system in order to better secure the intercountry adoption process.

Similarly to Guatemala, Ethiopia has also experienced a noticeable progress in the number of intercountry adoptions undertaken with the USA. Whereas the country would only carry some adoptions every year with the USA until 2003, it has now completed 441 in 2005, 732 in 2006 and 1,255 in 2007, thereby inducing an increase of approximately 300% in three years. This striking increase in the number of intercountry adoptions with Ethiopia – similarly observed in other receiving country – should continue in the next years should Ethiopia not initiate a legislative reform. It also reflects a particular tense situation in intercountry adoption, prompting receiving country to turn more towards African countries, where there is an extremely high number of orphans, and where intercountry adoption still remains developed to a very limited extent.

### **Slow but constant decrease in the number of adoptions with South Korea**

South Korea – the first country of origin of children adopted in the USA for many years – has experienced a slow, but constant, decrease for some years. Such a development is a sign that the alternative care of children is increasingly developing at domestic level in this country. Also in Asia, Vietnam is experiencing a renewed increase in the number of intercountry adoptions after

an approximately two-year suspension in 2004 and 2005. However, adoptions with this country still remain below 1,000 per year.

In relation to the other countries represented on the graph and carrying out, on average, under 1,000 adoptions per year

(Kazakhstan, Ukraine, Colombia and India), the situation has been more or less stable since 2000, despite a temporary increase in Ukraine in 2001 and 2002. However, in this country, the situation remains quite fragile given the political instability which repeatedly weakens it.

#### FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **France:** *Les échecs dans la situation adoptive: reconnaissance soin et prévention. Fatalité ou singularité?* [Breakdowns in the adoptive situation: Recognition, care and prevention. Fatality or uniqueness?] COPES, 26-28 May 2008 and 23-25 June 2008 (6 days in two modules). This training aims to address topics, such as the difficulties, the risk factors arising from the adoptive relationship and the necessary measures to monitor families and adopted children in crisis situations. For further information: COPES; Tel: +33 1 53 68 93 40; E-mail: [copes-formation@wanadoo.fr](mailto:copes-formation@wanadoo.fr); <http://www.lecopes.org>.

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*Table of contents of the Bulletins 1997 - 2008:*

[www.iss-ssi.org/Resource\\_Centre/Resource\\_Center\\_EN/About\\_ISS-IRC/about\\_iss-irc.html](http://www.iss-ssi.org/Resource_Centre/Resource_Center_EN/About_ISS-IRC/about_iss-irc.html). See Activities.

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