



## Fact Sheet N° 34

### Intercountry Adoption

#### ADOPTION BETWEEN HAGUE AND NON HAGUE STATE PARTIES

The 1993 Hague Convention on the Protection of Children and Co-operation in matters of intercountry adoption (HC-1993), is currently in force in 71 countries.\* Numerous important countries of origin or receiving countries in matters of adoption – Russia, Ukraine, Haiti, Vietnam, the United States, to quote only a few – have not yet ratified it. This situation is obviously not without consequences for the procedures in matters of intercountry adoption, which differ depending upon whether or not countries of origin and receiving countries have ratified the HC - 1993.

##### **The HC-1993 is a precious tool for the smooth running of adoption procedures**

In principle, when two States involved in an adoption procedure have ratified the HC-1993, the competent authorities have at their disposal a precious tool that allows them to obtain the necessary information for the smooth working of procedures in both countries. On the other hand, when one of the States involved is not a Party to the Convention, it can be difficult to identify the processes that lead up to the adoption decision.

##### **Hague adoptions offer the soundest guarantees for the child's best interests**

As seen in Fact Sheet n° 34, the HC-1993 enshrines the fundamental and procedural principles necessary to protect the best interests and the rights of children in matters of intercountry adoption. Amongst its best contributions, the HC-1993 invites States Parties to establish a Central Authority (article 6, para. 1) which assumes, in particular, the role of privileged mediator at the international level, and of co-ordinator at the national level. The introduction of such a high-ranking and unique intermediary makes it possible to clarify advantageously the intercountry

adoption procedure and thus to encourage international cooperation, so as to combat more effectively the trafficking of children.

This cooperation between receiving States and States of origin is a real pillar of the system implemented by the HC-1993, establishing joint responsibility of the two countries involved in an intercountry adoption procedure. This cooperation also implies that an adoption issued in the country of origin is automatically recognized in the receiving country.

##### **Less effective cooperation in the framework of “non-Hague adoptions”**

Such cooperation is much more limited in adoption procedures involving a State, which is not a Party to the Convention. In this case, the role of the authorities in the receiving country is limited to preparing the file of the prospective adoptive parents. For their part, the authorities of the country of origin ascertain the adoptability of children and take on the task of matching. However, it is in no way a matter of shared responsibility between the two States. Furthermore, it is often difficult to identify the authorities responsible for the procedures and their respective responsibilities in a country that is not a Party

to the Convention. Moreover, the recognition by the receiving country of an adoption issued by the country of origin is not automatic and is carried out in accordance with the usual rules of private international law.

However, States which are not Parties to the Convention have duties in matters of child protection, for they have ratified the 1989 United Nations Convention on the Rights of the Child, which makes it mandatory to respect the fundamental principles applicable in the framework of intercountry adoption, in particular, those mentioned in its article 21. This article places the interests of the child at the centre of procedures. The importance of placing the child and his/her needs at the heart of decisions that concern him is therefore valid in all circumstances.

Moreover, by virtue of the principle of non-discrimination firmly enshrined in the CRC, the signatory States of the HC-1993 should apply these fundamental principles to all adoptions, including those involving a State that is not a Party to the Convention. The Special Commission for the practical operation of the HC – 1993, convened by the Hague Conference on Private International Law from 28 November to 1 December 2000, has itself made this recommendation. From this perspective, the States concerned should be particularly attentive to the rules that provide for the subsidiarity of adoption, the evaluation of the child's adoptability, the fight against undue material gains, cooperation between authorities of the countries of origin and the receiving countries, the accreditation of intermediaries in adoption, the provision of

information to all parties concerned, the ascertainment of the abilities of prospective adoptive parents and the prohibition of all contact between the latter and the parents or guardians of the child before the competent authorities have established the adoptability of the child and the suitability of the prospective adoptive parents.

### **Intercountry adoptions in countries parties to the Convention should be promoted**

In practice, these considerations are unfortunately not always taken into account. Similarly, due to a lack of means, some States Parties to the Convention do not rigorously apply all these fundamental and procedural principles. The country of origin's selection of children should therefore operate on a case-by-case basis, depending upon the real application of the ethical principles to adoption in the countries of origin. The latter should also be able to choose the receiving States of their children using the same criteria. Nonetheless, the interests and rights of children will have a better chance of being protected when the receiving States and States of origin have ratified and apply the HC-1993, even if merely thanks to the simplification and transparency of the procedures. In the interests of children, it is thus strongly recommended that a maximum number of States ratify or accede to this Convention.

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#### **For further information:**

\* List of Contracting States available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69)

Permanent Bureau of the Hague Conference on Private International Law, *Report and conclusion of 2<sup>nd</sup> special commission on the practical operation of the Hague Convention of 29 May 1993 on protection of children and co-operation in respect of inter-country adoption*, The Hague, 17-23 September 2005, 61 pp. Available from [http://hcch.e-vision.nl/upload/wop/adop2005\\_rpt-e.pdf](http://hcch.e-vision.nl/upload/wop/adop2005_rpt-e.pdf)

Buck, Trevor. *International Child Law*. Routledge Cavendish, 2005

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