

## Is U.S. Finally Joining the World to Protect Children?

By Marguerite (Maggie) Smith

The United States has an unenviable reputation concerning its reluctance to join international agreements for the protection of children. Is this well deserved? If so, could it be that the U.S. is changing?

Perhaps the most disturbing of our country's past transgressions in the international child protection arena was its failure to ratify the United Nations Convention on the Rights of the Child of 20 November 1989. Amongst all the U.N. convention participants only the U.S. and Somalia failed to do so. The Convention upholds the basic principle that all children (those under 18) are born with innate rights and freedoms. Parties have to comply and report on children's rights in their countries.

The failure of the U.S. to become a contracting party to the following conventions (as abbreviated) also has been a cause for concern: Protection of Children (1996); Maintenance Obligations (Applicable Law) (1973); Maintenance Obligations (Enforcement) (1973); Maintenance Obligations – Children (Applicable Law) (1956); Maintenance Obligations – Children (Enforcement) (1958); Protection of Minors (1961); Adoption (1965). The length of the list perhaps speaks for itself. The U.S. has not been an international partner in the protection of children.

### Slow To Act

Even where the U.S. has made changes, it has come late to the table. For example, the U.S. failed, until very recently, to ratify the

Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. A skeptic might argue that this only occurred now due to the increasing bad press in the U.S. about abuses in international adoption.

The U.S. also took a long time to ratify (in 1988) the highly successful Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Hague Abduction Convention). This convention is very important to us family law attorneys as it helps us to recover children from other countries. It is almost commonplace, as one can see from State Department statistics, to have children abducted from one country to another.

### **A Piecemeal Approach**

The U.S.'s reluctance to be a full team player has sometimes resulted in separate agreements with countries rather than more sweeping (and more practical) multinational agreements. Nowhere is this more apparent than in the area of international child support enforcement.

The U.S. has had four opportunities to join Hague Conventions during the 1950s and 1970s relating to family support. However, it failed to do so. Instead, it has made individual agreements with some countries for bilateral enforcement.

Section 459A of the Social Security Act (42 U.S.C. 659A (1996)) authorizes the Department of State and the Department of Health and Human Services to enter into agreements with foreign countries for child support enforcement. Until recently, the U.S. thought this was good enough. However, this has led to a bizarrely inconsistent and time-consuming approach as practitioners try to work out what the agreed enforcement procedures are in each country. This should change if the U.S. ratifies the 23 November 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (which it has signed).

### **Signs of Change**

Recently, the U.S. has undergone an absolute flurry of activity in its efforts to promote children's interests in the international arena. It appears to be playing catch-up after years of reluctance to commit. This new attitude might be due to the profound benefits

experienced from joining the Hague Abduction Convention.

The U.S. is a respected party under this Convention. It has cooperated, within the terms of the Convention, with applications from foreign countries and made application to foreign countries in cases involving abducted children. The State Department has even gone so far as to criticize Mexico and Germany for their handling of cases under the Convention and is actively involved in encouraging other nations to join.

As noted above, the U.S. this year finally ratified The Hague Convention on Intercountry Adoption, which seeks to ensure that international adoptions are made in the best interests of the child. This includes fundamental rights under international law (including the U.N. Convention on the Rights of the Child of 20 November 1989, to which the U.S. is not a party) and to prevent the abduction or sale of, or traffic in, children. The Convention also establishes a central authority in each country to oversee international adoptions under the Convention.

This is a significant development and we may well be approaching a new enlightened international era in our country.

### **Brainstorming for New Ideas**

There is work ongoing behind the scenes on the issue of child protection. The American Bar Association, for example, has been tireless in its pursuit of the Rule of Law, including children's interests. The ABA International Law Section, Family Law Committee is involved in every major development. It makes its opinions known to the ABA, which publishes its position after considerable discussion and thought from informed sources. The State Department also is active in soliciting opinions.

For example, in December the State Department held a meeting for international practitioners in D.C. (which I attended). There we considered the U.S.'s need, or lack thereof, for the 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. The very long name amply describes its content. Although there was not much enthusiasm shown at that time for joining the Convention, it is truly exciting that the State Department is taking another look at old conventions. The lack of enthusiasm was not

due to any reluctance to join a workable and useful Convention, but rather stemmed from its benefits and workability in light of procedures we have in place.

Another good sign is the U.S.'s consideration of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance and to seriously consider how to implement it. It is very likely that this Convention will be ratified, which will make the recovery of child support much easier in other countries.

### **A Bright New Future?**

Although it might be possible to argue that the U.S. continues to be a second-rate participant in the international arena, the facts are against this proposition. We are in the process of a true renaissance wherein the U.S. believes in its partnership in the international pursuit of children's interests and acts credibly upon that belief.

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