ADOPTION

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# THE GREY ZONES OF INTERCOUNTRY ADOPTION

*International Social Service*

*Information Document No 6 for the attention of the*
*Special Commission of June 2010 on the practical operation of the*
*Hague Convention of 29 May 1993 on Protection of Children and*
*Co-operation in Respect of Intercountry Adoption*

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# THE GREY ZONES OF INTERCOUNTRY ADOPTION

*International Social Service*


**SPECIAL COMMISSION ON THE PRACTICAL OPERATION OF THE HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION**
17 JUNE 2010

# "THE GREY ZONES OF INTERCOUNTRY ADOPTION"

**SERVICE SOCIAL INTERNATIONAL**
INTERNATIONAL SOCIAL SERVICE

**CENTRE INTERNATIONAL DE REFERENCE POUR LES DROITS DE L'ENFANT PRIVE DE FAMILLE**
INTERNATIONAL REFERENCE CENTRE FOR THE RIGHTS OF CHILDREN DEPRIVED OF THEIR FAMILY
**(ISS/IRC)**

HERVÉ BOÉCHAT
FLAVIE FUENTES

## I- INTRODUCTION

As the last presenters for this first working day, we hope to share with you our experiences and those of the ISS/IRC by taking a step back and looking at intercountry adoption as a whole.

For me, this is the second Special Commission I have attended: 5 years ago, as a representative of the Swiss CA; today, as the Director of the ISS/IRC. Since the last Special Commission, I have had the opportunity to visit a number of countries of origin, where I have conducted missions evaluating adoption systems and training exercises, as well as a number of receiving countries. The reflections that we will share with you today are both a result of these experiences, and also the study conducted by Flavie Fuentes on abuses in intercountry adoption.

We should emphasise up front that the Hague Convention is not intercountry adoption, and intercountry adoption does not sum up the Hague Convention, and this is for two principal reasons: the reality of numbers and the reality of risks.

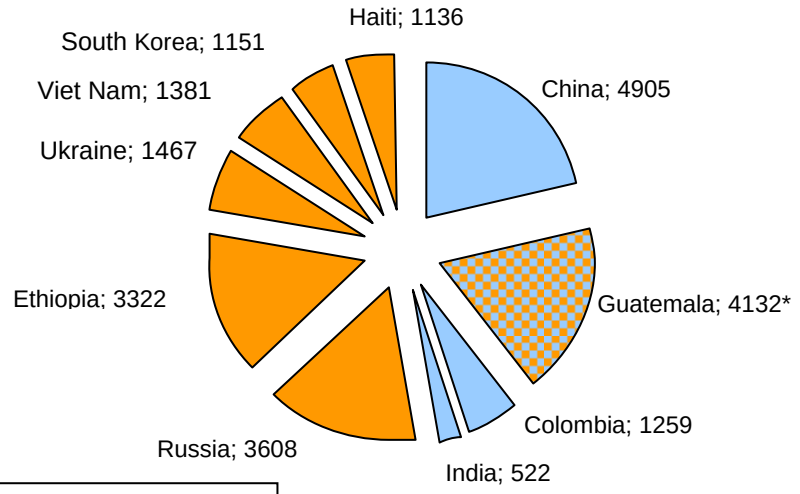
### 1) NUMBERS

Up until now, the Convention has managed to draw a line between states that have ratified it, and the rest. Today, of the 81 ratifying countries, 51 (or about 2/3) can be considered countries of origin, with the other 30 (or 1/3) being receiving countries. These figures are clearly pleasing, as they suggest that an ever-increasing number of intercountry adoptions are being done according to Convention standards.

But this first impression needs to be put into perspective. If we look, for instance, at the 2008 statistics for the five of the biggest receiving countries (Canada, France, Italy, Spain and the United States), we see that in terms of total numbers, less than a third of adopted children in the 10 major countries of origin went through the Hague process.

**Total intercountry adoptions: 22,883**
- convention cases: 6686 or **29.2%**
- non-convention cases: 16197, or **70.8%**

**Number of children adopted from the 10 first countries of origin in Canada, France, Italy, Spain and the USA**




*Cases in transition

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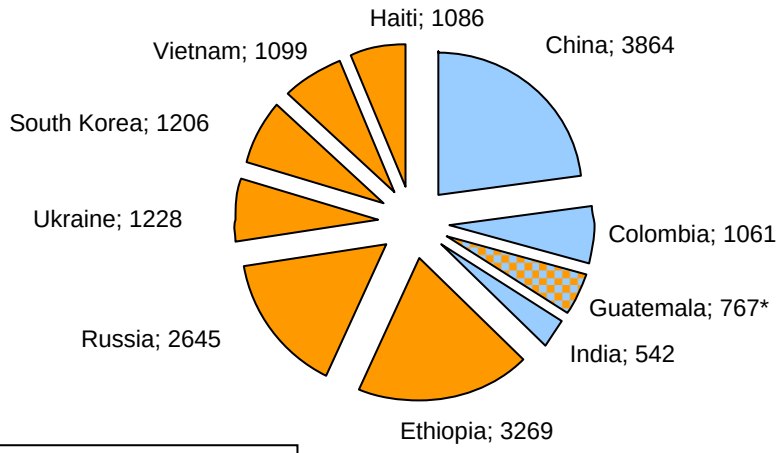
For 2009, based on statistics that will be made available next week, we see that for the group of receiving countries including the United States, France, Italy, Norway, Sweden, Netherlands and Canada, this proportion increases a little.

**Total intercountry adoptions: 16 767**
- convention cases: 6234, or **37.2 %**
- non-convention cases: 10 533, or **62.8 %**

**Number of children adopted from the 10 first countries of origin in the USA, Italy, France, Sweden, the Netherlands, Canada and Norway in 2009**




*Cases in transition

We are of course talking about basic figures here, which really need to be broken down by year and by country. But sadly, access to detailed and accurate statistical data remains a problem. Nevertheless, we need to keep in mind that just because there is an increase in the number of contracting states, there are not, indeed far from it, more adoptions being brought under the rules of the convention.

In practice, separating Hague countries from non-contracting countries has prompted all sorts of administrative arrangements and divisions of responsibility (for example, central authorities dealing only with Hague adoptions, or public bodies only authorised for Convention countries), which are not without problems of their own.

Above all, this distinction leads to adoptions being categorised: we, the adoption professionals, tend to take adoptions processed under the Convention as being automatically sound, practically free of risk as opposed to those that do not fall under the Convention. This view is quite understandable, as applying the Convention should indeed offer the necessary safeguards for respecting the rights of persons involved. Moreover, this view is perpetuated by the day-to-day routine, difficulties in cross-checking, and the sheer speed and volume of adoptions.

So now I come to the second reason why intercountry adoption is not "equivalent" to the Hague Convention: misconduct and bad practices also affect countries that have ratified the convention, whether states of origin or receiving states.

## 2) RISKS

We should recall that the Hague Convention is simply a tool that allows states to better manage relations amongst themselves. It is about putting in place a system of cooperation, just as the title of the Convention suggests. The Hague Convention does not in itself seek to replace a State's internal laws, nor cover all the loops that a child must theoretically go through to be considered in need of intercountry adoption.

When we look more closely at it, adoption misconduct clearly takes place well before the steps in the adoption covered by the Convention have even commenced. To give a simple example: if you falsify the civil status of a child by erasing its birth family and thereby have it declared abandoned, a review of its file will not raise any doubts about the child's adoptability. Clearly it is not the Hague Convention that deals with how official documents must be kept, or with the consequences of their misuse. Nevertheless, if misconduct is not identified, a Convention adoption can still be duly conducted, despite the circumstances of the case being a lie from the very beginning.

In light of this fact, the ISS/IRS has embarked on a study devoted to what we call "The grey zones of adoption". To do this, we identified the following **3 objectives**:

1) **Compile reports and information** about bad practices and misconduct affecting intercountry adoption around the world in the last 50 years to develop a "typology of risks" (for example: fraudulently obtained consents, corruption of official bodies, falsification of documents, etc.).

We have conducted lengthy research, and collected a large number of cases of alleged misconduct and illegal practices where the perpetrators had been punished. To do this, we relied on news articles, NGO reports, and our own records. The examples presented in the study do not stigmatise the various countries concerned as the authorities took action to counter the relevant activities in every instance.

2) On this basis, we sought to **identify misconduct** that is, or is not, covered by the Hague Convention, to allow us to consider how to combat it.

3) Finally, we wanted to prepare a summarised and simplified version of the study, to **produce a document for use by adoption applicants**, which could inform them of the risks that they could face during their adoption process.

The study in itself is still being conducted, and will be completed by the end of summer. The second phase, which is primarily targeted at adoption applicants, will be finished by the end of the year. I

would also like to take this opportunity to acknowledge the special support provided to the ISS/IRC by the Principality of Monaco to undertake this project, for which we are sincerely thankful.

## II- BRIEF OVERVIEW OF THE TYPOLOGY OF MISCONDUCT

Based on our research, we started by classifying the different forms of misconduct as shown in the diagram below. By following the main steps in the adoption process, we have identified the grey zones as well as the principles of the Convention to which they relate:

| **Steps in the adoption process** | Birth of children | Child is separated from birth family | Declaration of child's adoptability | Child is matched with a prospective adoptive parent (s) | Child leaves the country of origin |
|---|---|---|---|---|---|
| **The grey zones** | Child trade in baby farms and in orphanages | Forced relinquishment or abandonment Child abduction after a civil war or after a natural disaster | Falsification of birth certificates, relinquishment documents, shady judicial acts | The unclear role of adoption agencies and lack of professional matching | Processing of visa and passport |
| **Illegal practices and THC-93** | The child's adoptability (Article 4 THC-93) | The principle of subsidiarity (Article 21 UNCRC and THC-93) and proper consent (Articles 4 & 16 THC-93) | Improper material gain (Articles 8 & 32) Private and independent adoptions | Accredited and approved bodies (Article 11 etc & 22) Matching (Articles 16-17 | Authorization to enter country and reside permanently (Article 5 c) & 17) |

Before going further, we should explain our choice of words, particularly the term "**trade**". Although the word "traite" in French can be translated as "trafficking" in English, both terms, according to the Palermo Protocol, associate the illegal act with the exploitation of the victim. "Trafficking" in English is not the same in French, and it would in fact be incorrect to translate the English word "trafficking" by the French word "traffic". The main problem with the term "trafficking" ("traite" or "trafic" in French) is that it cannot apply to intercountry adoption since the ultimate purpose, in our view, is not child exploitation. As a result, we have decided to speak in terms of "trade" (or "commerce" in French), as this concept covers the various stages of the adoption market.

We will now give an overview of the typology of misconduct that we have identified, before moving on the study's conclusions.

## 1. THE CHILD'S ENTRY ONTO THE ADOPTION MARKET

We have identified three types of misconduct, and for each we have: 1) suggested its probable cause, 2) identified the international texts providing the relevant safeguards and 3) suggested reasons why these safeguards appear not to work.

### 1.1. THE TRADE IN CHILDREN FOR ADOPTION

This first group of illegal acts includes what might be termed the "manufacture" and harvesting of children for adoption. For example:

- the production of children for adoption (through the creation of "baby farms" or paid pregnancies);
- the "collection of children" via criminal networks (through abduction, false foetal death certificates, purchasing children) ;
- the trade in children through orphanages which create a network for child herding;
- trade involving state representatives, for example by encouraging parents to entrust their child to a social service, while the child is put up for intercountry adoption.

What these cases have in common is the complete erasure of the child's history and surroundings. The child is nothing more than a commodity, which can be put on the market by severing all links to its birth parents, its identity, and its origins.

Whilst often the common cause of misconduct, poverty and the supply/demand imbalance are above all the characteristic causes of child trading.

But what is also clear is that such practices persist due to **inadequacies in national laws, including making the connection between criminal and adoptions laws.**

That said, some laws do provide a direct interaction between child trading and adoption. One example is the Georgian Criminal Code, which prohibits the purchase of, or all other illegal transactions in relation to, a minor with a view to its adoption (cf article 172).

Furthermore, **national and international definitions of "trafficking"** (associated with the (non) existence of exploitation) **are too diverse** and do not apply specifically to adoption cases where exploitation is not the real purpose behind the illegal act.

So it is actually legal barriers, pure technicalities that are preventing penal coverage of the types of criminal activity affecting intercountry adoption.

### 1.2 FORCED CONSENT TO ABANDON

We are concerned here with situations where the birth parents are manipulated to officially abandon their child. By taking advantage of economic hardship, exploiting problems arising from single motherhood, and making illiterate parents sign consent forms, intermediaries are forcing parents to abandon their children. Once the consent form is signed, it will not be challenged later on.

Even though international texts condemn discrimination on the basis of social standing or a family's economic prospects, these practices remain. A useful way to remedy the situation would be to introduce legislative reform giving parents the right to withdraw their consent.

### 1.3. CRISES

Historically speaking, intercountry adoption has been linked to conflicts and natural disasters. Today, such crises are not necessarily related to the involvement of criminal networks. In times of crises, however, children have been (and at times still are) seen to be "adoptable all the same", without regard for their family, their culture and their rights. Mass adoption prevents any attention being paid to birth parents, and is based on a dangerous premise that opens the doors to dubious intermediaries.

And again we see that despite international texts firmly discouraging all adoptions in times of humanitarian crisis or natural disaster – including in the two years following the event – unwarranted adoptions are still carried out, due largely to the **ongoing association between "adoption" and "humanitarian act"** and **the absence of a common position amongst States on how to respond to such crises**.

## 2. EXITING THE ADOPTION MARKET: "CHILD LAUNDERING"

### 2.1 FALSIFYING THE CHILD'S STATUS

As Professor Smolin presented a moment ago, there are a variety of ways for a child to be made adoptable even when this is not warranted by the child's personal situation. Laundering, made possible further up the chain by the falsification of documents regarding the child's civil status, occurs at the moment a judgment is given formally recognising the child's adoptability, or one granting the adoption itself. This judicial laundering may either be done consciously by corrupt judges, or be made possible by a total lack of scrutiny. In both cases, the involvement of the judicial organ allows what was an illegal situation to be formalised, creating an impression that the adoption is normal, and adding to the virtual impossibility of carrying out any subsequent checks.

The falsification of the child's status will most often result in the child being "made" an orphan.

The cases we have studied clearly show that laundering is encouraged to a large extent by the proactive role played by lawyers, the corruption of judges, and that of public officials (particularly within the civil registry).

International texts are thus powerless in view of the **absence, in certain countries, of a system for the declaration of births**. As such, parents are sometimes unable to establish parenthood, which would otherwise be done by issuing a birth certificate or acknowledgment of paternity.

### 2.2 ADOPTION BODIES

Compiling cases of fraud in intercountry adoption has revealed clearly the role played by adoption bodies. Some adoption agencies have, for instance, been the subject of legal action for committing serious offences such as: "harvesting" children for the purpose of adoption, falsifying abandonment documentation, money laundering, visa fraud, ripping adoptive parents off by charging exorbitant fees, etc.

Although both accredited and authorised bodies (as the case may be) are regulated in detail under the Convention, and although Guide to Good Practice No 2 – which we will discuss tomorrow – establishes a very precise framework around this issue, unlawful and unethical practices are regrettably fuelled by competition, at times fierce and often unnoticed, that exists between ABs, which are themselves linked to the supply/demand imbalance.

Furthermore, the role played by foreign adoption bodies is at times questionable, not only given the proximity they have maintained with convicted persons, but also their key role in the exchange of money.

Aside from these aspects, two other phenomena should also be brought to light:

- Implementing the Hague Convention too slowly can give rise during the transition period to 2 coexisting adoption procedures (one for conventional, another for pending cases), and therefore create confusion prone to misconduct.
- Private adoption remains a risk factor, particularly when applicants are poorly prepared for the risks that they may confront in the country of origin.

In light of this, we arrive at the conclusion that **legislative changes that are relatively easy to effect could radically change the conditions in some countries which are prone to misconduct**. We refer here, for example, to laws which specifically criminalise the falsification of civil records, or which impose an obligation on parents to declare births (as is continually recommended by the Committee on the Rights of the Child), or which ensure greater protection for civil records.

By doing so, we are all required to examine more closely the connection between the demand for adoptable children and every aspect of intercountry adoption.

Although the types of conditions discussed by Flavie Fuentes are not exhaustive, they nonetheless cover the vast majority of cases that we have focussed on in our study. Some of these will no doubt require particular, complex, and lengthy attention.

In the end, it's all about considering these elements as indicators, taking them seriously, and drawing conclusions from them. For instance, it is no longer acceptable to read on the websites of accredited adopted bodies that for a given state of origin, a thousand dollar (or euro) donation is mandatory. It doesn't take in-depth study to suppose that these amounts do not in any way correspond with the local cost of living, and that money received will most likely end up financing underground networks. This is a matter for receiving State and States of origin alike.

## III- LINES OF THOUGHT

### 1. RECEIVING COUNTRIES

In a situation characterised by much greater demand for adoptable children than actual possibilities of adoption, the regrettable reality is that individuals take advantage of the weaknesses in the state system to respond to this demand.

It must be said, however, that authorities in most receiving states have not done their part in taking steps to limit this pressure. It's not fair to ask countries of origin to regulate their adoption procedures

if, at the same time, nothing is being done to limiting the exchange of money flowing from receiving countries, the number of accredited bodies per country of origin, the number of application files, etc.

But receiving states also have their own problems concerned with responding to public opinion or making decisions that are more the outcome of political will than blind interest. It follows that greater public awareness is needed of the realities of intercountry adoption, the risks and misconduct that it entails, and the actual needs of children.

Our missions have also shown that there are often contradictions between the views of diplomatic representations in countries of origin and the decisions that can be made by their respective countries. Likewise, the lack of coherence between receiving countries also represents an aggravating factor as it prevents giving a clear signal to a country of origin: in the case of a moratorium for instance, it only takes one receiving state to continue adoptions with the relevant country of origin for illegal practices to persist.

### 2. COUNTRIES OF ORIGIN

It is essential that states of origin take greater ownership of the adoption problem, that they be proactive, and that they decide authoritatively how each of them will manage this problem. Countries do not have to engage in intercountry adoption, and if they are not in a position to identify their needs, it will be very difficult for them to limit the number of foreign accredited bodies, and therefore limit the competition that they bring amongst themselves.

Moreover, legislative frameworks are still too often insufficient and do not cover the entirety of problems related to intercountry adoption. This is particularly the case with regards to controlling the activities of accredited bodies in countries of origin, and issues related to the exchange of money no matter what the reason.

### 3. COUNTRIES OF ORIGIN AND RECEIVING COUNTRIES

It is imperative that public opinion be better informed about the realities of adoption. In receiving countries, it is important to explain why often unpopular measures must be taken. For example: why a moratorium is imposed, why adopting children in situations of natural disasters is not advised, etc.

In countries of origin, the spread of preconceived ideas must be resisted, like the rumour that intercountry adoption is connected to the organ trafficking.

## IV- CONCLUSION

The Hague Convention is not a safeguard in itself. As we have said, it is a tool that facilitates communication and practice in intercountry adoption, but does not seek to cover all issues surrounding this specific measure for the alternative care of children.

It is time for the participants in the adoption process to discuss openly the real issues affecting current practice. Now more than ever we must improve coordination and communication between States, and collectively determine the best measures to take. Whether it is about setting up a table of “reasonable costs” (which remains unaddressed, despite the issue having been discussed at earlier Special Commissions), the adoptability of so-called children with special needs, or the various items to be discussed over the next 10 days, we can only hope that this tremendous opportunity to reunite so many experts from so many countries will open to way to renewed progress.

We wish you all the best with your work and thank you for your attention.