



Convention of 29 May 1993 on Protection of Children and Cooperation towards Inter country adoption and Girl trafficking with respect to Human Rights

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Abstract: In this paper, it is extensively deal with the history and background of the convention and purpose and objective of the convention and the weakness or the drawback of these conventions and also few suggestions which will help in understanding my project in a better way. It is said that Safeguards to makes sure that all intercountry adoptions are in the best interests of the child and respect their human rights, a system in place of cooperation among countries to guarantee that these safeguards are respected, and to prevent the abduction, the sale of, or traffic in children. The researcher had the obligation of using principles, guidelines, statutes and domestic legislations as primary sources of data. As part of secondary source of data the researcher has gone through the articles, reports, reviews and earlier researches and internet databases

Key words: convention, Human Rights, Protection of Children

Introduction

The multilateral treaty is the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. It was approved by 66 nations on May 29, 1993 at The Hague. It built directly on the UN Convention on the Rights of the Child, seeking to protect all parties to international adoptions and to prevent an international traffic in children. The United States signed the Convention in 1994, and it was passed by Congress in 2000. The Hague Convention aims to protect children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. To do this, the Hague Convention puts:

Mode of Research: The method adopted by me in doing my project is a doctrinaire methodology, and blue book method of citing bibliography. The researcher have also taken the help of various books that are in library and the

help of internet sources which will help me in doing my project successfully.

Hypothesis: The Hague Convention of Intercountry adoptions was successful to some extent bringing all the convention parties together having common set of principles guided but, it ultimately failed to address few issues regarding the intercountry adoptions and this convention lacks clear and specific guidelines and the convention is vague and it did not defined many words which lacks clarity and it contains no effective enforcement strategies sanctions to enforce compliance.

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History of the Hague Convention on intercountry Adoption:

Intercountry adoption began developing on an extensive scale at the end of World War II and expanded after the Korean War, in response to the abundance of orphaned or abandoned children¹.

But this intercountry adoption has led to the drastic child trafficking kidnapping and has led international black market for the selling of babies². In the late 1980's, the United Nations initiated multilateral discussions to develop a standard framework for adoption³. The UN General Assembly adopted the Convention on the Rights of the Child (CRC) in 1989, which distinguished child trafficking from legitimate adoptions⁴.

The Seventeenth Session of the Hague Convention expanded on the general principals of the United Nation's CRC with the Hague Convention which was adopted on May 29, 1993 in the Netherlands.⁵ In contrast with the CRC's preferences for domestic solutions which means placing a child in the foster care or the institutional care the Hague Convention, in keeping with the "best interests of the child" standard, maintains that placing the child in a "family environment" is the ultimate objective, which may be better served by a foreign adoptive family than by a domestic orphanage⁶.

Under Article 2(1) of the Hague Convention, a child need not be a national of the Contracting State to be adoptable, only 'habitually resident' in that Contracting State. However, if a child is a national of a Contracting State but not habitually resident in a Contracting State, the Hague Convention will not apply to that child⁷.

The Hague Convention, therefore, only applies to refugee and internationally displaced children where the child and the prospective adoptive parents habitually reside in different Contracting States.³⁴

Aim of the Convention on Protection of Children and Co-Operation in respect of intercountry Adoption⁸ :

For the establishment of a system of cooperation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children and also to secure the recognition of adoptions that are made according to the rules that has been prescribed according to the convention⁹. The international community has acknowledged the importance of international adoption and is striving toward the creation of a more efficient, stable, and ethical system through the cooperation of member states¹⁰. Convention applies to all the countries who are parties to the convention. Adopting a child from the convention country is similar to the ways of adopting a child from the country who is not a party to the convention but there are few differences where a country party and where a country is not differ.

Hague vs. Non- Hague Process¹¹

In U.S(party to the convention) for the adoption of children from the other countries

U.S for the Adoption of children from both the countries who were party to the convention who were not makes two conditions important.



They are as follows:

- The suitability of the adoptive Parents
- Whether the child's adoption meets the eligibility requirements for the immigration of the adopted child to the United States of America.

There are lot of basic differences between the convention countries and countries who are not a party to the convention willing to adopt a child differs in the Adoption service provider, Visa type, Adoption Service contract, Parents eligibility in adoption of a child , Adoption fees, Provisional Petition approval Child's eligibility, child's Medical records and etc¹².

These above stated conditions may differ state to state but according to the convention the party's adopting a child from the country who is a party to the convention grants more protection and safeguards when compared to the non-convention party. The convention mainly aims at prevention of Trafficking and abduction of children and illegal sale of children¹³. The convention works for the interests of intercountry child adoption ensuring that the children may been taken care by the parties who were willing to adopt them and they are recognized by the convention¹⁴.

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What is Inter-Country Adoption?

Inter-Country Adoption means

Adoption of a child from some other country through Permanent Legal means , and Making the adopted child to live with the guardian who had adopted him. In short It can be said that there is transfer of parental rights and responsibilities from the child's birth parents to the ones who adopted him or the guardians¹⁶.

The case of children separated from their families and communities during war or natural disasters merits special mention. Family tracing should be the first priority and intercountry adoption should only be envisaged for a child once these tracing efforts have proved fruitless, and stable in-country solutions are not available. This position is shared by UNICEF, UNHCR, the UN Committee on the Rights of the Child, the Hague Conference on Private International Law, the International Committee of the Red Cross, and international NGOs such as the Save the Children Alliance and International Social Service¹⁷.

If you adopt a child from a country that is party to the Convention (Convention countries), your adoption has additional protections as well as some added requirements¹⁸. One of the most important protections is that your adoption agency or service provider must be accredited to conduct intercountry adoptions¹⁹. The standards for accreditation ensure that your agency is qualified to provide services²⁰. The Department of State has designated two accrediting entities to perform the accreditation functions: (1) the Council on Accreditation and (2) the Colorado Department of Human Services. An important new Convention requirement



for you is that adoptive parents must participate in at least ten hours of pre-adoption training before traveling overseas to complete an adoption²¹.

Rights that are covered under the convention are as follows²²:

- Determination of the child's place of residence
- Right to take the child for a limited time
- Attribution, exercise, termination, or restriction of parental responsibility
- Guardianship
- Representation of or assistance for the child
- Placement in foster care or institutional care
- Supervision by a public authority
- Administration of the child's property

Rights that are not covered under the convention²³:

- Establishment of a parent-child relationship
- Adoption (this is covered by the 1993 Convention)
- Name and forenames of the child
- Emancipation
- Maintenance and support obligations
- Social security
- General public rights of education or health
- Criminal offenses committed by the child
- Rights of asylum and immigration

Duties of Country of Origin :

Under Article 4 of the Hague Convention, an adoption can only take place if competent authorities of the State of origin:

Determine that the child is adoptable (The term "Adoptable" is undefined, however Parra-Aranguren in his commentary to the Hague convention states that "adoptable" is in accordance with legal, psychological, social and cultural factors²⁴.

- Determine that an inter-country adoption is in the child's best interest²⁵
- Provide counseling to parties who must consent regarding the effects of the adoption, including possible termination of parental rights
- Assure that consent was given freely and legally, was not induced by payment, and was given by mother, if required, only after birth of the child²⁶
- Provide age-appropriate counseling to the child and obtain consent of the child, if required²⁷

Duties of Receiving Country (Adopting Country)

- Determine that the prospective adopting parents are eligible and suitable to adopt²⁸
- Provide appropriate counseling to the prospective adopting parents²⁹
- Determine that the child is or will be authorized to enter and reside permanently in the receiving country³⁰

Problems arising from the Hague Convention³¹:

The Hague convention was the first convention for bringing the intercountry



adoption which gives an positive opportunity for abandoned and orphaned children in bringing many nations together to address on this single issue.

The Convention also brought international attention to both the virtues of the system and the problems it still faces. Despite these achievements, however, the Convention is deficient in several areas, and it has left holes in the international adoption system that has permitted further new abuses.³²

The Hague Convention creates new requirements that any ratifying country must satisfy before its international adoptions are lawful. These requirements include the creation of a Central Authority, and the adoption of a variety of procedures which for many countries will be It took the U.S. many years to develop the legislation and related infrastructure needed to implement the Hague. For impoverished countries implementation can be a daunting task. Ratification may result in the suspension for many years of international adoption programs which had been working perfectly well, simply because countries cannot get it together to create the infrastructure needed for Hague implementation³³.

Major Advantages and disadvantages of the Convention and Its Implementation

Provides, for the first time, formal international and intergovernmental recognition of intercountry adoption. Recognizes intercountry adoption, as defined and treated by the Convention, as a means of offering the advantage of a permanent family to a child for whom a suitable family has not been found in the child's country of origin³⁴.

It establishes a set of rules and conditions and procedures that commonly govern the intercountry adoptions in which a child moves from one convention party to another.

Convention requires that countries party to the Convention establish a Central Authority to be the authoritative source of information and point of contact in that country, to carry out certain functions, to cooperate with other Central Authorities, and to ensure effective implementation of the Convention in the United States³⁵.

On the negative side, the Hague Convention represents a huge lost opportunity. During the negotiations about the form the Convention would take there was talk about the importance of designing this new law to facilitate international adoption, enabling cooperation between sending and receiving nations so that more children could be placed, and placed earlier in life. However opponents of international adoption fought the inclusion of any facilitating language, and won³⁶.

The another important aspect is that the Hague convention did not have a significant evidence that it had carried a positive impression on intercountry adoption, because the domestic laws of the nations had already enacted laws with reference to the intercountry adoptions so it is clear that the Hague's new requirements did not add any greater protection to the intercountry adoptions.

However, the opponents who opposed the Hague convention had misinterpreted the convention that to comply with the Hague they must eliminate the private intermediaries and also the United States



has also misused the Hague to restrict international adoption. It has pushed countries to ratify The Hague, threatening not to work with certain countries in the absence of ratification. And then once a country ratifies, the U.S. has often shut down its international adoption program, claiming that the country has failed to comply adequately with Hague requirements³⁷.

Another Aspect of dealing is the Ratification of the convention which result in the suspension of the intercountry adoption which had been working well, simply because countries cannot get it together to create the infrastructure needed for Hague implementation

Procedure of Intercountry Adoptions:

The Convention will apply to adoptions in which children move from one Convention party country to another³⁸. Such an adoption may take place only if the country of origin has established that the child is adoptable, that due consideration has been given to the child's adoption in its country of origin and an intercountry adoption is in the child's best interests, and that after counseling, the necessary consents to the adoption have been given freely, and the receiving country has determined that the prospective adoptive parents are eligible and suited to adopt, and that the child they wish to adopt will be authorized to enter and reside permanently in that country.³⁹ Adoption agencies and individual providers of international adoption services may be authorized to perform designated functions with regard to individual adoption cases provided they have

become Hague Convention accredited or approved⁴⁰.

Persons wishing to adopt a child resident in another party country must initially apply to a designated authority in their own country to obtain approval for intercountry adoption⁴¹. The Convention provides that, with limited exceptions, there can be no contact between the prospective adoptive parents and any parent or other person/institution that cares for the child until certain requirements have been met⁴².

The Convention requires the recognition of Convention adoptions certified as such, unless recognition would be manifestly contrary to the country's public policy, taking into account the best interests of the child⁴³.

Does The Hague international convention on intercountry adoption requires or prohibit recognition of adoption by gays or lesbians?

One of the main aim of the Hague international convention on intercountry convention is to secure the recognition of international intercountry adoption made in accordance of the states and also such intercountry adoptions shall also be permissible in the other contracting states and only then the adoption is made legal and all the laws related to both the countries shall also be favorable for the adoption and also however, one of the provision of the Hague convention is to protect the rights of the nations in the process of adoptions . And also the adoption shall not be carried with the conception of gaining any profit from the child or even there shall not be any inducement of the money from the service providers and it shall not be for



the exploitation of the children sexually or forcing them for labor the only motive behind the convention is to provide a home and a family for a child who is not part of it.

The fact that there is no proper service provider or no proper institution for the adoption may not become a cause or ground to deny the recognition of the foreign adoptions. However, as to the specific question of whether the public policy exception of the Convention indicating a contracting state could decline to recognize an adoption by homosexual couples or individuals from another contracting state, the official Report explicitly declares that the ability of signing States to refuse recognition of such adoptions is one of the safety-net protections for states opposed to such adoptions that made it unnecessary to specifically exclude adoptions by gay or lesbian couples or individuals from coverage of the Convention. It is on the decision of the contracting states and its internal law favoring or opposing the intercountry adoptions individually and no alteration can be done to those individual states law and it is completely on the decision of that particular country.

Conclusion: The international community must do all it can to ensure that those countries that engage in international adoption maintain it as an institution worthy of such an endorsement. Thus, the future impact of the Hague Convention on Intercountry Adoption is uncertain, and seems to be in our hands. May we all work diligently toward the goals of implementing the Hague Convention to make inter country adoption more abuse-free, lawful, and respectful of each? There should be a

uniform law in all the countries so that the intercountry adoptions that takes place shall abide all the guidelines of the uniform law enforced which will not have any further confusions between the countries where the adoption takes place without giving any way for illegal transport of children and child trafficking.

¹ Hague Conference on Private International Law, Report on Intercountry Adoption, Preliminary Document Number 1, 49 (Permanent Bureau of the Conference April 1990) (prepared by J.H.A. van Loon).

²www.internationaladoptionhelp.com

³ADOPTION 44 (Allen Verbrugge ed., Thompson Gale 2006).

⁴ ibid

⁵www.child-abuse.comDCI Hague Convention Full Document.

⁶<<http://www.aph.gov.au>>

⁷ "Report of the Working Group to Study the Application to Refugee Children of the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption" The Permanent Bureau <<http://www.hcch.net/e/conventions/wgrpt33e.html>>.

⁸Article.I of the hague convention.

⁹ Article 1(a), Paragraph 4 of the Preamble to the Hague Convention, Article 21 of The United Nations Convention on the Rights of the Child.

¹⁰ Guatemala Intercountry Adoptionwww.internationaladoptionhelp.com

¹¹travel.state.gov ;last seen on 15/11/2014.

¹²Intercountry Adoption travel.state.gov

¹³Article 1(b) Hague Convention.

¹⁴Article 1(c) Hague Convention.



¹⁵ 'Report of the Working Group to Study the Application to Refugee Children of the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption' The Permanent Bureau <<http://www.hcch.net/e/conventions/wgrpt33e.html>>.

¹⁶U.S. Department of State, Intercountry Adoption: Overview, <http://adoption.state.gov/hague/overview.html>.

¹⁷http://www.unicef.org/media/media_41918.html

¹⁸Article 41 Hague Convention.

¹⁹Hague Conference on Private International Law, Authorities, http://www.hcch.net/index_en.php?

²⁰www.childadoptionlaws.com

²¹<http://www.internationaladoptionhelp.com/>

²²<http://www.sji.gov/PDF/Hague%20Convention%204-1-13.pdf>

²³<http://www.sji.gov/PDF/Hague%20Convention%204-1-13.pdf>

²⁴ The Parliament of the Commonwealth of Australia, Joint Standing Committee on Treaties, Fifteenth Report (June 1998) <<http://www.aph.gov.au>>.

²⁵Article 4(d)(1)-(4) Hague Convention.

²⁶ Under Article 32 of the Hague Convention, no one is to derive any improper financial or other gain from an activity related to an intercountry adoption.

²⁷ Article 29 of the Hague Convention prohibits contact between adoptive parents and relinquishing parents until Article 4(a)-(c) and Article 5(a) have been complied with.

²⁸ Regulation 7(2)(a)-(f) Adoption of Children Regulation 1999 (Qld); s 13AC Adoption of Children

Act 1964 (Qld).

²⁹<<http://www.families.qld.gov.au>>.

³⁰ 'Considering adoptions from overseas?', Department of Families, Queensland Government at <<http://www.families.qld.gov.au/adoptions/considadoptfromoverseas.html>>.

³¹ Hague Conference on Private International Law, Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, http://hcch.evision.nl/index_en.php?act=conventions.status&cid

³²<http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1528&context=mjil>

³³<http://www.law.harvard.edu/faculty/bartholet/PepperdineBkHagueTrack9-5-13.pdf>

³⁴<http://www.passportsusa.com/>

³⁵ ibid 5

³⁶<http://www.law.harvard.edu/faculty/bartholet/PepperdineBkHagueTrack9-5-13.pdf> on the Hague convention: pros,

cons and potential by Elizabeth Bartholet.

³⁷<http://www.law.harvard.edu/faculty/bartholet/PepperdineBkHagueTrack9-5-13.pdf>

³⁸Article 1(b) Hague Convention.

³⁹<http://www.sji.gov/PDF/Hague%20Convention%204-1-13.pdf>

⁴⁰www.socmin.it

⁴¹ ibid.

⁴²<http://www.passportsusa.com/>

⁴³Article 1(c) Hague Convention.