

**NAME OF COUNTRY OR ORGANISATION: \_UNITED STATES OF AMERICA\_**

## **A EXPLANATIONS AND QUESTIONS**

If a question does not apply to your State, please answer "Not applicable".

### **1. Description**

- (a) Is your country (primarily) a receiving State or a State of origin? If both, please ensure your answers to the questions clearly distinguish, when necessary, between your role as a receiving State and your role as a State of origin.

The United States is both a receiving State and a State of origin for intercountry adoption, although it is primarily a receiving State. In Fiscal Year 2004 (October 2003 – September 2004), the U.S. issued 22,990 visas for orphans adopted internationally, from both Convention and non-Convention countries (see Tab 2). The United States does not maintain exit controls on U.S. citizens departing the country, and adoptions in the U.S. are handled through State or local courts, which have no obligation to report statistics to the federal government. Therefore, authoritative statistics regarding the number of U.S. children who emigrate for the purposes of intercountry adoption do not exist at this time. The Intercountry Adoption Act (see (b) below) will require reporting on emigrating adoption cases, but these provisions are not yet in effect.

- (b) If your country is not yet a Party, please specify if your country is considering becoming a party to the Convention.

The United States signed the Convention in 1994. In 2000, the Senate gave its advice and consent to the Convention, as required by the U.S. Constitution. At about the same time, Congress passed the Intercountry Adoption Act of 2000 (the IAA), the implementing legislation for the Convention. The text of the IAA is provided at Tab 1.

The U.S. is currently engaged in multiple tasks to implement the Convention, including by developing required implementing regulations. While the U.S. Government is strongly committed to implementing the Convention, this process is complex and we cannot predict a precise date for ratification.

- (c) Was your country represented at the 2000 Special Commission? Were the Conclusions and Recommendations of that meeting discussed or implemented by relevant authorities in your country?

Yes.

### **2. Good practice**

The Permanent Bureau has commenced work on a Guide to Good Practice on Implementation of the Convention. A consultative group met in September 2004 to provide advice to the Permanent Bureau on this project. It is anticipated that the draft Guide will be circulated, in English, French and Spanish, to all Contracting States in June 2005 seeking comments and for discussion at the Special Commission.

- (a) In relation to any aspect of intercountry adoption, what examples of good practice can you report, (i) from your own country or (ii) from another country?
- (b) Please indicate what topics you would suggest for future chapters in the Guide to Good Practice (in addition to "Implementation", "Central Authority Practice" and possibly "Accreditation").
- (c) Have you experienced any major concerns or problems (i) in your State and (ii) in another State, associated with implementation of the Convention, such as a lack of implementing legislation, inadequate staffing or funding issues?
- (d) If your State has signed but not yet ratified the Convention, please indicate whether your State would like implementation assistance from the Permanent Bureau or other States. What type of assistance would be most beneficial?

a) and b): Detailed comments on the Guide to Good Practice have already been provided to the Permanent Bureau.

c) The United States has no major concerns in this regard.

d) The United States requires no implementation assistance from other States or the Permanent Bureau.

### **3. Questions concerning scope**

Please specify any difficulties you have experienced in determining whether certain situations do or do not come within the scope of the Convention.

In particular, have there been any problems in determining whether:

- (a) a child was or was not habitually resident in the State of origin;
- (b) a prospective adopter was or was not habitually resident in the receiving State (as e.g. in the case of a short-term or temporary resident); and
- (c) the removal of the child was or was not "for the purpose of adoption" in the receiving State (as e.g. where the child is initially moved to the receiving country on a temporary basis or for foster care, and later on adoption is considered)?

As the United States has not yet ratified the Convention, the U.S. does not have any experience to report in this regard.

However, United States immigration law currently requires, for all intercountry adoption cases in which the adoptive parents apply for a visa so that the adopted child can enter and reside in the United States, that an officer of the Department of Homeland Security or the Department of State, as appropriate, first determine that the child has met the requirements of the U.S. Immigration and Nationality Act, as amended (INA), before an orphan petition can be approved and a visa issued. These procedures are required for both Convention and non-Convention adoptions and include a review that considers adoptability, whether appropriate consents have been obtained, and that all residence issues have been addressed.

### **4. General principles for protection of children**

- (a) What are the different types of care available to a child in need of care and

protection in your State?

There is a broad array of laws and regulations at the Federal, State and local level designed to ensure that the best interests and welfare of all children – birth children and adopted children, both those adopted domestically and through intercountry adoption – are protected. The Department of State maintains an information sheet on these protections, available at [http://travel.state.gov/family/adoption/info/info\\_450.html](http://travel.state.gov/family/adoption/info/info_450.html) (a copy of this information sheet is attached; see Tab 3). Further information on Federal, State, and local legislation is available from the National Adoption Information Clearinghouse (NAIC), a unit of the Administration of Children and Families at the Department of Health and Human Services, at <http://naic.acf.hhs.gov/>.

- (b) Please specify the procedures or other measures in place to ensure that due consideration is given to the possibilities for placement of the child within the State of origin before intercountry adoption is considered (the principle of subsidiarity - see Article 4 *b*) and Preamble, paragraphs 1-3).

When the U.S. acts as a receiving State: Current U.S. immigration regulations require U.S. parents filing an orphan petition to provide, among other things, evidence of adoption abroad or that custody has been granted for emigration and adoption in accordance with the laws of the State of origin. We have developed flyers detailing adoption law and practice in over 100 countries and territories. These flyers describe local laws relating to the principle of subsidiarity, where known. Flyers can be accessed at [www.travel.state.gov](http://www.travel.state.gov).

When the U.S. acts as a State of origin: Adoption in the United States is currently a matter for regulation by individual States, where laws or procedures may differ. We refer you to the extensive child welfare and protection regulations of the various State and local jurisdictions at the NAIC website cited above.

- (c) What are your procedures to establish if a child is adoptable?

See (b) above.

- (d) What procedures are in place to ensure that consent to an adoption is given in accordance with Article 4 *c*) and *d*) of the Convention?

Not applicable. The Convention is not yet in force for the United States. See (b) above for current procedures.

- (e) Do you make use of the Model Form for the "Statement of consent to the Adoption"? See < [www.hcch.net](http://www.hcch.net) >, "Intercountry Adoption", "Practical Operation Documents", "Annex B to the Special Commission Report of October 1994".

No. The Convention has not yet entered into force for the United States. In cases where the U.S. will act as a State of origin, the IAA does not prescribe use of the Model Form or require States to use uniform consent forms. It is unknown whether any individual State(s) use(s) or intend(s) to use the Model

Form.

- (f) Have you applied the "Recommendation concerning the application to refugee children and other internationally displaced children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption"? See Annex A to the Special Commission Report of October 1994.

While the Hague Convention has not yet entered into force for the United States, the principles underlying this recommendation are reflected in current U.S. practice. In cases where a child is a refugee as determined by the U.N. High Commissioner for Refugees (UNHCR), the child is not considered by the U.S. to be eligible for intercountry adoption until the UNHCR and the country of residence have determined that the steps outlined in the Recommendation have been taken and the country of residence has determined that a permanent family placement for the child in that country is unavailable.

In the aftermath of civil unrest or natural disasters, the Department of State will often put up a notice on its website at [www.travel.state.gov](http://www.travel.state.gov) advising the adoption community that intercountry adoption is not in general an appropriate initial response to such situations, and stressing the need to reunite children with birth or extended families, or to explore options for domestic adoption, before considering intercountry adoption. See, for example, the notice on tsunami orphans at [http://cas2k3ftp01/family/adoption/notices/notices\\_2017.html](http://cas2k3ftp01/family/adoption/notices/notices_2017.html).

- (g) How is the eligibility and suitability of prospective adoptive parents assessed in your country (see Article 5 a))?

Current procedures for orphan cases are as follows: Prospective adoptive parents are required to meet applicable laws of their State of residence as well as Federal requirements. At the Federal level, prospective adoptive parents seeking to adopt an orphan must:

- be a married couple, at least one of whom is a U.S. citizen, or a single U.S. citizen parent at least 24 years old, provided that a single U.S. citizen parent be at least 25 by the time the final orphan petition is filed; and
- provide documentation for a suitability review, including a properly completed application form with supporting evidence, fingerprints for all adult members of the household, and a home study, which must be performed by a licensed home study preparer according to the laws of the State of the prospective adoptive parents' residence.

Based on the information provided, the United States Citizenship and Immigration Service (USCIS) within the Department of Homeland Security evaluates suitability.

- (h) What preparation (counselling, education or training) is given to prospective

adoptive parents to prepare them for the intercountry adoption?

Individual State laws regarding counselling, education and training requirements currently vary widely. Please see State laws accessible through the NAIC website.

At the federal level, IAA Section 203(b) requires, in order for an adoption service provider (ASP) to be accredited to perform adoption services in cases subject to the Convention, that the ASP provide prospective adoptive parents with a training program that includes counselling and guidance for the purpose of promoting a successful intercountry adoption before such parents travel to adopt the child or the child is placed with such parents for adoption. The regulations to implement the IAA will elaborate on this requirement. The IAA provides for Department of State oversight of ASPs through accrediting entities to ensure that the standards outlined in the regulations are adhered to. The IAA sections regarding counselling and training of parents will become effective when the Convention enters into force for the United States.

- (i) Please also specify the measures / procedures in place to ensure that the requirements concerning the counselling of prospective adopters are complied with (see Article 5 b)).

See (h) above.

- (j) Please specify any post-adoption services established or contemplated in your country (see Article 9 c)).

A wide variety of post-adoption services are available in the United States. Availability and format vary and are dependent on such factors as State law requirements, size and resources of the private or public agency engaged to provide such services, and the availability of ancillary services in the region concerned.

IAA Section 3 specifically identifies two post-placement services as “adoption services” for the purposes of the IAA: post-placement monitoring of Convention adoption cases until an adoption is finalized, and where necessary because of a disruption before final adoption, assuming custody of child and providing child care or other social services pending an alternative placement. When the Convention enters into force for the U.S., ASPs providing these services will be required to be accredited under the system prescribed in the IAA, provided the service takes place before an adoption is finalized. The terms “post-placement” and “post-adoption” will be defined in the accreditation/approval regulations currently under development.

## **5. Central Authorities**

- (a) Please specify any of the functions under Chapter IV of the Convention performed directly by your Central Authority or Central Authorities.

We intend that when the Convention enters into force for the U.S., the U.S. Central Authority (USCA) will directly perform the tasks in Article 17(c) and Article 18. The USCA may be assisted in performing these tasks by USCIS as provided for in U.S. law and regulation.

- (b) Please indicate the number of personnel employed by your Central Authority to deal with intercountry adoption, their experience and qualifications, and what type of training they have received. (Where personnel undertake other functions, count them only for the amount of time spent on intercountry adoption, for example, if a person spends 50% of their time on intercountry adoption, count them as 0.5 of a person.)

The Department of State will not act as Central Authority for purposes of the Convention until the Convention enters into force for the United States. It is too early to determine at this time the size or training of future Central Authority staffing.

- (c) What procedures are in place to ensure continuity of experienced staff and training for new staff?

See (b) above.

- (d) Have you experienced difficulties with regard to the establishment or operation of the Central Authority, for example, difficulties over funding or resources?

No. Implementing the Hague Adoption Convention is a high priority for the Department of State. There are adequate financial and personnel resources for the Department to execute its responsibilities to implement the Convention and the IAA.

- (e) Please provide details of any difficulties you have experienced communicating with "central" Central Authorities in other countries or with provincial Central Authorities (in your own country or other countries)?

The Department of State has encountered no difficulties in this regard.

## **6. Accreditation**

At the Special Commission meeting in September 2005, the first day will be devoted to an examination of accreditation issues. Your responses to this part of the questionnaire will be very helpful to the Permanent Bureau in the planning and preparations for that day.

### *Accredited bodies*

- (1) Please indicate whether your country uses or intends to use accredited bodies in intercountry adoption. If so, please provide details on the topics (a) to (m) below.

The United States intends to use accredited bodies in executing many of the responsibilities and obligations under the Hague Convention. Title II of the IAA provides the legal basis for this and establishes requirements for which bodies must be accredited (private, non-profit adoption service providers) or approved (individuals and for-profit adoption service providers); the process for

accreditation/approval and the role of accrediting entities; the standards and procedures for providing accreditation or approval; and oversight by the Department of the accreditation and approval process.

The Department of State is currently in the process of developing regulations to implement these and other provisions of the IAA. Once these regulations are finalized and published in the *Federal Register*, the Department will be able to enter into Agreements with one or more Accrediting Entities qualified under the IAA to accredit adoption service providers. The Accrediting Entity or Entities will then be able to accredit or approve adoption service providers to provide adoption services in cases subject to the Convention.

An outline of the Department of State's plan to implement the Convention, and documents relating to key milestones of this project, are available on the website at [http://cas2k3ftp01/family/adoption/convention/convention\\_462.html](http://cas2k3ftp01/family/adoption/convention/convention_462.html).

The IAA provides authority to regulate the accreditation of only those adoption service providers performing adoption services in cases subject to the Convention. Adoption service providers providing intercountry adoption services in non-Convention cases will continue to be regulated by State law and may, but are not required to, observe the standards currently under development for provision of adoption services under the Convention.

(a) Please provide details (including powers and resources) of the authority or authorities which grant accreditation.

No authorities have yet been designated to grant accreditation under the IAA. The Department is currently engaged in discussions with six potential accrediting entities and will designate one or more of them as accrediting entities under the IAA after the regulations on accreditation and approval are finalized.

(b) How many bodies have been accredited by your country? Federal States may provide the number for each state or province. If possible, please indicate how many bodies have been refused accreditation.

As no accrediting entities have yet been designated, no bodies have yet been accredited in the United States.

(c) Please give a brief outline of your accreditation criteria, guidelines or legislation.

IAA Section 201 establishes the requirement that an adoption service provider must be accredited to perform adoption services in a Convention case, subject to certain defined exceptions. IAA Section 203 establishes the minimum standards that an adoption service provider must meet in order to be accredited, and directs the Department of State to issue regulations prescribing the standards and procedures to be used by accrediting entities for the accreditation and approval of adoption service providers. The Department of State is in the final stages of

developing those regulations.

(d) What is the process by which accreditation is granted?

Adoption service providers seeking accreditation will be required to apply to a designated accrediting entity. The accrediting entity will apply published standards developed by the Department of State, as required by the IAA, to determine whether the adoption service provider should be granted accreditation or approval. Precise standards and procedures will be described in the accreditation/approval regulations currently under development.

(e) If possible, please provide an electronic copy of your accreditation criteria, guidelines or legislation, and any translations into English, French or Spanish.

An English electronic copy of the IAA is attached at Tab 1. The Department of State will forward to the Permanent Bureau an electronic copy of the accreditation/approval regulations once they have been published in the *Federal Register*.

(f) How is the supervision of accredited bodies carried out in your State (Article 11 c))? Are there regular reporting requirements (including financial reporting) by the accredited body to the supervising authority?

IAA Section 204 gives the Department of State specific responsibilities and authority for oversight of both accrediting entities and accredited or approved bodies. Specific requirements for how accrediting entities and adoption service providers will comply with these responsibilities will be specified in the accreditation/approval regulations currently under development.

(g) How is the performance of the accredited body assessed or evaluated?

Please see (d) above.

(h) Has the competent supervisory authority encountered any difficulties in relation to (f)?

Not applicable, as no bodies have yet applied for or been granted accreditation.

(i) Are you aware of any acts or behaviour by accredited bodies or approved bodies or persons that contravened your accreditation criteria? Please also provide details of any sanctions or penalties applied?

Not applicable, as no bodies have yet applied for or been granted accreditation.

IAA Sections 202(b)(3) and 204, and the accreditation/approval regulations currently under development, provide for sanctions or penalties for accredited or approved bodies that are not in substantial compliance with accreditation standards.

(j) What are the conditions for renewal of accreditation?



The accreditation/approval regulations currently under development will describe conditions and procedures by which an accredited or approved adoption service provider can apply for renewal of its accreditation.

- (k) Have you experienced any difficulties in obtaining assistance or cooperation from other Central Authorities in regard to accredited bodies?

The United States is not aware of any difficulties in this regard.

- (l) Have you experienced any difficulties or concerns regarding the supervision of accredited bodies in other countries?

The United States is not aware of any difficulties in this regard.

- (m) Do you consider that standard or model accreditation guidelines would assist countries in developing appropriate safeguards or procedures?

Countries seeking to implement (or improve implementation of) the Convention may, in some circumstances, benefit from model accreditation guidelines. It is our experience that countries seeking technical assistance for child welfare or adoption system development often request sample Hague-compliant legislation, regulations or procedures. It is also our experience, however, that such model guidelines are rarely practical if conceived as a “one size fits all” model. Practical application of model guidelines, in which regulators and those being regulated understand, accept and intend to abide by the guidelines, requires that such guidelines reflect to a considerable degree existing intercountry adoption norms and practices in the country concerned.

- (2) Has your country authorised foreign accredited bodies to undertake intercountry adoptions in your country (see Article 12)?

Not directly. Currently, individual States are competent for authorizing adoption service providers, including foreign accredited bodies, to operate in individual States. Please see the NAIC website listed above for information on adoption service providers licensed to operate in individual States of the United States.

- (a) What steps are involved in the process of authorisation?

Please see (2) above, and the NAIC website for a listing of State licensing authorities and their procedures.

- (b) What supervision of foreign authorised bodies occurs?

Please see (2) above.

- (c) Have you experienced any difficulties regarding a body accredited in one State and authorised to act in another State?

The United States has no information in this regard.

(3) If your State has decided not to use accredited bodies, please explain the reasons and indicate what has influenced the decision.

Not applicable.

(4) What particular issues concerning accreditation would you like discussed on the Accreditation Day (17 September)?

Communication between accredited bodies and Central Authorities in other Convention countries.

(5) Would you like to see a chapter on Accreditation developed for the Guide to Good Practice for Intercountry Adoption? What issues do you think should be covered in this chapter?

In the draft Guide to Good Practice, there is a helpful outline discussion on accredited bodies. Once the United States has gained further experience with our own accreditation process, we would re-examine the question of whether an expanded chapter on accreditation would be helpful.

*Approved bodies and persons*

(6) Please indicate whether your country uses or intends to use approved bodies or persons (see Article 22(2)) in intercountry adoption. If so,

The United States intends to use approved bodies and persons in intercountry adoption cases subject to the Convention. IAA Title II specifically authorizes accreditation of agencies and approval of persons to perform adoption services and describes the requirements for obtaining approval.

(a) How many bodies or persons have been approved by your country to provide adoption services in accordance with Article 22(2)?

None at present. The standards for accreditation and approval are still in development.

(b) Do you grant approval to persons or bodies from abroad?

Please see (2) above.

(c) What are the guidelines by which approval is granted (if different from 1(c))?

The standards being developed for accreditation of adoption service providers will also apply for the approval of persons.

(d) What is the process by which approval is granted and renewed?

Please see 1(d) above.

(e) How is the supervision of approved bodies or persons carried out in your State (Article 22(2))?

Please see 1(f) above.

(f) Has your country made a declaration under Article 22(4)?

No.

## **7. Procedural aspects**

(1) Please indicate any operational difficulties that have been experienced, including in particular:

The United States has not yet ratified the Convention and so has no direct experience with the operation of the Convention in these areas.

- (a) obtaining accurate and sufficient health and social information on the child;
- (b) obtaining accurate and sufficient information on prospective adoptive parents;<sup>1</sup>
- (c) obtaining an accurate estimate of fees to be paid by adoptive parents prior to adoption and / or travel to collect the child;<sup>2</sup>
- (d) documentation requirements, including requirements for legalisation or authentication of documents, or the acceptance of documents by the other country;
- (e) obtaining the agreements required in Article 17;
- (f) receiving post-placement reports from adoptive parents or Central Authorities;<sup>3</sup>
- (g) translation requirements;
- (h) time taken to process Convention cases.

(2) Do you permit prospective adopters, once their eligibility and suitability have been established, to make their own arrangements for contacting directly the placement agencies in the country of origin?

When the United States is acting as a receiving State, current practice is to permit prospective adoptive parents to make their own arrangements for contacting directly placement agencies or other appropriate authorities in the country of origin. It is anticipated that this practice will continue after the Convention enters into force for the United States.

When the United States is acting as a State of origin, current practice is to permit prospective adoptive parents to make their own arrangements for contacting directly placement agencies or other appropriate authorities in the United States. It is anticipated that this practice will continue after the Convention enters into force for the United States.

(3) Has the practice referred to in the preceding question given rise to particular problems of which you are aware?

The United States has not yet ratified the Convention and so has no direct experience with the operation of the Convention in this area.

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<sup>1</sup> The Convention, Articles 15 and 16.

<sup>2</sup> See Report of the Special Commission of 2000, page 42, paragraph 7.

<sup>3</sup> See the Convention, Article 20.

(4) Please provide details on the breakdown of placements in the Receiving State. What steps have been or are being taken in your country to address this problem (Article 21)?<sup>4</sup>

No national data is collected in the United States on rates of placement breakdowns in intercountry adoptions. State and local governments and private organizations are often available to assist families to ensure that adoptions are successful.

The IAA includes, as an adoption service that will require accreditation or approval in connection with a Convention adoption, assuming custody and providing child care or other social services pending alternative placement in the event of a disruption before final adoption. The regulations under development will outline standards whose overall aim is to minimize the likelihood of disruption in adoption and, in the event a disruption is unavoidable, to ensure that the best interests of the child will continue to be met until alternative placement can be arranged.

(5) Legalisation of foreign documents can be very time consuming for Contracting States. At the Special Commission on the Apostille, Evidence and Service Conventions in November 2003,<sup>5</sup> a recommendation was made concerning the 1993 Convention. The Report states that:

*"The Special Commission stressed the usefulness of linking the application of the Hague Adoption Convention of 1993 to the Apostille Convention [the 1961 Convention Abolishing the Requirement of Legalisation for Foreign Public Documents]. In light of the high number of public documents included in a typical adoption procedure, the Special Commission recommended that States that are party to the Adoption Convention but not to the Apostille Convention consider actively becoming party to the latter."<sup>6</sup>*

Would you favour a similar recommendation from the forthcoming Special Commission meeting for the 1993 Convention?

The United States would favor a similar recommendation from the forthcoming Special Commission meeting for the 1993 Convention.

(6) DNA testing has been used to establish identity (if, for example, a consent is in doubt). Can you provide details of such cases, including the cost and procedures involved?

As stated in (3) above, in order for a child adopted or travelling to the United States in order to be adopted to receive a U.S. immigrant visa, the consular officer or officer of the Department of Homeland Security must determine that the child meets the requirements of U.S. immigration law. As part of this investigation, officers can require additional testing or evidence in order to

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<sup>4</sup> The number of placement breakdowns is sought in the new draft Statistics Form.

<sup>5</sup> See "Conclusions and Recommendations adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence and Service Conventions", 2003, page 5, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) >.

<sup>6</sup> See paragraph 6.

verify the authenticity of documentation or statements made as part of the application. DNA testing is sometimes used to verify the identity of claimed parentage and to ensure that any consents to adoption have been properly obtained. For example, the Department of Homeland Security requires DNA testing in all adoption cases from Guatemala. The U.S. requires that such testing be performed in an approved AABB (American Association of Blood Banks) laboratory, with strict chain of custody controls to ensure the integrity of the sample and the testing results. For these reasons, costs can vary widely depending on the location where the sample is taken and the laboratory used. The cost of a DNA test in Guatemala in 2004, for example, ranged from US\$300 to \$700, depending on the laboratory used and the time frame in which the results were requested.

## **8. Private international law issues**

(1) The Convention does not determine which authorities have jurisdiction to grant or amend / revoke an adoption nor which law applies to the conditions governing, or the effects of, an adoption.

(a) Are you aware of any difficulties that may have arisen in the application of the Convention concerning the jurisdiction of the authorities to grant or amend / revoke an adoption?

(b) Are you aware of any difficulties that may have arisen in the application of the Convention concerning the law or laws to be applied to the conditions governing, or the effects of, an adoption?

The United States has not yet ratified the Convention and so has no direct experience with the operation of the Convention in this area.

If the answer to either or both of these questions is "yes", do you wish the Permanent Bureau to study these questions further?

(2) Issues of applicable law may arise when bodies accredited in one Contracting State act in another Contracting State (Article 12), for example:

- whether and to what extent agents of that body are authorised to act and bind their principal;
- whether they have exceeded or misused their authority.

Have you experienced any difficulties in this respect (see also the *Hague Convention of 14 March 1978 on the Law Applicable to Agency*)?

The United States has not yet ratified the Convention and so has no direct experience with the operation of the Convention in this area.

## **9. Recognition and effects**

The United States has not yet ratified the Convention and so has no direct experience with the operation of the Convention as it pertains to recognition and effects of adoption decrees. IAA Section 301 provides for the Secretary of State

to issue a certificate with respect to Convention adoptions where applicable requirements have been met. Adoptions finalized in another Convention country and certified pursuant to IAA Article 301 will be recognized as final valid adoptions for purposes of all Federal, State and local laws in the United States. IAA Section 301 will enter into force when the Convention enters into force for the United States.

Currently, some U.S. States may maintain requirements that an adoption finalized abroad must be validated by a court in that State. Notwithstanding such laws, the Department of State is not aware of any cases in which, despite the fact that the U.S. has not ratified the Convention, an adoption completed in a Convention state was not recognized in the U.S., or an adoption completed in the United States was not recognized in a Convention country.

(1) Have your courts used the Recommended Model Form "Certificate of Conformity of Inter-country Adoption"? See < [www.hcch.net](http://www.hcch.net) >, "Inter-country Adoption", "Practical Operation Documents", "Annex C to the Special Commission Report of October 1994".

(2) Have you knowledge of any difficulties that have arisen in obtaining certificates under Article 23(1)?

(3) Do you have information about any case in which recognition of a Convention adoption has been refused under Article 24?

(4) Are there any circumstances in which you would recognise the validity of a foreign adoption coming within the scope of the Convention despite Convention procedures or requirements not having been followed?

Please specify any other difficulties that have arisen in relation to Chapter V of the Convention.

The United States has not yet ratified the Convention and so has no direct experience with the operation of the Convention in this area.

## **10. Payment of reasonable charges and fees**

(1) Please quantify the costs and expenses charged or fees paid in your country in respect of intercountry adoptions (Article 32(2)). Is this information freely available and accessible to prospective adoptive parents and competent authorities?

In the United States, the fees for services relating to adopting a child are influenced by several factors, including the type of adoption, the type of placement agency, child's age or circumstances, and the laws and procedures in the jurisdiction of the prospective parents. To our knowledge, an intercountry adoption can range anywhere from \$7,000 to over \$30,000, including dossier and immigration processing, court costs, translation fees, medical care, and various other expenses.

(2) Have you had any experiences with the use of fee caps, established and publicised appropriate fees, established expediting fees, or other similar controls?

The United States has not yet ratified the Convention and so has no direct experience with the operation of the Convention as it pertains to payment of reasonable charges and fees for Convention adoptions.

As a general matter of principle, the United States considers fee transparency – including establishing and publicizing the amount of fees charged and what they are for, to whom they are paid, and provision of detailed receipts for fees collected – to be a critical component of a well-run adoption system in which the interests of the child, birth parents and adoptive parents are protected.

IAA Section 203 includes requirements that, in order to be accredited to provide adoption services in a Convention adoption case, an adoption service provider must disclose fully all fees it charges for intercountry adoption.

(3) Do you have any comments on the practice in some countries of requiring a mandatory contribution by adoptive parents for the support or development of child protection services in such countries?

The United States recognizes that in some countries, local law or practice requires a mandatory contribution by adoptive parents for the support or development of child protective services in the country of origin. Such practice can be useful in generating funds required for child welfare services. In such cases, to ensure proper accountability for such funds and to prevent opportunities for using adoption for inappropriate financial gain, the U.S. advocates that such contributions be established and publicized, that the bodies receiving such funds be required to provide receipts for such contributions and maintain detailed records of the use of any contributions provided by adoptive parents, and that these records be made available for review by appropriate authorities.

(4) Do you have any comments on or experiences of uneven processing amongst countries due to large disparities in fees (for example, applications from countries that offer higher fees may be processed more quickly)?

The United States considers that in general, a fundamental element of a well-run adoption system that protects the interests of children, birth parents and adoptive parents is transparency and equity regarding rules and procedures. Adoption procedures should be clear and publicized. They should be applied consistently to all applicants regardless of nationality, and perhaps just as importantly, should be seen to be so applied.

(5) Are you aware of any instances of disparity between professional salaries or fees charged for adoptions compared to other forms of legal work? (For example, large legal fees may be charged for adoption, while standard or lower fees are paid for other family law matters such as divorces – see Article 32(3).)

The United States is not aware of any concrete examples of this nature.

The U.S. recognizes that costs for legal fees associated with adoption can differ significantly from fees normally charged for other family law matters, depending on prevailing conditions in a given country. Factors which may influence the cost for legal fees associated with adoption can include the availability of attorneys with requisite legal experience; the risks of potential litigation alleging wrongful adoption; the number of adoptions completed in the country of origin; the cost of complying with documentary requirements in the country of origin; and others.

(6) Are you aware of any significant differences in fees charged for intercountry adoption by regional or provincial authorities?

Information is not available regarding regional differences in fees charged; however see (1) above for general discussion of adoption fees.

(7) To what extent, if any, are intercountry adoption fees used (a) to support or develop the national childcare and protection system; or (b) to contribute to funding resources of Central Authorities or accredited bodies?

(a) The Department of State has no information on the degree to which, in cases where the U.S. acts as a State of origin, intercountry adoption fees that may be charged by public authorities in a U.S. State are used to support child care and protective services in that State.

(b) The Department of State does not currently charge fees in connection with intercountry adoptions, with the exception of standard fees for services, such as visa application fees.

IAA Section 403 authorizes the Secretary of State to charge a fee for new or enhanced services undertaken to meet the IAA's requirements in Convention adoptions and comparable services for other intercountry adoptions. The IAA stipulates that such fees cannot exceed the cost of such services, and must be retained and deposited as an offsetting collection to any Department of State appropriation to recover the costs of providing such services. Any such fees must be authorized in advance by Congress in appropriations acts.

(8) Do you have any other comments about reasonable or unreasonable costs and expenses or fees?

As a matter of general principle, the United States supports intercountry adoption policies and procedures that ensure that those involved in intercountry adoption do not derive inappropriate financial gain. Fees associated with intercountry adoption services should be appropriate to cover legitimate, identifiable costs for providing such services. The United States considers that fee transparency is a useful tool for encouraging reasonable intercountry adoption costs and expenses.

(9) Are you aware of any other problems arising from the payment of fees or charges in your country or in other countries with which you have adoption arrangements?



The Department of State from time to time receives complaints regarding fees paid for intercountry adoption. The Department at this time does not have authority to regulate fees charged by adoption service providers.

#### **11. Improper financial gain**

(1) Please indicate the laws (including criminal sanctions), measures and procedures in place to give effect to the principle that no one shall derive improper financial or other gain from an activity related to an intercountry adoption (Article 32(1)).

IAA Section 404(a) aims to ensure that the principle articulated in Convention Article 32(1) is upheld by imposing civil penalties on any person who:

- (1) violates Section 201 (general requirement to be accredited or approved in order to provide adoption services in Convention cases);
- (2) makes a false or fraudulent statement, or misrepresentation, with respect to material fact, or offers, gives, solicits or accepts inducement by way of compensation, intended to influence or affect in the United States or a foreign country –
  - (A) a decision by an accrediting entity regarding the accreditation or approval of an adoption service provider;
  - (B) the relinquishment of parental rights or the giving of parental consent relating to a Convention adoption;
  - (C) a decision or action of any entity performing a central authority function;
- (3) engages another person as an agent in the U.S. or in a foreign country, who, in the course of that agency, takes any of the actions described above.

Section 404 prescribes civil penalties of not more than USD 50,000 for a first violation and not more than USD 100,000 for each succeeding violation, in addition to other penalties as may be prescribed by law. In addition, violators of 404(a)(1) or (2) are subject to criminal penalties of a fine of not more than USD 250,000, imprisonment for not more than 5 years, or both.

(2) Are you aware of any instances of success in enforcing penalties to discourage improper financial gain?

IAA Section 404 takes effect upon entry into force of the Convention for the United States.

(3) Are you aware of any difficulties in the enforcement of laws or regulations or in prosecution of criminal activity?

See 11(2) above.

(4) Apart from the measures referred to in Question 11(1) above, have any other preventive measures been taken in your country to combat improper financial gain?

The IAA is the primary Federal level legislation concerning standards in intercountry adoption. Individual States may maintain additional legislation concerning standards in intercountry adoption. Please see the NAIC website cited above.

(5) Please provide details of any measures taken to prevent solicitation (e.g. through inducements to consent) of children for adoption (Articles 8 and 29).

Please see 11(1) above.

(6) Have you experienced any difficulties in obtaining co-operation or assistance from other States in eliminating practices that lead to improper financial gain?

The United States' general experience is that other countries recognize the potential for improper financial gain associated with intercountry adoption and want to eliminate practices or circumstances that can lead to it. It is not always the case that countries have legislation penalizing such practices, or adequate means to enforce such laws if they exist. As discussed in Section 10 above, it is our experience that countries that do not have transparent, consistently applied procedures regarding adoption fees are at greater risk for practices that lead to improper financial gain in intercountry adoption.

## **12. Relative adoptions**

Do you have any comments on the application of the Convention procedures to relative (inter-family) adoptions?

IAA Section 502 grants the Department authority to promulgate regulations that set forth alternative procedures for Convention cases concerning adoption by relatives.

## **13. Children with special needs**

What policies or programmes do you have to ensure that children with special needs are given the same opportunity to find a family through intercountry adoption as other children?

Many states offer various kinds of public sector agency assistance to families interested in adopting special needs children. Federal and state tax credits and adoption subsidies are available in certain cases for qualified children.

## **14. Other forms of cross-border child care**

International foster care, transnational *kafala* and other forms of child care with a cross-border element are not covered by the 1993 Convention, but by the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*: See for example its Articles 3 e) and 33(1).

(1) Is your country involved in international placements of children other than for purposes of adoption?

## REPATRIATION:

The Office of Refugee Resettlement (ORR) is the agency of the Department of Health and Human Services designated to facilitate the resettlement in the United States from other countries of children, who are U.S. citizens or who are dependents of U.S. citizens, when those children must return to the U.S. due to destitution, illness, neglect, abandonment, abuse, war, natural disaster, or similar crisis. The service is performed in cooperation with U.S. Department of State/Bureau of Consular Affairs/Overseas Citizens Services (OCS), which facilitates their return to the United States. The OCS then refers the children to HHS for assistance after arrival to U.S.

Services are facilitated by International Social Service/USA Branch, Inc. under a cooperative agreement with ORR and are generally carried out by local or state government child welfare services. The services provided may include foster care, kinship care or return to parent or other caretaker relative.

## UNACCOMPANIED MINOR REFUGEE AND TRAFFICKED CHILDREN:

ORR provides funding to 15 States to work in conjunction with two lead voluntary agencies, the United States Catholic Conference of Bishops (USCCB) and the Lutheran Immigration and Refugee Service (LIRS), to provide culturally appropriate foster care and resettlement services under the Unaccompanied Refugee Minors (URM) program to refugee minors who enter the country unaccompanied and to refugee minors who enter the United States with their families, but whose family circumstances change drastically after arrival. Asylee minors, Cuban/Haitian Entrants and minors who are victims of certain forms of trafficking may also be eligible for assistance under the URM program. Minors who enter the United States prior to age 18 can remain in the URM program until they reach 20-21 years of age, depending on the age that the State provides child welfare services to other children in that State. Minors who enter the program are not generally eligible for adoption since family reunification is the objective of the program.

## UNACCOMPANIED ALIEN CHILDREN:

ORR places in contracted shelters throughout the U.S. unaccompanied alien children who are in Federal custody by reason of their immigration status. The children remain in ORR care pending immigration hearings or until they can be released to a responsible adult.

(2) Are you aware of any difficulties concerning such placements?

## REPATRIATION:

Difficulties arise in the absence of an established legal guardian for the child. Problems may occur both en route and until the appropriate court within the U.S. has established custody for the child. Local and state child welfare policies may require the beneficiary child to be a legal resident of their jurisdiction. Accordingly, returning children may be required to wait until they are established in the local community before becoming eligible to obtain child welfare services, other local or state services, or the rights and protections of the local or state legal system.

## UNACCOMPANIED MINOR REFUGEE AND TRAFFICKED CHILDREN

Placement in ORR's URM program is limited to 19 designated programs that are able to provide refugee-appropriate child welfare service. Resettlement of unaccompanied refugee minors occurs in accordance with domestic child welfare guidelines, but services are only provided through programs specifically designed to meet the special needs of refugee children. Depending on the individual needs of the minors, they are placed in home foster care, group care, and independent living.

## UNACCOMPANIED ALIEN CHILDREN:

ORR contracts with non-profit organizations to provide for the children's care during pending immigration proceedings in the U.S. ORR has a system of shelters, group homes, staff secure facilities, secure facilities, and foster care (not state foster care, but foster care through the United States Conference of Catholic Bishops and the Lutheran Immigration and Refugee Service). ORR aims to place the child in its care as close to the time of apprehension as possible, but delays can occur pending verification of the minor's status or as a result of an ongoing criminal investigation. If an ORR contract facility is full, the Department of Homeland Security (DHS), which provides transportation for the children to ORR facilities, may have to delay placement for a short period until some children are reunited with families or beds become available. ORR currently has over 950 beds in its program for unaccompanied alien children and in FY06 aims to have 1200 beds.

(3) If your country is not yet a Party to the 1996 Convention, is your country actively studying ratifying or acceding to it?

The United States is studying the possibility of becoming a party to the 1996 Convention. As more countries become parties to this Convention, we expect that it will become an increasingly useful instrument. Information from other countries on how the Convention works in practice would assist us in moving forward with the process of deciding whether to become a party.

### **15. Avoiding the Convention**

Are you aware of any attempts to circumvent the Convention or to avoid protections

afforded to children, including the moving of children or birth parents to other countries?

Not applicable -- the Convention is not yet in force for the United States.

#### **16. Additional safeguards and bilateral arrangements**

Please describe any additional safeguards, requirements or procedures, which you apply to Convention adoptions (*i.e.* over and above those which are set out in the Convention itself). Are these applied generally, or only in relation to particular States?

Please see Tab 3 for a description of existing child welfare protections applied in the United States. These protections are applied to all children in the United States, including adopted children.

The regulations to implement the IAA that are currently under development may include safeguards over and above those set out in the Convention. The regulations will, as a general matter, apply only to adoption cases covered under the Convention.

Have you made agreements with one or more other Contracting State (see Article 32(2)) with a view to improving the application of the Convention? If so, please specify with which States and what matters are covered by the agreements.

No. The Convention is not in force for the United States.

Do you have any comments on the efficacy of bilateral arrangements:

- (a) with non-Contracting States? Are Convention safeguards applied?
- (b) with Contracting States? Do they improve the operation of the Convention? Have they caused any difficulties?

In general, the United States does not favor negotiating bilateral agreements in any area where an adequate multilateral arrangement exists, for several reasons:

- Negotiating a bilateral agreement is time-consuming. To the extent that doing so mirrors principles already contained in the multilateral arrangement, it is also duplicative.
- Depending on the precise nature of the document, any such agreement could require the advice and consent of the U.S. Senate. The Department of State cannot guarantee this advice and consent would be granted.

#### **17. Limits on number of States with whom co-operation is possible**

In making arrangements for intercountry adoption (whether as a receiving State or as a State of origin), have you found it necessary to confine co-operation under the Convention to a limited number of other Contracting States? If so, please explain the reasons (*e.g.* no appropriate accredited body, lack of resources to process applications from large number of States, etc) and indicate what has influenced the choice of these States.

The Convention has not yet entered into force for the United States. The United States maintains a restriction on adoptions with only one country – Cambodia. In December 2001 the U.S. Immigration and Naturalization Service imposed a

moratorium on adoptions from Cambodia amid widespread evidence of fraud in the adoption process in that country. Since that time the U.S. has worked with UNICEF and the international community to help Cambodia craft adoption legislation incorporating safeguards that meet Hague Convention standards. Cambodia, however, has until recently lacked a legislature empowered to enact legislation.

The U.S. is working with the Cambodian Government to explore ways of increasing the Cambodian Government's capacity to establish and administer an adoption system with strong safeguards to protect the interest of children, birth parents and adoptive parents. The U.S. will consider resuming adoptions from Cambodia after Cambodia has demonstrated it has been able to establish and administer an adoption system that eliminates the potential for fraud and abuses seen in the past.

## **B SUGGESTIONS FOR THE SEPTEMBER SPECIAL COMMISSION**

**18.** Do you regularly hold seminars, training sessions or workshops on the Adoption Convention in your State? Would you welcome participants from other countries? Would you find it helpful if there was a consistent way to announce such activities to other States? Do you have suggestions?

We have not organized regular seminars or training sessions on the Adoption Convention. We do regularly meet bilaterally with States of origin to discuss adoption issues. We take such opportunities to encourage those countries to become party to the Convention.

**19.** In the current negotiations for a new Convention on the International Recovery of Child Support and other Forms of Family Maintenance, an Administrative Co-operation Working Group has been established to examine and report on practical problems and issues of administrative co-operation between authorities. Would you favour the establishment of a similar group for the 1993 Convention?

The United States is co-chair of the Administrative Co-operation Working Group for the new Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, currently under negotiation. The United States has found the Administrative Co-operation Working Group a very useful vehicle and would favor establishment of a similar group for the 1993 Convention.

**20.** Please indicate which topics you consider priority issues for the Special Commission in September 2005, and their degree of importance.

Assisting States of origin not party to the Convention to develop and implement Convention-compliant legislation and procedures, and practical experience in administering them, in advance of their ratification of the Convention. (very important)

Sharing information regarding adoption fees charged in States of origin, to

encourage fee transparency. (very important)

Encouraging “mentor” relationships between existing Convention States party and aspiring States party, to maximise efficient use of experience and resources in assisting aspirant countries to become Convention-compliant (important)

**21.** Any other suggestions, comments and observations are welcomed.

The United States appreciates the opportunity to share our experience in the field of intercountry adoption and to comment on the Convention. We will provide updated information on our implementation of the Convention as that information becomes available.