

THE REGULATION OF INTERCOUNTRY ADOPTION

Mary Eschelbach Hansen^{*}, Daniel Pollack^{**}

RH: Regulation of ICA

Abstract

As of January 2006, the United States was the only major receiver of children through intercountry adoption that had not implemented the 1993 Hague Convention on Intercountry Adoption (Hague Convention). The United States signed the Hague Convention in 1994, but did not pass implementing legislation until 2000. Regulations pursuant to the legislation were proposed in 2003, but final regulations did not go into effect until March 2006. The slow pace was partly the result of both Congressional wrangling over designation of a regulator and a prolonged conversation between the designated regulator and the adoption community over specific regulations.

Finalization of the regulations brings the Hague Convention into force in the United States, but the current system is inadequate to protect the rights of all children and families as the Hague Convention intends. Two parts of the regulations are problematic, especially in combination. First, only substantial, not strict, compliance is required of adoption providers. Second, the United States encourages competition between accreditors of adoption providers. We argue that the regulations will increase the costs of adoption services but, at best, will not improve quality. We conclude that regulation of adoption should be centralized in order to comply with the intent of the Hague Convention.

^{*} Mary Eschelbach Hansen, Assistant Professor, Department of Economics, American University, (4400 Mass. Ave. NW, Washington, D.C., 20016, 202-885-3793, mhansen@american.edu), and Research Fellow, Center for Adoption Research, University of Massachusetts Medical School, Worcester, MA.

^{**} Daniel Pollack, Professor, Wurzweiler School of Social Work, Yeshiva University, New York City, and Senior Fellow, Center for Adoption Research, University of Massachusetts Medical School, Worcester, MA.

I. INTRODUCTION

The 1993 Hague Convention on Intercountry Adoption (Hague Convention) came into force in the United States in March 2006.¹ Before 2006, the United States was the only country annually receiving more than one thousand intercountry adoptees that had not implemented the Hague Convention.² The slow pace of implementing the Hague Convention in the United States was partly the result of both Congressional wrangling over the designation of a domestic “Central Authority” to regulate intercountry adoption, and a prolonged conversation between the designated Central Authority and the adoption community over the specifics of the regulations. Regulations were proposed in 2003, but progress towards finalization was halting.

Finalizing the regulations brings the Hague Convention into force in the United States, but the full benefits of the Hague Convention will not be realized with the system as it is currently detailed. We argue that the regulations will increase the costs of adoption services, but, at best, will not improve quality. We conclude that regulation (specifically, the monitoring of providers and the enforcement of standards) of the market for adoption services should be centralized in order to be consistent with the intent and letter of the Hague Convention.

Two parts of the regulations, taken together, are problematic. The first part is the performance criterion for adoption service providers. Only substantial compliance is required; strict compliance is not required for accreditation.³ The second part is the law regarding the selection of accreditors of adoption service providers. The U.S. Central Authority encourages all interested parties to apply to become accreditors.⁴ The many accreditors will have overlapping jurisdictions and will compete for the business of the many adoption providers that will seek accreditation. Together, these two parts of the regulations will

¹ The final regulations were published in 71 Fed. Reg. 8131 on February 15, 2006 and codified at 22 C.F.R. pts. 96–98 (2006).

² Jeff D. Opdyke, *Adoption's New Geography*, WALL ST. J., Oct. 14, 2003, at D1, (“The U.S. adopts more foreign children than all other nations combined.”). For ratification dates and country-specific details, see Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption, Status Table, Member States of the Organisation [hereinafter Status Table of Contracting States with Hague Convention], available at http://www.hcch.net/index_en.php?act=conventions.status&cid=69.

³ 22 C.F.R. § 96.27(a).

⁴ 22 C.F.R. § 96.4 (private accreditors must be non-profit).

prevent the regulations from safeguarding the rights of children and families that the Hague Convention intends to protect.

We begin by addressing the question of why regulation of the market for adoption services is desirable, and whether the regulation should be on a local, national, or international level. Next, we present a brief history of the international movement to regulate intercountry adoption, as expressed in the Hague Convention. Following this brief account of the development of the Hague Convention, we discuss U.S. efforts to ratify the Hague Convention, including the specific regulations finalized in 2006. Finally, we show that, in general, the regulation of adoption has the potential to produce the desired results, but these specific regulations are unlikely to do so.

II. ECONOMIC RATIONALE FOR REGULATION OF ADOPTION SERVICES

Economists identify three main rationales for regulation: monopolistic abuse, imperfect information, and the existence of external effects on public goods.⁵ In these three market failure scenarios, the unregulated outcome fails to produce the optimal quantity or quality of the good or service. Regulation can move the outcome towards the optimal quantity or quality in these situations. Parties to the Hague Convention agree to enact regulation to solve the problems of imperfect information and the public goods aspect inherent in the market for adoption services.

A. *Public Good Aspect*

Economic theory postulates that goods and services that produce satisfaction only for the people who consume and produce them are most efficiently produced by private firms in unregulated markets. Consumption of each of these “private” goods is limited to the individual consumer (or a well-defined group of consumers), and the production and consumption of private goods does not affect other people. This is not so with adoption services. When an adoption takes place, the wider society—in both the sending and receiving countries—is affected. Parental rights are exchanged, the definition of family is transformed, and the sending society loses a potentially productive future worker while the receiving society gains one.

⁵ For a thorough review of the literature on the political causes of regulatory policy, see Roger G. Noll, *Economic Perspectives on the Politics of Regulation*, in 2 HANDBOOK OF INDUSTRIAL ORGANIZATION 1254–87 (Richard Schmalensee & Robert D. Willig eds., 1989).

Moreover, as the cases of the moratoria on intercountry adoption from Romania and Cambodia demonstrate,⁶ the market for adoption services relies on a service it cannot provide for itself—the protection of the rights of children and families involved in adoption. The protection of the rights of children and families has benefits to society that are greater than the benefits to any single individual. Further, the protection of rights is not antagonistic (non-rival) or exclusive (non-excludable); everyone benefits from the protection of rights, even those who do not adopt. Thus, the protection of rights in adoption is a public good. Public goods are under-provided by markets, which is why they are usually closely regulated, or even directly produced by governments.⁷ The protection of rights in adoption, if achieved through the regulation of adoption services, is therefore likely to increase the number of intercountry adoptions.

B. Imperfect Information Aspect

In some markets, producers have more knowledge than consumers about the quality of the product or service provided. When the information about the quality of a product or service is complex and expensive to collect, consumers may not, despite their best efforts, be able to discover all they need to know in order to make well-informed decisions. The imperfect information rationale has been the historical motivation for regulation of consumer products, workplaces, and occupations.⁸

The imperfect information problem in adoption arises because it is difficult for prospective adoptive parents to know whether an adoption service provider has high ethical standards.⁹ Specifically, prospective adoptive parents may be concerned about whether (1) an adoption service provider only places

⁶ The State Department has information on the Romanian moratorium at http://travel.state.gov/family/adoption/notices/notices_2211.html (last visited July 23, 2006). Information about the investigation of adoption practice in Cambodia can be found at <http://www.adoptioninstitute.org/FactOverview/international.html> (last visited July 23, 2006).

⁷ Economic Growth and Tax Reconciliation Act of 2001, Pub. L. No. 107-16, § 202, 115 Stat. 38, 47 (codified at 26 I.R.C. §§ 23, 137 (2006)). The protection of rights in adoption also meets the definition of a *global* public good, similar to peace, distributive justice, and environmental integrity. See GLOBAL PUBLIC GOODS (Inge Kaul, Isabelle Grunberg, & Marc A. Stern, eds., 1999) (published for the United Nations Development Programme).

⁸ Howard K. Gruenspecht & Lester B. Lave, *The Economics of Health, Safety, and Environmental Regulation*, in 2 HANDBOOK OF INDUSTRIAL ORGANIZATION 1508–50 (Richard Schmalensee & Robert D. Willig eds., 1989).

⁹ See Harvey Schweitzer & Daniel Pollack, Adoption and Foster Care: *Ethical and Legal Dilemmas in Adoption Social Work*, 44 FAM. CT. REV. (SPECIAL ISSUE) 258 (2006).

children who are truly legally available for adoption, (2) the adoption service providers are interested primarily in creating the best “match” of family and child, and (3) the adoption service providers are not charging or condoning the payment of fees beyond the cost of providing adoption services.

Regulation can improve the outcome of a market with imperfect information,¹⁰ such as the market for adoption services, in two ways. First, the government can set minimum standards, which protect consumers from the hazards of consuming low-quality products or services. In the case of adoption, the minimum standards are stated in terms of ethical social work practice. Second, government can compel producers to disclose information about the quality of their products and services, thus increasing the amount of information available to consumers and decreasing the cost to consumers of obtaining the information. In the case of adoption, the regulatory remedy is a required audit of adoption service providers that explicitly accounts for the legality of placements, the internal matching criteria, and the disbursement of all fees collected and donations accepted.

III. HISTORY OF INTERNATIONAL REGULATION OF INTERCOUNTRY ADOPTION

Prior to 1989, there existed only regional agreements regarding intercountry adoption, which were enacted by countries in the Americas as well as those in western and northern Europe.¹¹ However, because many adoption service providers operate in many countries at the same time, and because many intercountry adoptions involve several jurisdictions, regional agreements did not suffice.¹² In the late 1980s, the United Nations began an effort to establish an international basis for the regulation of intercountry adoption.¹³

¹⁰ See, e.g., Helen M. Alvare, *The Case for Regulating Collaborative Reproduction: A Children's Right's Perspective*, 40 HARV. J. ON LEGIS. 1 (2003).

¹¹ See Daniel Pollack, Moshe Bleich, Charles J. Reid, Jr. & Mohammad H. Fadel, *Classical Religious Perspectives of Adoption Law*, 79 NOTRE DAME L. REV. 693, 718 (2004).

¹² See Joanne Selinske et al., *Ensuring the Best Interest of the Child in Intercountry Adoption Practice: Case Studies from the United Kingdom and the United States*, 80 CHILD WELFARE 656 (2001).

¹³ Joan Heifetz Hollinger, *Introduction to Adoption Law and Practice*, in 1 ADOPTION L. & PRAC. §§ 1.01–1.07 (Joan H. Hollinger et al. eds., Matthew Bender 2005) (1988). See generally BEREND HOVIUS, *FAMILY LAW: CASES, NOTES AND MATERIALS* 915–78 (3d ed. 1992) (discussing Canadian adoption law); Elizabeth Bartholet, *International Adoption: Propriety, Prospects and Pragmatics*, 13 J. AM. ACAD. MATRIMONIAL L. 181 (1996) (describing the problems with international adoptions and how international law attempts to balance the interests of those

A. Involvement of the Hague

The 1989 United Nations Convention on the Rights of the Child (UNCRC) explicitly acknowledges the importance of intercountry adoption to children and families.¹⁴ The preamble to the UNCRC expresses the right of the child to “grow up in a family environment, in an atmosphere of happiness, love and understanding”¹⁵ Article 20 of the UNCRC recognizes that when birth families are unable to provide a suitable environment, alternative care—including adoption—should be sought.¹⁶ The UNCRC also explicitly acknowledges the importance of national and international regulation of adoption in order to protect the rights of children and families: Article 21 requires states that allow adoption to take steps to be certain that adoption serves the best interests of the child.¹⁷ Moreover, the UNCRC posits that children involved in intercountry adoption are entitled to protections “equivalent to those existing in the case of national adoption.”¹⁸

In January 1988, the Hague Conference on Private International Law began to consider what was to become its thirty-third Convention. The representatives of Hague-member countries believed that the problems in intercountry adoption went beyond the problems addressed by the 1965 Hague Convention on adoption. The work of drafting the thirty-third Convention began in October 1988.¹⁹ Both Hague member states and non-member states

countries that demand adoption and those countries that supply the children to be adopted). For a discussion of the need for international cooperation, see Ethan B. Kapstein, *The Baby Trade*, 82 FOREIGN AFF. NOV.–DEC. 2003, at 115.

¹⁴ Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 61st plen. mtg., U.N. Doc. A/RES/44/25 (Nov. 20, 1989), reprinted in 28 I.L.M. 1448 (1989), with corrections at 29 I.L.M. 1340 (1990) [hereinafter UNCRC]. For a complete discussion of the UNCRC as the foundation for the Hague Convention, see William Duncan, *The Protection of Children’s Rights in Intercountry Adoption*, in HUMAN RIGHTS—A EUROPEAN PERSPECTIVE (L. Hefferman ed., 1994) and Gonzalo Parra-Aranguren, *La tarea complementaria de la Convención de las Naciones Unidas sobre los Derechos del Niño realizada por las Convenciones de la Conferencia de La Haya de Derecho Internaciones Privado*, in REVISTA DE LA FACULTAD DE CIENCIAS JURISDICAS Y POLÍTICAS 106 (Universidad Central de Venezuela, Caracas 1998).

¹⁵ UNCRC, *supra* note 14, at 1457.

¹⁶ *See id.* at 1464.

¹⁷ *See id.*

¹⁸ Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption, May 29, 1993, S. Treaty Doc. No. 105-51, 32 I.L.M. 1134, 1142 (art. 21(c)) [hereinafter Hague Convention].

¹⁹ Gonzalo Parra-Aranguren, *Explanatory Report on the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (1994), <http://hcch.3vision.nl/upload/exp133e.pdf>, ¶ 5.

participated in drafting the Convention.²⁰ The Convention was unanimously approved on May 28, 1993.²¹

Worldwide acceptance and ratification of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption has been extraordinarily swift by historical standards.²² By September 2000, forty-one countries had become contracting states. As of February 2006, sixty-five states have ratified or acceded to the Convention.²³ The states include a wide variety of sending and receiving countries; a partial list is given in Table 1.

B. Goals of the Convention

The specific provisions of the Convention are intended to encourage a more child-centered practice in intercountry adoption.²⁴ The intent is to focus adoption practitioners on finding an appropriate placement for each waiting child and to limit the extent to which the practice of intercountry adoption focuses upon the quest of prospective adopters to find a child.

During the 1980s and 1990s, a number of cases of trafficking in children were revealed in the international press. These cases included the sale of children by parents and orphanages, as well as the abduction of children for the purpose of adoption.²⁵ Arguably, the most important goal of the Hague Convention is the prevention of such abuses.²⁶ Establishing a system of international cooperation for the prevention of abuse is a responsibility of countries under the UNCRC.²⁷ Pursuant to this goal, the Hague Convention delegates the responsibility for ensuring proper consent to the adoption to the country of origin.²⁸

²⁰ Parra-Aranguren, *supra* note 14 ¶ 22.

²¹ Parra-Aranguren, *supra* note 19, ¶ 29; *see generally* Hague Convention, *supra* note 18.

²² William Duncan, *The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, in INTERCOUNTRY ADOPTION: DEVELOPMENTS, TRENDS, AND PERSPECTIVES 40–52 (Peter Selman ed., 2000).

²³ The Hague Conference regularly updates its list of contracting states on its website. *See* Status Table of Contracting States with Hague Convention, *supra* note 2.

²⁴ Duncan, *supra* note 22, at 46–47.

²⁵ For a summary of the scandals, see Kapstein, *supra* note 13, at 119.

²⁶ Hague Convention, *supra* note 18, 32 I.L.M. at 1139, 1142 (arts. 1 and 21(c)).

²⁷ UNCRC, *supra* note 14, 28 I.L.M. at 1464 (arts. 20, 21).

²⁸ Hague Convention, *supra* note 18, 32 I.L.M. at 1140 (art. 4(c)(2)) (“[S]uch persons, institutions and authorities have given their consent freely, in the required legal form, and

The Hague Convention also seeks to remove incentives for parent-centered practice on intercountry adoption by prohibiting financial gain from adoption, including payments to birth parents and institutions beyond actual costs incurred, such as provision of social services, travel, and child support for the pre-adoption period.²⁹ While prohibiting financial gain from adoption protects the rights of adopted children, it also protects the rights of adoptive parents. Congressman Benjamin Gilman expressed it this way: “These standards will provide parents with the confidence that this emotional undertaking will not leave them open to fraud or abuse.”³⁰ Accreditation of adoption agencies under the Hague Convention is intended to require full financial disclosure so that practices such as outright extortion and mandatory “donations” can be curbed.³¹

Finally, in addition to the ethical goals of preventing abduction, trafficking, and improper financial gain, it is hoped that the provisions of the Hague Convention will reduce “delays, complications and [the] considerable costs” of intercountry adoption.³² Under the Hague Convention, domestic law is required to clarify the status of the adopted child in the receiving country to “streamline documentary requirements” for immigration of the adopted child.³³

To achieve its goals, the Hague Convention requires each contracting state to designate a Central Authority. The division of responsibilities between Central Authorities in the sending and receiving states is clearly articulated. It is the responsibility of the sending state to “ensure that the child is adoptable, that due consideration has been given to the possibilities for placement of the child in that state, that an intercountry adoption is in the child’s best interests,

expressed or evidenced in writing . . .”). Article 4(d) expresses a similar requirement for consent of the child, when appropriate. *Id.*

²⁹ Kapstein, *supra* note 13, at 115–25. See also Hague Convention, *supra* note 18, 32 I.L.M. at 1140 (art. 4(c)(3)) (“[T]he consents [of parents, institutions and authorities] have not been induced by payment or compensation of any kind . . .”). Article 4(d) similarly requires that, when the consent of the child is appropriate, the consent not be induced by payment. *Id.* Article 8 requires Central Authorities to “prevent improper financial or other gain.” *Id.* Article 28 is more specific, confining the exchange of monies to costs and expenses (including reasonable professional fees) and limiting the earnings of adoption service providers. *Id.* at 1143.

³⁰ *Implementation of the Hague Convention on International Relations: Hearings and Markup of H.R. 2909 Before the Comm. on International Relations*, 106th Cong. (1999) [hereinafter *Hearings*] (statement of Benjamin A. Gilman, Chairman, International Relations Comm.).

³¹ Hague Convention, *supra* note 18, 32 I.L.M. at 1140 (art. 11).

³² Duncan, *supra* note 22, at 47.

³³ The Intercountry Adoption Act of 2000, Pub. L. No. 106-279, tit. II, § 302, 114 Stat. 825, 838 (2000) [hereinafter *IAA*] amends the Immigration and Nationality Act § 204(d)(2) (to be codified at 8 U.S.C. § 1154(d)(2) (2000)).

and that the relevant consents have been freely given.”³⁴ It is the responsibility of the receiving state to “determine that the prospective adopters are eligible and suitable to adopt, that they have been appropriately [counseled], and that the child will be [authorized] to enter and reside permanently in that State.”³⁵

IV. HISTORY OF U.S. REGULATION OF INTERCOUNTRY ADOPTION SERVICES

In the United States, adoption services, including intercountry adoption services, have not been directly regulated by the federal government. Federal involvement in adoption has been limited to the financing of adoptions of children in foster care who cannot return to their birth families and to tax deductions and credits for adoptive families.³⁶ Like most family law, law concerning the regulation of providers of adoption services has been left to the states. Each state licenses agencies and social workers using its own guidelines;³⁷ each state has its own rules regarding relinquishment and parental consent; and each state has its own rules regarding what payments adoptive parents may make to birth parents.³⁸

³⁴ Hague Convention, *supra* note 18, 32 I.L.M. at 1143 (art. 28). Duncan, *supra* note 22, at 44.

³⁵ Duncan, *supra* note 22, at 44. *See also* Hague Convention, *supra* note 18, 32 I.L.M. at 1143 (art. 28); National Adoption Information Clearinghouse, U.S. Dep’t of Health and Human Services, The Adoption Home Study Process (Child Welfare Information Gateway 2004), available at http://www.childwelfare.gov/pubs/f_homstu.cfm (last visited July 23, 2006).

³⁶ Congress has enacted the following federal laws financing adoption from foster care: Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. No. 95-266, § 203, 92 stat. 205 (codified as amended at 42 U.S.C. § 5101 (1994 & Supp. II 1996)); Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 stat. 500 (codified as amended at 42 U.S.C. 675 (1997)); Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 stat. 2115 (amending 42 U.S.C. §§ 671, 675, 473A, 1320a-9, and 629a). Federal tax law regarding adoption includes: Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, § 125, 95 Stat. 172 (codified as amended at 26 U.S.C. § 222 (1981)); Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (codified as amended at scattered sections of 26 U.S.C. and of the I.R.C.); Small Business Job Protection Act of 1996, Pub. L. No. 104-188, § 1807, 110 Stat. 1755 (codified as amended at 26 U.S.C. § 23); Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 202, 115 Stat. 44 (codified as amended at 26 U.S.C. § 23).

³⁷ Best practice guidelines are updated and published by the Child Welfare League of America (CWLA). *See* Child Welfare League of Am., CWLA STANDARDS OF EXCELLENCE FOR ADOPTION SERVICES (rev. ed. 2000).

³⁸ FAMILIES BY LAW: AN ADOPTION READER (Naomi R. Cahn & Joan Heifetz Hollinger eds., 2004); NATIONAL SURVEY OF STATE LAWS (Richard A. Leiter ed., 4th ed. 2003); CHILD, FAMILY

A. Designating a Regulator

Given the limited role of the federal government in adoption law, it is perhaps not surprising that the United States took so long to bring the Hague Convention into force. The United States signed the Hague Convention on Intercountry Adoption in 1993. After seven years and extensive Congressional hearings, the International Adoption Act (IAA) of 2000, Pub. L. No. 106-279, was signed by President Clinton. A primary stumbling block for passage of implementing legislation was the designation of a Central Authority. The IAA designated the Department of State (as opposed to the Department of Health and Human Services (DHHS)) as the Central Authority for the United States in matters of intercountry adoption. The Department of Health and Human Services has direct experience with social work practice, including adoption practice. Further, the Department of Health and Human Services has experience with the regulation and accreditation of health care facilities. While both Departments supported the designation of DHHS as Central Authority,³⁹ Congress chose the Department of State because of its experience “on the ground” in sending countries.⁴⁰ The State Department processes orphan visas for adoptees of U.S. citizens and has been involved in evidence gathering and the prosecution of cases of intercountry child abduction and trafficking.

AND STATE (Stephen Macedo & Iris Marion Young eds., 2003); SARAH H. RAMSEY & DOUGLAS E. ABRAMS, CHILDREN AND THE LAW IN A NUTSHELL (Thomson/West 2d ed. 2003); WOMEN'S LEGAL GUIDE (Barbara R. Hauser & Julie A. Tigges eds., Fulcrum Publishing 1996); 1 ADOPTION LAW AND PRACTICE (Joan Heifetz Hollinger ed., 1988). For a less academic approach, see AMERICAN BAR ASSOCIATION, GUIDE TO FAMILY LAW (Times Books/Random House 1996). *See also* MADELYN FREUNDLICH & LISA PETERSON, WRONGFUL ADOPTION: LAW, POLICY AND PRACTICE (CWLA Press 1998).

³⁹ In fact, a representative of the State Department testified before Congress that the Department has no experience in child welfare or human services and has no first-hand knowledge of the myriad ways in which intercountry adoptions are facilitated. *See* Hearings, *supra* note 30.

⁴⁰ The Senate and the House versions of the bill originally designated different Central Authorities. Intercountry Adoption Convention Implementation Act of 1999, S. 682, 106th Cong. (1999) (wanted State); H.R. 2342, 106th Cong. (1999) (wanted State); Intercountry Adoption Act of 2000, H.R. 2909, 106th Cong. (1999) (wanted Health and Human Services). Some members of Congress felt very strongly that Health and Human Services would not be able to incorporate the duties of Central Authority. *See* Hearings, *supra* note 30 (comments of Richard Burr, House Subcomm. on Energy and Power). However, the policy question here is one of *public perception* of the relative ability (in other words, the credibility) of the two departments. *See id.* (statement of Mary A. Ryan, Asst. Sec. for Consular Affairs, U.S. Dep't of State) (“The Administration strongly believes the accrediting function should rest with [Health and Human Services . . . [as] Health and Human Services is the only federal agency with the relevant and necessary experience evaluating social service and health service providers. . .”).

Once it was designated Central Authority, the State Department set about writing specific regulations to fulfill its responsibilities.⁴¹ Information gathering was conducted under contract with the private consulting firm Acton-Burnell.⁴² Because of its lack of experience in the fields of social work and accreditation, the State Department required a significant amount of time for information gathering.⁴³ Acton-Burnell was well known to the State Department but was not well-versed in adoption. Input from researchers, adoption agencies, adoptive parents and adoptees was gathered, and public meetings were held during the process of drafting the regulations.⁴⁴ After three years of study, the State Department published its draft of proposed regulations.⁴⁵

Some observers of adoption policy expressed frustration with what they believed to be misinterpretations of the IAA and the Hague Convention in the proposed regulations.⁴⁶ Furthermore, at a public meeting at the State

⁴¹ Almost all of the Central Authorities designated by states contracting to the Hague Convention are human services agencies or adoption-specific agencies. *See* Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, Authorities, *available at* http://www.hcch.net/index_en.php?act=conventions.authorities&cid=69. For an example of criticisms of this choice, see Bastard Nation, *Intercountry Adoption Act of 2000*, <http://www.bastards.org/international/>.

⁴² Hague Adoption Standards Project Homepage, <http://www.hagueregs.org> (last visited July 23, 2006).

⁴³ When Acton-Burnell announced its contract with the State department in March of 2001, it projected regulations would be completed by July 31, 2001. *See* Press Release, Hague Adoption Regulations Project, Acton Burnell Wins Department of State Contract to Develop Regulations for the Intercountry Adoption Act of 2000 (March 8, 2001), *available at* <http://holtintl.org/infoupdates/pdfs/Haguepr.pdf>.

⁴⁴ Summaries of the meetings and some documents are available at the Hague Adoption Standards Project Website, <http://www.hagueregs.org> (last visited July 23, 2006).

⁴⁵ *See* Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons; Preservation of Convention Records, 68 Fed. Reg. 54,064, (proposed Sept. 15, 2003) (to be codified at 22 C.F.R. pt. 96 (2006)); Intercountry Adoption—Preservation of Convention Records, 68 Fed. Reg. 54119 (proposed Sept. 15, 2003) (to be codified at 22 C.F.R. pt. 98).

⁴⁶ *See, e.g.,* Maureen Hogan et al., *Comments to the Department of State on Proposed Regulations: Intercountry Adoption* (Center for Adoption Research 2002) (unpublished article, on file with the University of Massachusetts, Center for Adoption Research); Maureen Hogan, *The Struggle Between Families and Adoption Providers Over the Hague Convention*, Center for Adoption Research (Center for Adoption Research 2002) (unpublished article, on file with the University of Massachusetts, Center for Adoption Research). *See also* The Evan B. Donaldson Adoption Inst., International Adoption Facts Webpage, <http://www.adoptioninstitute.org/policy/>

Department on November 10, 2003, a number of small agencies expressed frustration with the State Department for not reaching out more visibly to the adoption community.⁴⁷ The State Department responded to this frustration by extending the public comment period from three months to four months.⁴⁸ In January 2005, the State Department issued its response to these comments.⁴⁹

B. Specifics of the Regulation

Some aspects of the implementation of the IAA have been uncontroversial. For example, while the Hague Convention makes verification of the consent of birth families the responsibility of the Central Authority in the sending country, the United States plans to double-check sending country efforts; to wit, the IAA adds two sections to the Immigration and Nationality Act.⁵⁰ The U.S. Attorney General will review intercountry adoption cases to confirm that the purpose of the adoption is to “form a bona fide parent-child relationship.”⁵¹ Further, provisional upon U.S. Attorney General review of consents, the IAA allows for the immigration of children who are not technically orphans.⁵²

Other aspects of the IAA have generated more furor. For example, one of the most troubling issues to providers of adoption services is the requirement that accredited providers prove they are adequately insured for liability.⁵³ However, in terms of achieving the goals of the Convention, the regulatory

hagueregs.html (last visited July 23, 2006).

⁴⁷ Personal observation.

⁴⁸ The Acton-Burnell Project History Page <http://web.archive.org/web/20060912222948/http://www.hagueregs.org/History.htm> (last visited August 31, 2006).

⁴⁹ U.S. Dep’t of State, Announcement of Publication of Department’s Website Of Public Comments Received on Proposed Hague Regulations, http://travel.state.gov/family/adoption/implementation/implementation_1519.html (last visited July 23, 2006).

⁵⁰ IAA § 302, *supra* note 33, amends the Immigration and Nationality Act § 101(b)(1)(G) (to be codified at 8 U.S.C. § 1101(b)(1)(G)). For a summary of these changes, see U.S. Dept. of Justice, Immigration & Naturalization Service (INS) Fact Sheet, The Intercountry Adoption Act of 2000: Approval of the Hague Convention Regarding Intercountry Adoptions (Jan. 22, 2001), available at <http://www.immigrationlinks.com/news/news980.htm>.

⁵¹ Immigration and Nationality Act § 101(b)(1)(D), available at <http://www.uscis.gov/lpBin/lpext.dll/inserts/slb/slb-1/slb-20/slb-457/slb-782?f=templates&fn=document-frame.htm> (last visited Aug. 10, 2006).

⁵² *Id.* § 101(b)(1)(G)(i)(III).

⁵³ The proposed regulations require liability coverage of \$1 million per occurrence. 22 C.F.R. §§ 96.45, 96.46 (proposed Sept. 15, 2003) (to be codified at 22 C.F.R. pt. 96); IAA, *supra* note 32, § 203(b)(1)(E) (codified as amended at 42 U.S.C. § 14923(b)(1)(E) (2000)). The final regulations set liability requirements at \$1 million per agency. 22 C.F.R. § 96.33(h) (2006).

structure matters more than the performance requirements for individual adoption service providers.

The regulations rely on the IAA: “The Secretary [of State] may authorize public or private entities to perform appropriate central authority functions”⁵⁴ The responsibilities of the Central Authority, as well as public authorities and adoption service providers, are defined in Articles 7, 8 and 9 of the Hague Convention.⁵⁵ Article 7 gives Central Authorities the non-delegable job of coordinating with the sending state.⁵⁶ Article 9 lists the jobs of day-to-day placement and reporting, which the Central Authority may undertake itself or delegate to either public authorities or “other bodies duly accredited,” that is, adoption service providers.⁵⁷ Article 8 states, “Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.”⁵⁸ Article 8 does not, therefore, facially appear to allow the Central Authority to delegate the job of detection and deterrence of financial impropriety to a private firm. But that is exactly what the IAA and the State Department regulations do.⁵⁹ The regulations put the State Department at arm’s length from providers; and put the job of front-line detection and prevention of abuses in intercountry adoption on (yet to be named) accreditors, which may be public authorities, such as state departments of child welfare services, or may include private firms, such as the Council on Accreditation.

1. Accreditation vs. Licensure

Providers of adoption services are currently regulated through licensure by state departments of child welfare and protective services. However, the majority of licensing standards in the states concerns domestic adoption, or are limited to activities within the state.⁶⁰ Moreover, licensing standards vary

⁵⁴ IAA, *supra* note 33, § 102(f), Methods of Performing Responsibilities, 42 U.S.C. § 14912(f) (2000).

⁵⁵ Hague Convention, *supra* note 18, 32 I.L.M. at 1140.

⁵⁶ *See id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ 42 U.S.C. §§ 14921–44 (2000). The State Department acknowledged these objections in 71 Fed. Reg. 8131 on February 15, 2006 (codified at 22 C.F.R. pt. 96 (2006)).

⁶⁰ *See* Hearings, *supra* note 30 (statement of Patricia Montoya, Commissioner for Children, Youth, and Families, Department of Health and Human Services) [hereinafter Montoya Statement].

widely, thus state licensing cannot be used as a meaningful national standard. At a Congressional hearing in 1999, Hague Coordinator of the Joint Council on International Children's Services Susan Freivalds testified that, "Although it would be convenient and easier for Joint Council agencies to rely only on State licensure, after six years of deliberation we have determined that State licensure does not rise to the level of quality standard that is needed for high quality intercountry adoption services."⁶¹

In the regulations, the system of accreditation of providers of adoption services, which would facilitate intercountry adoptions in Hague contracting countries, is separate and fundamentally different from the system of state licensure. In fact, the system provided for by the IAA,⁶² and fleshed out by the State Department regulations,⁶³ is not a system of licensure at all, but rather a system of accreditation. Accreditation, in the American sense of the word, is a method of industry self-regulation.⁶⁴

Under licensure, rules must be clearly stated and well-understood. In theory, there is little room for the licensor's discretion in evaluating compliance. Accreditation, on the other hand, specifically allows for a varying level of compliance rather than a fixed level. In some cases, indeterminacy is an asset. For example, in state corporate law, it is widely agreed that the indeterminacy of Delaware's law regarding the fiduciary duties of corporations gives the state an advantage in attracting corporations.⁶⁵ The indeterminacy of the Delaware corporate rules allows judges to be sensitive to corporate needs, arguably at the expense of creditors and consumers. Indeterminacy in adoption rules will allow accrediting agencies to be similarly sensitive to the needs of adoption service providers, possibly at the expense of children and prospective adoptive families.

There is some question as to whether regulation by accreditation in the American sense is what the framers of the Convention had in mind. While "accreditation" is the vocabulary used in the English text of the Convention, the following excerpt from Article 10 of the Hague Convention defines regulation

⁶¹ See Hearings, *supra* note 30 (statement of Susan Freivalds, Hague Coordinator, Joint Council on International Children's Services).

⁶² 42 U.S.C. §§ 14921-44 (2000).

⁶³ 22 C.F.R. §§ 96.12-96.64 (2006).

⁶⁴ Daniel Pollack, *Does Accreditation Lead to Best Practice? Maybe*, 63 POL'Y & PRAC. 1, at 26 (2005).

⁶⁵ Ehud Kamar, Note, *A Regulatory Competition Theory of Indeterminacy in Corporate Law*, 98 COLUM. L. REV 1908 (Dec. 1998).

in terms of “competence,” a concept more akin to licensure: “*accreditation shall only be granted to . . . bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.*”⁶⁶

2. Substantial Compliance

The regulations⁶⁷ require only that accredited bodies demonstrate substantial compliance with the standards of performance.⁶⁸ The status of “accredited” will not, therefore, mean that an adoption service provider clearly has met all of the standards. “Accredited” will mean only that an adoption service provider has met *most* of the standards. Moreover, the definition of *most* may differ from accreditor to accreditor, and it is possible that accreditors may base their evaluations on whether an adoption service provider is moving towards compliance with standards, rather than actually complying with standards. That accreditation is to be based upon substantial compliance, rather than strict compliance, with the stated standards is one of the key flaws in the regulations and is discussed in additional detail below.

3. Overlapping Jurisdictions and Competition Between Accreditors

State departments of child welfare services, which already license some adoption service providers in their states, may apply to the State Department to become accreditors.⁶⁹ Under the regulations, the State Department may also authorize private firms to be accreditors. There is no upper limit upon the number of accreditors that the State Department may authorize. There is also no geographic limit to the “jurisdiction” of a private accreditor (although state departments of child welfare services may not compete with each other in jurisdiction).⁷⁰ An adoption service provider will be able to choose its own accreditor from among many on the authorized list, and may even choose to switch accreditors when a re-accreditation is required at a later time if the

⁶⁶ Hague Convention, *supra* at 18, 32 I.L.M at 1140 (emphasis added). The State Department recognized this objection to the IAA in the regulations. 22 C.F.R. pts. 96–98 (2006). See also 42 U.S.C. §§ 14921–44 (2000). For an extended critique, see Hogan, *supra* note 46, *Comments to the Department of State on Proposed Regulations: Intercountry Adoption* (Center for Adoption Research 2002) (unpublished article, on file with the University of Massachusetts, Center for Adoption Research).

⁶⁷ 22 C.F.R. § 96.27(a).

⁶⁸ 22 C.F.R. §§ 96.29–96.56.

⁶⁹ 22 C.F.R. §§ 96.4–96.11.

⁷⁰ 22 C.F.R. § 96.4.

provider desires. In other words, there is not an assignment of accreditors to adoption service providers, but rather the “jurisdictions” of accreditors overlap, creating the potential for competition among accreditors.

The State Department will face the logistical challenge and cost of maintaining and communicating with multiple accreditors. The cost will be borne either by prospective adoptive families or by the taxpayers. The cost of providing for competition between multiple accreditors will not be offset by the benefits of consistent quality in adoption services that can be trusted by sending countries and prospective adoptive parents.

The overlapping jurisdiction of accreditors provides incentive for competition. Usually competition is beneficial to society because competition, all other things being equal, leads to an efficient outcome. In this case, adoption service providers will seek the services of an accreditor that maximizes the profits of the provider, or equivalently, that minimizes its cost of accreditation. Standard microeconomic theory predicts that only the lowest cost accreditors would survive, so that adoptive families would pay the lowest possible amount for the assurance that adoption providers are on the up-and-up. Recent work on the market for auditing services indicates that, at least in theory, industry self-regulation (accreditation) can lead to efficient outcomes.⁷¹ This is, most likely, what the authors of the regulations had in mind.

However, even if the competitive, efficient, lowest-cost outcome does result, the outcome will not also meet the goals of the Hague Convention. It will not meet the goals because there is no reason to expect all accreditors to provide exactly identical services. In fact, the accreditors would have an incentive to be somewhat different from one other. The “substantial compliance” requirement opens the door for this product differentiation.⁷²

⁷¹ Paul V. Dunmore and Haim Falk, *Economic competition between professional bodies: The case of auditing*, 3 AM. L. AND ECON. REV. 302 (2001).

⁷² Roberta Romano advocates this sort of “product differentiation” in regulation. Romano advocates the substitution of a system of competing state regulations to supplant the federal monopoly on regulation of corporate securities issuance. The idea is that with competition, states will develop laws that are in line with investor interests, which will lower the cost of capital, increase share value, and attract firms to the regulatory jurisdiction. This will work only if investor interests are not subverted and asymmetric information problems are not persistent. It will not work in regulation of intercountry adoption because of the severity of the asymmetric information problem and the pressure on agencies to control the price of adoption services. Further, financial capital is very mobile; provision of adoption services is less so, insofar as the same agency usually performs a home study and provides placement and post-placement

To simplify, imagine that accreditors come in two varieties: high-cost with high-quality and low-cost with low-quality. Perhaps the high-quality accreditors have experience in accreditation in other industries; thus, people believe they can do a more thorough job. A high-quality accreditor will be able to charge more for its services, as compared to a less reputable, lower-quality accreditor. Providers that use high-quality accreditors will, in turn, have an incentive to advertise that fact to families because the demand for quality in accreditation is a derived demand; that is, the willingness of an adoption provider to pay for accreditation will depend on how families value accreditation. Some families will be willing and able to pay more for adoption services that use high-quality accreditation. Some families will not be able to pay more for high quality. This subverts the intent of the Hague Convention, which is to ensure that *all* adoption service providers meet high standards so that the rights of all families and children are protected equally.⁷³

It seems unlikely that the regulations will prevent the low-quality accreditors from accrediting low-quality providers. First, again, the law only requires substantial compliance. Second, low-quality accreditors and providers will persist because the standards to which providers will be held will be partly generated by the providers themselves; this is the American understanding of “accreditation” reflected in the fact that the regulations allow accreditors to have standards that differ from one another. Third, the law enforcement role of the State Department is one-step removed from the accreditation process.⁷⁴ If there is little threat of enforcement, some accreditors and providers will have little incentive to form strict standards and stick to them. Fourth, providers that specialize in limited services, such as conducting only the home study or providing only the legal services, do not have to be independently accredited.⁷⁵ They can act as supervised subcontractors to accredited providers, and

services. Provision of competent adoption services from afar would increase the cost significantly, offsetting any gains from increased confidence obtained from rule-shopping in a regime of competitive federalist adoption regulation. Roberta Romano, *The Need for Competition in International Securities Regulation*, 2 THEORETICAL INQUIRIES L. 387 (2001).

⁷³ Montoya Statement, *supra* note 60 (“[A]ccreditation standards must be consistent in order to assure other nations we have a uniform standard of quality that they may rely upon when they entrust their children to a U.S. agency and the prospective adoptive parents they represent.”). In Europe, variation in adherence to the principle of subsidiarity has led to the establishment of EurAdopt. Kerstin Sterky, *Maintaining standards: The role of EurAdopt*, in Selman, *supra* note 22, at 389–91. The text of the EurAdopt guidelines for adoption practice are available at <http://www.euradopt.org/ethical-rules.htm> (last visited July 23, 2006).

⁷⁴ 22 C.F.R. §§ 96.68–96.73 (2006).

⁷⁵ 22 C.F.R. §§ 96.12–96.17.

subcontractors will have little incentive to maintain high standards.⁷⁶ Finally, providers are not required to provide all of their adoption-related information to accreditors, but are only required to provide the information regarding adoptions covered by the Hague Convention.⁷⁷ Under these regulations, “mistakes” will be easily hidden.

The existence of both high-quality and low-quality accreditors will lead to one of two outcomes. The first possibility is that low-cost, low-quality accreditors will supplant high-cost, high-quality accreditors. This “race to the bottom” is common in circumstances in which the quality of a good or service is unknown to the consumer before a transaction.⁷⁸

Fortunately, the unsavory race-to-the-bottom outcome is unlikely. So long as high-quality accreditors can signal their quality directly to providers and, at least, indirectly to families through reputation for example—both high-quality accreditors and low-quality accreditors will persist. Families who are not willing or able to pay the higher cost of adoption services from a provider that uses a high-quality accreditor will be left with the services of providers that meet only the lower standards of the low-quality accreditors. *Caveat emptor*.

But, of course, a *caveat emptor* system is what is in place today. In fact, the *caveat emptor* system has spawned the abuses in intercountry adoption that the Hague Convention and the IAA seek to eliminate. Therefore, the regulations impose costs (the cost of the accreditation process itself and supervision of accreditors by the State Department) that will be passed on to adoptive families and taxpayers, but provide only limited benefits to the adopted families, the adoptees, and society.

⁷⁶ UNCRC, *supra* note 14, 28 I.L.M. at 1464 (art. 21(e)) (“[T]he placement of the child in another country is carried out by competent authorities or organs.”). This would seem to rule out the role of the independent person in ICA. The inclusion in the Hague Convention of the provision to allow independent persons to operate with supervision was a compromise included to obtain US agreement to the Convention. William Duncan, *The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*, 17 *ADOPTION & FOSTERING* 9, at 11–12 (1993).

⁷⁷ 22 C.F.R. § 96.42.

⁷⁸ Counterfeit currency is the staple example of a “race to the bottom.” If enough counterfeit currency is available, people hold onto their “good” money and soon only counterfeit money will be in circulation. The only way that good money stays in circulation is through extensive “central authority” efforts to detect and deter counterfeiting. “The phrase ‘Gresham’s law’ appeared in Henry D. Macleod’s 1858 book, *Elements of Political Economy*.” RICHARD DUTU ET AL., *THE TALE OF GRESHAM’S LAW 1* (2005), available at <http://www.clevelandfed.org/Research/Com2005/1001.pdf> (last visited Aug. 10, 2006).

V. EFFECTIVE REGULATION OF INTERCOUNTRY ADOPTION

The current regulations are unlikely to be effective in meeting the goals of the Hague Convention. However, before advocating an alternative to the current regulations, it seems advisable to ask whether effective regulation of intercountry adoption is an attainable goal at all. In this section, we use a recently developed political economy framework to show that effective regulation of adoption services is possible.

In their book on the success and failure of government policy, Amihai Glazer and Lawrence Rothenberg present a compelling case that the ability of government to achieve the objectives of policy depends upon four interrelated factors, which they term “economic constraints.”⁷⁹ Economic constraints include the credibility of the government’s commitment to the policy objectives and whether there is the possibility of multiple equilibria in the outcomes of the behavior being regulated.⁸⁰

The existence of multiple, self-sustaining equilibria is an important precondition for success of policy, because then policy “can be viewed as an attempt to nudge behavior toward a particular equilibrium.”⁸¹ The current equilibrium in the market for intercountry (and also private domestic) adoption services is characterized by low-quality providers operating side-by-side high-quality providers. We define “low-quality” in this context to refer to providers that violate the rights of adoptees or adoptive parents. The goal of the Hague Convention and its implementing legislation and regulations is to push the equilibrium in the market for intercountry adoption services in the direction of

⁷⁹ AMIHAI GLAZER & LAWRENCE S. ROTHENBERG, *WHY GOVERNMENT SUCCEEDS AND WHY IT FAILS* (Harvard University Press 2001). See especially the examples in Chapter 3.

⁸⁰ See generally GLAZER & ROTHENBERG, *supra* note 79. Glazer & Rothenberg also include as economic constraints the rational responses of the regulated and of the public and the possibility of crowding in and crowding out effects. In our view, these two constraints are less important to the success of regulation of intercountry adoption services. There is, however, a possibility for a crowding in effect and that deserves mention. If the experiences of parents are more positive at agencies accredited to facilitate adoptions between Hague-ratifying countries than at non-accredited agencies that facilitate intercountry adoptions with non-Hague Convention countries, accredited agencies will attract more clients. *Id.*

⁸¹ *Id.* at 6.

consistent high quality, an equilibrium in which the rights of all participants in an adoption are protected.⁸²

Credible commitment refers to the ability of lawmakers and officials to convince others that the regulation will be taken seriously and that violations will be redressed. To the extent that lawmakers and officials are subject to the influences of special interests and public opinion, government credibility can be questioned. Credibility is important because it factors into the rational response of people to the policy. When people weigh the costs and benefits of compliance with the policy, credibility affects the calculation by figuring into the probability that compliance will be worthwhile and the probability that non-compliance will be detected and punished.

The credibility of the government's commitment to protecting children's and parents' adoption rights is key to the success of regulation of intercountry adoption services. However, the commitment of the government to the protection of rights in adoption is not communicated clearly in the IAA or in the regulations. The credibility of the government's commitment to the goals of the Hague Convention is questionable on three grounds, which have already been discussed. First is the decision to delegate regulatory authority to the Department of State rather than to the Department of Health and Human Services. The second is the decision for U.S.-style accreditation with a substantial compliance standard rather than a stricter licensing procedure. The third is the decision for multiple accreditors with overlapping jurisdictions. The first issue, choice of Central Authority, is less critical than the second two. The Department of State could attain credibility by adopting a model of centralized regulation of intercountry adoption services.

VI. CONCLUSION

Because both high-quality and low-quality accreditation exists in the market under the regulations, the rights of children and families (in the United States and in sending countries) will not be equally protected. Equal protection is likely to require centralized accreditation standards and procedures. In fact, centralization has been the norm when seeking to protect human rights, such as the right of workers to unionize or the civil rights of all citizens. In these cases, regulation is held close; detection and enforcement occur within a government department or commission. Similarly, when the public gains from compelling information disclosure, regulation tends to be centralized.

⁸² See Hague Convention, *supra* note 18, 32 I.L.M at 1134 .

For example, the regulators of intercountry adoption have a charge originating from the Hague Convention and the IAA that is similar to the charge of the Equal Employment Opportunity Commission, because regulation of both adoption and employment are primarily concerned with the protection of rights. The charge to regulate adoption also has similarities to the charge of the Securities and Exchange Commission because the regulation of intercountry adoption is concerned with ethical behavior and full financial disclosure. Both the Equal Employment Opportunity Commission and the Securities and Exchange Commission are centralized systems that, despite recent problems, historically have demanded a high level of compliance.⁸³

Other countries have moved towards centralization in the regulation of adoption. In the Netherlands, the Intercountry Child Welfare Organisation (now Worldchildren) was established under the Ministry of Justice in 1975. It was hoped that the Child Welfare Organisation would have responsibility for all intercountry adoptions, but competition emerged. During the 1980s, there was an increase in concerns about the variability of standards between agencies. In response, the Act on Intercountry Adoptions of 1988 set up centralized licensing requirements enforced by the Ministry of Justice.⁸⁴

In the United Kingdom, the Adoption (Intercountry Aspects) Act of 1999 “can be seen as attempting to use regulation to promote good practice in [intercountry adoption]” with a view towards controlling “thwarted adopters some of whom engage in abuses of various kinds.”⁸⁵ The 1999 Act promotes

⁸³ On the history of the EEOC and SEC, see U.S. Equal Employment Opportunity Comm., *THE STORY OF THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION: ENSURING THE PROMISE OF OPPORTUNITY FOR 35 YEARS, 1965–2000* (Washington DC: GPO 2000); CLINTON L. DOGGETT AND LOIS T. DOGGETT, *THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION* (Chelsea House 1990); ANNE M. KHADEMIAN, *THE SEC AND CAPITAL MARKET REGULATION* (University of Pittsburgh Press 1992); SUSAN SHAPIRO, *WAYWARD CAPITALISTS: TARGET OF THE SECURITIES AND EXCHANGE COMMISSION* (Yale University Press 1984); BERNARD SCHWARTZ, *THE ECONOMIC REGULATION OF BUSINESS AND INDUSTRY: A LEGISLATIVE HISTORY OF U.S. REGULATORY AGENCIES* (Chelsea House 1973). For analysis, see Richard Sylla, *The Rise of Securities Markets: What Can Governments Do?* (World Bank Policy Research, Working Paper No. 1539, 1999); Sarah Wilhelm, *The Impact of Equal Employment Opportunity Commission Enforcement on the Wages of Black and White Women, 1988-1996*, 30 REV. OF BLACK POL. ECON. 25 (Fall 2002); and Cecile Carpenter & Jean-Marc Suret, *The Canadian and American Financial Systems: Competition and Regulation*, 29 CANADIAN PUB. POL’Y 431 (2003).

⁸⁴ Peter Selman & Jill White, *Mediation and the role of ‘accredited bodies’ in intercountry adoption*, 18 ADOPTION & FOSTERING 8 (1994).

⁸⁵ Derek Kirton, *Intercountry adoption in the UK: Towards an ethical foreign policy?*, in Selman, *supra* note 22, at 71–72.

centralization and limits competition in the provision of intercountry adoption services by prohibiting private home studies, and it reduces the temptations facing prospective adoptive parents by restraining the ability of judges to circumvent social work guidelines.⁸⁶

A centralized regulator of intercountry adoption services would be able to compel strict compliance with uniform standards of adoption practice and would prevent competition from undermining the goals of the Hague Convention.⁸⁷ Hopefully, a more centralized system of accreditation may yet emerge.

⁸⁶ *Id.* at 77.

⁸⁷ *Id.* at 80–81. Kirton argues that ethical foreign policy on adoption must include strict standards for authorization of prospective adoptive parents, especially with regard to their sensitivity to the ethnic and cultural heritage of the adoptee. *Id.* Additionally, he argues that an ethical foreign policy in a country that actively supports ICA must include foreign aid directed at reducing the poverty and conflict that makes children available for ICA in the first place. *Id.*

Table 1. Parties to the Hague Convention⁸⁸***Bold:** Major Receiving Countries

*Normal: Major Sending Countries

MEMBER STATES

<u>Country</u>	<u>Signed</u>	<u>Ratification</u>	<u>Entry into Force</u>	<u>Central Authority</u>
Belgium	27 Jan 99	26 May 05	1 Sept 05	Service de l'Adoption internationale within the Service Public Fédéral Justice, additional authorities designated for each language community
Brazil	29 May 93	10 Mar 99	1 July 99	State Secretariat for Human Rights, Program for Cooperation on International Adoption and State Agencies
Bulgaria	27 Feb 01	15 May 02	1 Sept 02	Ministry of Justice
Canada	12 Apr 94	19 Dec 96	1 Apr 97 (varies by Territory)	Human Resources Development & Territorial Ministries of Social Service
Denmark	2 Jul 97	2 Jul 97	1 Nov 97	Minister of Justice
Finland	19 Apr 94	27 Mar 97	1 July 97	Finnish Board of Intercountry Adoption Affairs
France	5 Apr 95	20 June 98	1 Oct 98	Central Authority for Intercountry Adoption, whose secretariat is provided by the Mission de l'adoption internationale
Italy	11 Dec 95	18 Jan 00	1 May 00	National Board for Intercountry Adoptions
Mexico	29 May 93	14 Sep 94	1 May 95	Systems for Integral Family Development
Netherlands	5 Dec 93	26 Jun 98	1 Oct 98	Ministry of Justice Prevention, Youth and Sanction Policy Department
Poland	12 June 95	12 June 95	1 Oct 95	Ministry of Labor and Social Policy
Romania	29 May 93	28 Dec 94	1 May 95	Romanian Committee for Adoption
Sweden	10 Oct 96	28 May 97	1 Sept 97	Public Authorities or Bodies Accredited

⁸⁸ Convention of 29 May 1993 on Protection of Children and Co-operation, Status Table, Member States of the Organisation, *available at* http://www.hcch.net/index_en.php?act=conventions.status&cid=69 (last visited May 9, 2006); Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, Authorities, *available at* http://www.hcch.net/index_en.php?act=conventions.authorities&cid=69.

Switzerland	16 Jan 95	24 Sept 02	1 Jan 03	Federal Office of Justice, Office for the International Protection of Children
UK	12 Jan 94	27 Feb 03	1 June 03	Department of Health, Adoption and Permanence Team (Intercountry Section)
USA	31 Mar 94	n/a	n/a	n/a

NON-MEMBER STATES

Columbia	1 Sept 93	13 July 98	1 Nov 98	Instituto Colombiano de Beinestar Familiar
Guatemala	Accession	26 Nov 02	1 Mar 03	Procuraduria General de a Nacional
India	9 Jan 03	6 Jun 03	1 Oct 03	Central Adoption Resource Agency
Phillipines	17 Jul 95	2 Jul 96	1 Nov 96	Intercountry Adoption Board

As of May 10, 2006, the Russian Federation has signed but not yet ratified. Major sending countries that are **not** signatories include Cambodia, Haiti, Kazakhstan, South Korea, Ukraine, Vietnam.