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EDITORIAL

Cooperation and intercountry adoption in perspective

Developments in intercountry adoption and its implementation in countries of origin may sometimes share similarities with development programmes, thus creating a new dynamic whilst also raising important issues. Although conventional texts highlight the need for genuine cooperation among countries, the meaning and the scope of the latter still remain to be defined in a context which experiences constant change.

The evolution of intercountry adoption – in its understanding and its practice – benefits from the progress inherent to our internationalised society. Transport and communications contribute to bringing countries of origin and receiving countries closer, thus encouraging the spirit of cooperation which supports international texts governing adoption, whether the United Nations Convention on the Rights of the Child (CRC) or the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (HC-1993). These means should enable to strengthen, even further, cooperation amongst States, in the increasingly sensitive and changing field of intercountry adoption.

Cooperation is a means of safeguarding the best interests of children

Cooperation: The founding principle

In its preparatory report on a new convention on intercountry adoption, the Permanent Bureau of The Hague Conference already emphasised *the need for cooperation between the children's States of origin and those receiving them. Efficient working relations, based on mutual respect and compliance with strict ethics and strong professional standards, would contribute to building relations of confidence between such countries*[1]. This concern has been recognised so widely that it has even been incorporated into the very title of the HC-1993.

This concern to promote cooperation, so as to better achieve the goals set, can also be found in the CRC, which includes numerous references to it (articles 4, 11, 21, 23, 24, 28, 35, etc) and even dedicates a specific article to it (article 45). Article 10 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography also identifies international cooperation as an essential tool in combatting these issues. The HC-1993, for its part, provides Contracting States with the possibility to conclude special agreements designed to encourage its application and thereby strengthen cooperation (article 39, para. 2). Finally, in its Recommendation 1443, in 2000, the Parliamentary Assembly of the Council of Europe called on the Committee of Ministers "*to give a clear indication of its political will to ensure that children's rights are respected, by immediately inviting the Member States to develop the bilateral and multilateral cooperation essential for the Convention's effective implementation.*"[2]

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Which cooperation?

In its broader meaning, cooperation connects with the field of development: the CRC views it as a means to overcome the lack of resources in the poorest countries[3]. It implies a genuine involvement in achieving progress in matters of children's rights in countries of origin. The prevention of abandonment, the support to families of origin, the fight against long-term institutionalisation of children, the improvement of living conditions in residential institutions, the identification and implementation of a permanent family life plan for each child in placement, the development of domestic family solutions (adoption, foster care) are just as many areas that may be included in a broad definition of cooperation.

From a practical point of view, this may include organising visits among central authorities of receiving countries and countries of origin; supervising and supporting the requests from intermediaries wishing to develop activities in one country or another; encouraging the training of local staff; combining development programmes with intercountry adoption (for example, by supporting child protection institutions), even though the offer to provide intercountry cooperation does obviously not have to be linked to the carrying out of a specific number of adoptions by nationals of the State offering that cooperation.

The establishment of structures, such as a Central Authority, is not always an easy matter and requires time and resources. Thus, receiving countries could become more involved and support countries of origin which must establish – sometimes starting from nothing – a Central Authority, which has the available staff and resources to enable it to fulfil its mission efficiently. Real support would enable to ensure the establishment of a reliable system which could efficiently apply the basic principles of the HC-1993.

The system put in place by the HC-1993 is based upon the joint responsibility of States of origin and receiving States. Therefore, the conclusions of the Special Commission, which was held in The Hague in September 2005, stress "*the importance of enhancing cooperation and exchange of information between Central Authorities, public authorities, accredited bodies and any bodies and persons under article 22(2), notably with a view to promoting good practice and to ensuring that illegal and unethical procedures prior to the adoption of a child are effectively and systematically combatted*"[4].

Cooperation is therefore a means of safeguarding the best interests of children, which materialise when determining the role of accredited bodies in the adoption procedure. As for matching, it perhaps materialises best the spirit of cooperation sought by the HC-1993. By submitting the files of children and of prospective adoptive parents to each other, and by both determining whether the matching is suitable, States become jointly responsible for the reliability of the procedure and for safeguarding the interests of the individuals involved.

A philosophy…

The above considerations reflect that the concept of cooperation covers such a wide spectrum that it may sometimes become difficult to tackle. Of course, receiving States cannot respond to all the needs associated with the establishment of a national child protection policy in countries of origin. However, beyond these very practical implications, cooperation must essentially be understood as a general principle. What matters to the practitioner is keeping in mind that what is decided in a receiving country will have implications for the country of origin, and that a henceforth easier dialogue should help to cooperate in making the right decision.

The IRC team

[1] Preparatory report on a new convention on intercountry cooperation and the protection of children in matters of interstate adoption; Permanent Bureau of The Hague Conference on Private International Law, November 1989, pp. 1-2.
[2] Recommendation 1443 *International adoption: respecting children's rights,* Council of Europe Parliamentary Assembly, 2000.
[3] The Preamble also includes: 'Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries.'
[4] Conclusions and Recommendations of the second meeting of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on the protection of children and cooperation in respect of intercountry adoption, 17 - 23 September 2005, para. 10.

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