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▪ **SPECIAL ISSUE** ▪

**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**

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.

The 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 homes 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 document¹ 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 Convention² – 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,
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Sources:

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

² 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.