

ADOPTION ADVOCATE

April 2018

NO.
118

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Reflection: Ten Years After the U.S. Joins the Hague Convention

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The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, commonly referred to as the Hague Convention on Adoption, went into force internationally in participating countries on May 1, 1995. The U.S., however, would not implement the multilateral treaty for another 13 years. This *Adoption Advocate* is a reflection upon the U.S. implementation of the Hague Convention over the last decade, and concludes with suggestions for changes in the next ten years.

Background of the Convention

The current Hague Convention is not the first treaty on intercountry adoption established by the Permanent Bureau of the Hague Conference on private international law. A previous Convention, commonly referred to as The 1965 Hague Adoption Convention, was widely recognized as not having an adequate framework to address issues pertinent to intercountry adoption.¹ The United States, like most other countries, did not ratify the 1965 Hague Adoption Convention.

¹ Parra-Aranguren, G. (1993). Explanatory report on the convention on protection of children and co-operation in respect of intercountry adoption. Retrieved from <http://www.hcch.net/upload/expl33e.pdf>.



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In 1998, the sixteenth session of the Hague Conference called for a new international treaty on adoption, laying the groundwork for a new Special Commission to form the current Adoption Convention.²

The current Convention was drafted for implementation by the Hague Conference on Private International Law on May 29, 1993. Individual countries, including countries that are not members of the Hague Conference, participated in the formation of the Convention and all countries were able to be contracting parties to the treaty. As of March 2018, 98 countries were contracting parties to the Hague Convention.³

History of the Convention in the United States

The Hague Convention on Adoption went into force in the United States on April 1, 2008, following a series of legal and procedural steps⁴:

Convention Signed by the United States	March 31, 1993
President transmitted Convention to U.S. Senate	June 11, 1998
Senate gave advice and consent to ratification	September 20, 2000
<i>Intercountry Adoption Act of 2000</i> signed into law	October 6, 2000
Dept. of State publishes proposed rules for accreditation	September 15, 2003
Dept. of State publishes final rule for accreditation	February 15, 2006
United States ratifies the Hague Convention	December 12, 2007

Following these steps, the Hague Convention went into effect in April 2008. Years later, Congress passed the *Universal Accreditation Act of 2012*, requiring that essentially all intercountry adoptions follow the requirements of the Hague Convention and the U.S. implementing regulations.

What is the Purpose of the Hague Convention?

The Hague Convention's pre-amble states that the purpose of the Convention is to "...take measures to ensure that intercountry adoptions are made in the best interests of the child ... and to prevent the abduction, the sale of, or traffic in children."⁵

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² Extract: Report on Intercountry Adoption, by J.H.A. van Loon (Prel. Doc. No 1 of April 1990) Retrieved from https://assets.hcch.net/upload/adoption_rpt1990vloon.pdf

³ Status Table (2018). Retrieved from <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>

⁴ Federal Register: Volume 71, No. 31

⁵ Hague Conference on Private International Law. (1993). Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.

The Intercountry Adoption Act of 2000 (IAA), was the legislation that set the stage for the United States to not just be a signatory to the Convention but a full Contracting Party. The IAA states its three purposes are to allow the U.S. to implement the Hague Convention, to protect children and parents, and to improve the ability for the U.S. federal government to assist with adoptions.⁶

Seeking Families for Children: The Subsidiarity Principle

The concept of subsidiarity, often referred to as “the principle of subsidiarity,” is of central importance within the text of the Hague Convention itself, as well as in discussion and debates about countries’ intercountry adoption policies. In essence, the subsidiarity principle is this concept that children ought to remain in their family of origin when possible, and when not possible, kinship placements, followed by domestic adoption options, should be considered before an intercountry placement.

Some mistakenly define the concept such that intercountry adoption should be the last resort. Obviously, such a stance would mean that children are better in orphanages, long-term foster care, or living on the streets—all of which are definitively shown by social scientists to be far worse for children on nearly every well-being outcome. The Hague Conference on Private International Law states that, “... institutional care should be considered a last resort for a child in need of a family.”⁷

Nearly all child welfare advocates agree that reunification with birth families, kinship care, and domestic adoption should all be acknowledged as important ways of providing families for children; in fact, according to the Hague Convention, these methods should all be considered prior to intercountry adoption. The current inability of these (preferred) options to meet the needs of children is reason enough to support intercountry adoption. Critics of intercountry adoption state it as an either-or situation: we either invest in family preservation and reunification, or we allow for intercountry adoption. A more holistic approach is one that recognizes we need all the tools available on the continuum of care options as we seek to find families for children. We can concurrently strengthen our commitment to these domestic options while also strengthening intercountry adoption systems.

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⁶ Pub. L. 106-279 Intercountry Adoption Act of 2000.

⁷ Hague Conference on Private International Law. (2012). The 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption: Information Brochure.

As we do so, the question becomes how long should children wait for “more preferred” options, when the opportunity to join a family through intercountry adoption is immediately available? Children need families and they should not wait the entirety of their childhood to find them. We learned the importance of achieving permanency for children in the United States over many decades of providing child welfare services, when we eventually moved to a system where we are able to concurrently plan for children’s placement needs: pursuing reunification while simultaneously considering the viability of kinship and adoptive placement. In countries where there are not families waiting on a domestic placement, there should be little or no wait time for a child to be placed for intercountry adoption, if reunification with the biological parents or kinship placements are not timely, viable options.

Is the Hague Convention Working?

The only appropriate reflection upon the last ten years of intercountry adoption in the United States is that, on the whole, we have woefully failed to meet the needs of children to find families. Government officials, adoption professionals, and child welfare advocates have collectively failed to achieve the hope and promise offered by the Hague Convention on Intercountry Adoption.

Though the last decade has given us tens of thousands of individual examples of immeasurably positive, life-changing adoptive placements, they are far too few given the millions of orphans worldwide, and given the continued decline in adoptive placements year after year. Had the number of adoptive placements from the early 2000s stayed steady, well over 100,000 more children would be living with families, instead of in institutions or deceased.

It is tempting to say that the Hague Convention on Adoption is responsible for this decline. While aspects of the Hague Convention may have contributed to this, it is not fair to place the blame for this decline solely upon the Hague Convention itself. The Hague Convention offers an opportunity for better cooperation between nations and the possibility of more systematic processes to serve children effectively. The problem primarily rests in its implementation.

A successful, effective implementation of the Hague Convention has been a missed opportunity in the United States. Instead of focusing the blame on the Hague Convention, we ought to look instead at how the United States has chosen to interpret and implement the Hague Convention. We also ought to examine the evidence we have related to how well the U.S.

Central Authority has utilized its role to increase opportunities for more children to find parents.

Are Adoptions Safer?

Following implementation of the Hague Convention, intercountry adoptions in the U.S. are now said to have more safeguards than they did previously. But what do we mean by safeguards?

We cannot mean that children are safer. Any consideration for the conditions of children will quickly lead us to reject that idea. Children living in orphanages are far more susceptible to childhood mortality, child trafficking, child abuse, and child neglect.⁸ Even children living in long-term foster care have been shown to have worse well-being outcomes than children in permanent placements.⁹

What is meant when we casually say adoptions are safer is not that children are safer, but rather that adults are safer; we mean that the process is more trustworthy. And of course, this is a good thing; adoption processes can and should be trustworthy. In this regard, the so-called safeguards are working well.

The problem is that, along with saying adoptions are safer, child welfare advocates also want to say children are safer, and at the present time we cannot do so.

While maintaining safeguards for the *adoption process*, we must also ensure we are proactively seeking safeguards for *children*. So long as there are children who are not able to reunite with their birth families or find families through kinship or domestic adoption, we must continue to advocate for intercountry adoption. We cannot accept the false choice of picking between adoptions being either plentiful or legitimate.

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Looking Ahead to the Next Ten Years

With more orphaned children in the world than ever before, and fewer children finding families through intercountry adoption each year, there are numerous ways that all involved in child welfare can improve their work to better serve children in need. The United States is just one of nearly 100 countries participating in the Hague Convention on

⁸ Balding, C., Feng, Y., & Atashband, A. (2015). Who wants to adopt and who wants to be adopted: a sample of American families and sub-Saharan African orphans. *Health Policy and Planning*, 30, 1320-1333.

⁹ Holloway, J. (1997). Outcome in placements for adoption or long term fostering. *Archives of Disease in Childhood*, 76(3), 227-230.

Triseliotis, J. (2002). Long-term foster care or adoption? The evidence examined. *Child & Family Social Work*, 7(1), 23-33.

Adoption. Central Authorities around the world bear a responsibility to work cooperatively with other nations on behalf of children and families. The Hague Permanent Bureau can and should do more to increase its Intercountry Adoption Technical Assistance Programme (ICATAP) to assist countries implementing, and maintaining compliance with, the Hague Convention.

What Can U.S. Adoption Service Providers Do in the Next Decade?

Continue finding and assisting families for orphaned children.

As the number of intercountry adoptions declines, more agencies are discontinuing intercountry services. It is essential, for the future of our field, that competent service providers continue serving adoptive families.

Identify and nurture new country programs.

Scores of countries still do not participate in intercountry adoption. Many other nations only allow a handful of their waiting and eligible children to find families through intercountry adoption. The efforts of Adoption Service Providers (ASPs) to pioneer new programs and work in new countries will provide opportunities for more children to have families.

Foster collaboration.

With adoptions becoming more difficult, greater collaboration and partnership with other ASPs is crucial, including sharing of information, best practices, and providing referrals for resources and support.¹⁰

Increase knowledge of regulatory and accreditation standards.

Over the last few years, there has been an unmistakable shift as regulatory authorities push for ASPs to comply with new policies and reporting requirements. It is incumbent upon every ASP to have a thorough knowledge of the regulatory standards, and ensure compliance with these requirements.

Advocate for change.

ASPs can connect with stakeholders, including staff, adoptive families, and others to seek legislative change to advance intercountry adoption. National Council For Adoption has published a list of 2018 legislative priorities, some of which impact intercountry adoption.¹¹

¹⁰ Semar, J. (2015). Reinventing intercountry adoption. *Adoption Advocate* No. 85. Retrieved from <http://www.adoptioncouncil.org/publications/2015/07/adoption-advocate-no-85>

¹¹ Bayles, E., Hanlon, R., Johnson, C. (2018). NCFAs legislative priorities for 2018. *Adoption Advocate* No. 115. Retrieved from <http://www.adoptioncouncil.org/publications/2018/01/adoption-advocate-no-115>

What Can the U.S. Central Authority Do in the Next Decade?

Change the current narrative.

Instead of presenting intercountry adoption as a dysfunctional and problematic institution, present intercountry adoption as what it is: a profoundly beneficial way to help children in need of parents. When discussing concerns about corruption or fraud, the U.S. Department of State should accurately present these cases as limited and rare, while simultaneously working with Central Authorities and the professional adoption community to prevent fraud.

Partner with ASPs and other stakeholders.

Utilizing the knowledge and experience of adoption professionals can advance the work of the Central Authority by furthering understanding of country processes, identifying country-specific concerns to address, and identifying ways to improve adoption services to families and children. In addition to its own staff, the Office of Children's Issues can work with accrediting entities to establish a positive, collaborative dynamic with ASPs.

Set measurable goals with foreign Central Authorities to increase adoptions.

More pro-active engagement with foreign Central Authorities is needed to help find additional opportunities for children waiting for a permanent family. While this cannot be accomplished solely by the U.S. Central Authority, the United States can take the lead on forging new, productive relationships that help establish trustworthy processes, and faster timeframes, for children to find parents.

Increase training and oversight of Dept. of State's foreign service officers.

In many cases, adoptive families and ASPs interact with Department of State staff who are not part of the Office of Children's Issues. While some serve children and families well, others lack the education and training to understand how adoption processes work as well as the importance of intercountry adoption as a means of helping parentless children find families.

Increase efficiencies with adoption processing.

Adoption steps have proliferated and timeframes have increased since 2008, both of which prolong the institutionalization of children. Reducing and synchronizing steps (and encouraging foreign Central Authorities to do the same) will reduce negative child well-being outcomes, including malnourishment and developmental delays.

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Work to support outgoing adoptions.

The U.S. Department of State should increase its outreach to other Central Authorities on behalf of the nearly 118,000 children in the United States in need of a family.

Develop practical processes for U.S. citizens to adopt relatives through intercountry adoption.

The current framework for intercountry adoption does not differ for families adopting relatives through intercountry adoption. Families seeking to adopt relatives are required to use an accredited adoption service provider, but these providers report they are often unable to assist families with the current enforcement of accreditation standards. ASPs have asked the State Department for years to revise the standards for relative adoptions, including waiving some requirements that delay placements. Until this is resolved, families—and ultimately parentless children—are stuck with few or no options.

Conclusion

Though understanding of the growing chorus of voices calling for the United States to formally denounce and withdraw from the Hague Convention, National Council For Adoption does not join our voice to that cause. We continue to believe that had the United States failed to join the Convention, many countries would not have remained bilateral partners with the United States. We also recognize the improvement in intercountry adoption processes, including more transparency, greater uniformity in practice standards, and a higher bar for ASPs to meet in their provision of services.

At the same time, we are keenly aware that the improvements made over the last ten years have been realized almost exclusively by adults—while children in need of parents continue to wait in institutions. As stated earlier, the IAA had three purposes: to implement the Hague Convention, to protect children and parents, and to improve the ability for the U.S. federal government to assist with adoptions. While we have joined the Convention and put measures in place to protect parents, we still have much work to do in protecting children and assisting with adoption processes. The collective failure of child welfare advocates and officials to have fully realized all of these goals comes at a high price paid by children in need of families. We cannot let another ten years go by without significant progress toward reaching these goals.

ABOUT THE AUTHOR

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Prior to joining NCFA, Ryan worked for 13 years as an adoption professional at a child-placing agency. Ryan holds a B.A., a M.A. in Liberal Arts, a M.S. in Nonprofit Management, and a Master of Social Work degree.



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