

# HAGUE IS ENOUGH?: A CALL FOR MORE PROTECTIVE, UNIFORM LAW GUIDING INTERNATIONAL ADOPTIONS

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## INTRODUCTION

Millions of children throughout the world have been forced into homelessness within their own native countries due to national disasters such as war, disease, and changing governmental regimes.<sup>2</sup> For many children, these disastrous environments have literally become a waking nightmare.<sup>3</sup> In particular, unaccompanied children who have become homeless due to a loss of a parent or other family relatives are at the greatest risk for premature mortality.<sup>4</sup> Premature mortality arises from a lack of the most basic necessities of life, including warm shelter, food, clean water, and the protection of an adult to help guide and shield them from the world's harms.<sup>5</sup> It is these children who are most vulnerable to having their rights violated, as they are the first to be killed, tortured, raped, robbed, and exploited as child soldiers or child prostitutes.<sup>6</sup>

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<sup>2</sup> Graca Machel, *Impact of Armed Conflict on Children: Healing Minds As Well As Bodies*, at <http://www.unicef.org/graca/psychol.htm> (last visited Feb. 1, 2004).

<sup>3</sup> *Id.*

<sup>4</sup> Graca Machel, *Impact of Armed Conflict on Children: Unaccompanied Children*, at <http://www.unicef.org/graca/alone.htm> (last visited Feb. 1 2004) [hereinafter Machel, *Unaccompanied Children*].

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

International adoption,<sup>7</sup> the “process by which a married couple or single individual of one country adopts a child from another country,”<sup>8</sup> is a realistic and viable solution to the plight of homeless children around the world. This solution offers the advantage of a permanent family to a homeless child for whom a suitable family has not been found in the child’s country of origin due to devastating circumstances or country-wide disasters.<sup>9</sup> International adoption serves as a dual solution and a positive, viable outcome for children longing for a permanent family to care for them, and for the families longing for a child to take care of. However, without uniform, global regulations for international adoptions in place, many of these children are left struggling for survival in a world where the odds are almost entirely against them. As a result, families remain childless despite their ability to provide a caring, permanent home, and orphaned children continue to wait.

The *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*<sup>10</sup> (“*Hague Convention*”) is a significant starting point to address the need to protect internationally adopted children and to promote global recognition of international adoptions. The *Hague Convention*, a multilateral treaty approved by sixty-six nations, entered into force on May 1, 1995 and serves as a blueprint for the international adoption process.<sup>11</sup> It provides, for the first time, formal international and intergovernmental recognition of intercountry adoption.<sup>12</sup> The *Hague Convention* provides guidance to participating states on how to build basic legal structures to govern international

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<sup>7</sup> International adoption is also interchangeably referred to as intercountry adoption or transcountry adoption.

<sup>8</sup> CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH, EDUCATION AND WELFARE, INTERCOUNTRY ADOPTION GUIDELINES 97 (1980).

<sup>9</sup> See generally MARY KATHLEEN BENET, POLITICS OF ADOPTION 121 (1976).

<sup>10</sup> Hague Conference on Private International Law: Final Act of the 17th Session, Including the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, May 29, 1993, S. Treaty Doc. No. 105-51 (1998), reprinted in 32 I.L.M. 1134-46 (1994) [hereinafter *Hague Convention*].

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

adoptions.<sup>13</sup> The *Hague Convention* also recognizes the ever-increasing rate of international adoptions, sets forth a minimal framework and bolsters cooperation between sending and receiving states of adopted children.<sup>14</sup> Despite its recognition that the best interests of the internationally adopted children are at the heart of the issue, the *Hague Convention* fails to provide a uniform standard which can be applied efficiently, realistically, and safely. Further, the *Hague Convention* lacks any kind of evaluation process for participating states to rely on to ensure that internationally adopted children are adequately protected.

This paper focuses primarily on the need for clarification of the *Hague Convention* to make it a more protective and globally uniform international law. Part one provides a brief history of international adoptions, including a discussion of current international adoption trends throughout the world, with an emphasis on the critical status of Cambodian orphans as a realistic illustration of the need for more protective and uniform international adoption law. Part two considers the politics and barriers impeding international adoptions, including the arguments in favor of, and conversely, against international adoptions. In addition, the anti-international adoption position held by the United Nations International Children's Emergency Fund ("UNICEF") will follow the discussion of opposition to international adoptions. Part three examines the *Hague Convention* in detail, with a brief discussion of its purposes and objectives. Finally, part four highlights the lack of uniform standards available to curb the abuses and harms historically associated with international adoptions. This part includes a brief critique and analysis of particularly weak sections of the *Hague Convention* that fail to provide adequate protective measures. The analysis and critique section is followed by recommendations for amendments to the *Hague Convention* designed to improve the uniformity of the document and strengthen the safeguards provided for children and families involved in the international adoption process.

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<sup>13</sup> *Id.*

<sup>14</sup> Kimberly A. Chadwick, *The Politics and Economics of Intercountry Adoption in Eastern Europe*, 5 J. INT'L LEGAL STUD. 113, 137 (1999).

## I. CHILDREN ON THE MOVE FROM EAST TO WEST: A BRIEF HISTORY OF INTERNATIONAL ADOPTIONS

International adoption plays an enormously important role in the total adoption picture.<sup>15</sup> Throughout the last half of the 20th century, international adoptions have increasingly become a positive way to match children without families to families without children.<sup>16</sup> In the United States, for example, interest in international adoptions initially began with a focus on children affected by military conflicts overseas where the U.S. was involved.<sup>17</sup> There were two major waves during which international adoption first hit the global scene, both occurring after renowned wars. These two periods greatly increased the popularity of adopting overseas, and provided another alternative for families searching for a child to adopt. The U.S.'s involvement in recent overseas conflicts, such as in Afghanistan, Iraq, and Bosnia, will likely create a third wave of international adoptions.

Adoption is divided into two prominent groups: 1) countries consisting of low birth rates and small numbers of children in need of homes, such as the United States, and 2) countries with high birth rates and large numbers of homeless children, such as Cambodia, Romania, and Russia.<sup>18</sup> Although adoption processes have changed since the 1950's when international adoptions were first recognized, children continue to have the same fundamental needs as before: clean water, sustenance, shelter, and above all, love.

### A. WAVES OF INTERNATIONAL ADOPTIONS IN THE 20TH CENTURY

The first major wave of international adoptions grew out of the devastating aftermath of World War II.<sup>19</sup> Save The Children, an organization originally comprised of women from Great Britain and several Scandinavian countries, found homes for Belgian

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<sup>15</sup> ELIZABETH BARTHOLET, FAMILY BONDS: ADOPTION AND THE POLITICS OF PARENTING 141 (1993) [hereinafter BARTHOLET, FAMILY BONDS].

<sup>16</sup> *Id.*

<sup>17</sup> MADELYN FREUNDLICH, ADOPTION AND ETHICS: THE ROLE OF RACE, CULTURE, AND NATIONAL ORIGIN IN ADOPTION 89 (2000).

<sup>18</sup> BARTHOLET, FAMILY BONDS, *supra* note 15, at 141.

<sup>19</sup> *Id.*

children forced into displacement because of World War II.<sup>20</sup> At the same time, a widespread humanitarian effort led by the U.S. Committee for the Care of European Children brought approximately 300 children to the United States, many of whom were Polish, German, Greek, and Italian.<sup>21</sup> This global humanitarian movement attempted to “save” homeless children who were innocent victims of World War II.

The second major wave of international adoptions occurred just after the end of the Korean War, and especially seized the attention of United States residents.<sup>22</sup> Between 1953 and 1981, the great influx of Korean adoptions by U.S. citizens further popularized the idea of “rescuing” homeless children from war-torn environments. The increased export of Korean children for international adoption was in large part due to Korean societal and cultural beliefs concerning the homogeneity of its countrymen and children.<sup>23</sup> For example, many Korean children were treated as outcasts by society because they were the offspring of mixed couples, most frequently between black or white U.S. soldiers and Korean women.<sup>24</sup>

During the 1988 Olympics in Seoul, Korea, a worldwide broadcast, featuring a story on the adoption of Korean children and highlighting the vast movement of these children to the United States, led to the sharp decline in the numbers of international adoptions coming out of Korea.<sup>25</sup> This sharp decline occurred because South Koreans were outraged that their country was portrayed as one unable to care for the needs of their own young children.<sup>26</sup> After the 1988 worldwide broadcast, the numbers of Korean adoptions drastically dropped from 6,188 in 1986 to 1,534 in 1991.<sup>27</sup>

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<sup>20</sup> Jorge L. Carro, *Regulation of Intercountry Adoption: Can the Abuses Come To an End?*, 18 HASTINGS INT’L & COMP. L. REV. 121, 125 (1994) [hereinafter Carro, *Regulation of Intercountry Adoption*].

<sup>21</sup> *Id.*

<sup>22</sup> Margaret Liu, *International Adoptions: An Overview*, 8 TEMP. INT’L & COMP. L.J. 187, 192 (1994).

<sup>23</sup> Carro, *Regulation of Intercountry Adoption*, *supra* note 20, at 125.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 126–27.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

B. THE CURRENT STATE OF INTERNATIONAL  
ADOPTIONS: DOMESTIC FACTORS  
IN "RECEIVING" COUNTRIES

Since the World War II and Korean War adoptions, international adoptions have gained enormous popularity and the momentum for going overseas to find an adoptable child continues to build. American citizens, in particular, are seeking to adopt children overseas in ever increasing numbers because the reduction in children available for adoption in the United States ("U.S.").

In the United States and other industrialized countries, the number of children available for domestic adoption has been drastically limited in recent decades. This decrease is due to the advent of contraception, legalization of abortion and the increased tendency and social acceptance of single parents choosing to keep their children.<sup>28</sup> In the United States, the increased acceptance and legalization of abortion after *Roe v. Wade*<sup>29</sup> has contributed to decreased numbers of healthy babies available for domestic adoption. As a result, fewer children are available for domestic adoption, while there remain large numbers of people eager to adopt.<sup>30</sup> Thus, childless families are prompted to look to international adoption as a means to fulfilling their dreams to have a child.<sup>31</sup>

Currently, children are primarily adopted from less developed countries by citizens of more developed nations.<sup>32</sup> Since the 1950's, international adoptions have increased at an accelerating pace, most often involving countries of unequal socioeconomic development, and comprised of varying racial composition. Based on a 2000-2001 report by the U.S. Department of State, most children are adopted from the following countries: China, Russia, South Korea, Guatemala, Ukraine, Romania, Vietnam,

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<sup>28</sup> BARTHOLET, FAMILY BONDS, *supra* note 15, at 141.

<sup>29</sup> 410 U.S. 113 (1973)

<sup>30</sup> BARTHOLET, FAMILY BONDS, *supra* note 15, at 141.

<sup>31</sup> Mary Ann Candelario McMillan, *International Adoption: A Step Towards a Uniform Process*, 5 PACE INT'L. L. REV. 137, 138 (1993).

<sup>32</sup> *Id.* at 137.

Kazakhstan, India, and Cambodia.<sup>33</sup> Of these countries, Romania and India are the only countries that have signed and ratified the *Hague Convention*,<sup>34</sup> making the *Hague Convention* legally binding on its countrymen. China and Russia have signed but not ratified the convention, signaling their intent to proceed with efforts to ratify the *Hague Convention*.<sup>35</sup> And, as of November 26, 2002, Guatemala acceded to the *Hague Convention*, indicating its intent to join the global regulatory efforts in safeguarding international adoptions.<sup>36</sup> However, Cambodia, Kazakhstan, South Korea, Ukraine, and Vietnam still have not signed, ratified, or acceded to the convention, but instead continue to facilitate international adoptions absent regulation or guidance under the *Hague Convention*.<sup>37</sup>

There is no question that global attention is directed to improving the international adoption process and increasing the safety of such processes. Undoubtedly, the *Hague Convention* is a monumental first step in streamlining the cooperative aspects of international adoption globally. However, the lack of a single, uniform, international law inevitably backlogs the international adoption process, provides loopholes for the abuse and exploitation of children, and fails to truly protect children and families who long for a common “happily-ever-after” ending.

### C. WAITING FOR A PERMANENT HOME: THE CHILDREN OF CAMBODIA

Presently, the children of Cambodia provide the strongest argument for a more protective law guiding international adoptions. Cambodia, a country that is currently not party to the *Hague*, is in the process of pulling themselves out of a legal vacuum and nationwide genocide. Countless numbers of

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<sup>33</sup> U.S. Department of State, Bureau of Consular Affairs, Overseas Citizens Services, Office of Children Issues, *Immigrant Visas Issued to Orphans Coming to the U.S.*, at [http://travel.state.gov/orphan\\_numbers.html](http://travel.state.gov/orphan_numbers.html) (last visited Mar. 30, 2004) [hereinafter *Immigrant Visas*].

<sup>34</sup> Hague Conference on Private International Law, *Concise Status Report* #33, at <http://www.hcch.net/e/status/adoshte.html> (last updated Apr. 12, 2004) [hereinafter *Hague Conference Status Report*].

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Immigrant Visas*, *supra* note 33.

Cambodian children dwell in orphanages throughout the country, waiting for the day when someone comes to take them to a place called home. In addition to bandaging its economic and political wounds, the Cambodian government has shown great commitment to establishing protective adoption procedures to facilitate international adoptions of orphaned Cambodian children.<sup>38</sup>

Years of war, genocide, and political violence have contributed to the surplus of orphans in Cambodia, making it a new hotspot for American adoptions.<sup>39</sup> In Cambodia, the huge loss of life under the rule of the Khmer Rouge has left fewer adults to care for children.<sup>40</sup> Currently, over half of the population in Cambodia is under the age of fifteen, leaving Cambodian children responsible for their own survival.<sup>41</sup> The disintegration of the Cambodian family has led to vastly increased numbers of child delinquency, crime, drug abuse, and child prostitution.<sup>42</sup> As of February 2002, the estimated 60,000 to 200,000 Cambodian children available for adoption thus presents itself as a surplus for the many people who are eager to reach out and provide a loving home for the Cambodian orphans.<sup>43</sup>

However, this surplus of adoptable Cambodian children also attracted sordid black market baby sellers to Cambodia to entice desperate parents into selling their children for profit. Allegations of fraud and baby trafficking in Cambodia prompted the U.S. Immigration and Naturalization Services (“INS”) to place

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<sup>38</sup> See generally Kingdom of Cambodia, Ministry of Foreign Affairs and International Cooperation, *Procedure for the Adoption of Cambodian Orphans*, Note Verbale No. 524 MFA-IC/LC2 (Mar. 2001), available at <http://uscis.gov/graphics/services/govcamb.pdf> (last visited Oct. 7, 2002).

<sup>39</sup> ABC News, *Empty Arms* (Dec. 20, 2001), at [http://www.abcnews.go.com/sections/2020/DailyNews/2020\\_Cambodia\\_feature\\_011219.html](http://www.abcnews.go.com/sections/2020/DailyNews/2020_Cambodia_feature_011219.html) (last visited Oct. 23, 2002).

<sup>40</sup> Machel, *Unaccompanied Children*, *supra* note 4.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Cambodia Adoption Connection, *Punishing the Innocent*, at <http://www.cambodiaadoptionconnection.com/Adoptions%20Suspended.htm> (last visited Feb. 1, 2004) [hereinafter *Innocent*].



an immediate suspension on the processing of Cambodian adoptions.<sup>44</sup> The moratorium, currently still in effect, has been in place since December 21, 2001.<sup>45</sup> Although there has been some progress in the development of policies and procedures regulating safe international adoption of Cambodian children, there is no concrete timeline for when the suspension will be lifted.<sup>46</sup> According to former INS Commissioner James Ziglar, the suspension resulted from serious deficiencies in the Cambodian legal framework on adoptions coupled with mounting evidence of very real human trafficking concerns.<sup>47</sup> Commissioner Ziglar emphasized that the goal of the suspension was to encourage the establishment of a legitimate adoption process in Cambodia.<sup>48</sup> However, the INS reports that the suspension of orphan visa petitions will remain in effect until the Cambodian adoption process is more transparent and consistent with international adoption standards,<sup>49</sup> such as the standards provided by the *Hague Convention*.<sup>50</sup>

Since the INS imposed the suspension on adoptions of Cambodian children, the mortality rate of Cambodian children under the age of five has steadily risen.<sup>51</sup> Leading causes of death

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<sup>44</sup> News Release, U.S. Department of Justice, Immigration and Naturalization Service, *INS Announces Suspension of Cambodian Adoptions and Offer of Parole in Certain Pending Cases* (Dec. 21, 2001), available at [http://uscis.gov/graphics/publicaffairs/newsrels/camb\\_adopt.htm](http://uscis.gov/graphics/publicaffairs/newsrels/camb_adopt.htm).

<sup>45</sup> *Id.*

<sup>46</sup> U.S. Department of Justice, Immigration and Naturalization Service, International Affairs, *Cambodia Adoptions: Talking Points For Congressional Briefing, Update – Special Humanitarian Initiative For Cambodian Adoptions* (June 20, 2002), at <http://uscis.gov/graphics/services/TlkngPnts0602.pdf>.

<sup>47</sup> News Release, U.S. Department of Justice, Immigration and Naturalization Service, *Cambodian Adoption Review to Expand* (Sept. 11, 2002), available at <http://www.uscis.gov/graphics/publicaffairs/newsrels/cambodiarev.htm>.

<sup>48</sup> *Id.*

<sup>49</sup> U.S. Department of Justice, Immigration and Naturalization Service, International Affairs, *Statement of James W. Ziglar Commissioner Immigration and Naturalization Service U.S. Department of Justice Before the House Committee on International Relations Regarding a Hearing on International Adoptions* (May 10, 2002), at <http://uscis.gov/graphics/aboutus/congress/testimonies/2002/1ZIGHOUS.pdf>.

<sup>50</sup> See generally, Hague Convention, *supra* note 10.

<sup>51</sup> UNICEF, *Information By Country, At a Glance: Cambodia – The Rate of Progress*, at [http://www.unicef.org/infobycountry/cambodia\\_statistics.html#10](http://www.unicef.org/infobycountry/cambodia_statistics.html#10) (last visited Apr. 12, 2004).

in Cambodian children include malaria, dengue fever, acute respiratory infection, typhoid, tuberculosis, and anemia.<sup>52</sup> Further, poor hygiene, lack of clean water, poor sanitation and care, poor quality of medicine and expensive treatment, which many cannot afford, affect the high mortality rate of Cambodian children.<sup>53</sup> Malnutrition in Cambodia affects over half of the child population under the age of five, as shown by a national survey taken in 1996.<sup>54</sup>

Since the moratorium was imposed in December 2001, progress has been slow in reopening the path for adoptions of Cambodian children. In March 2003, a team of officials from the U.S. Departments of State and Homeland Security visited Phnom Penh, Cambodia to gather information on the current state of adoptions in Cambodia.<sup>55</sup> The purpose of the visit was to ascertain whether the Government of Cambodia has made sufficient efforts to approve adoption legislation and establish procedures that provide for adequate safeguards to protect the interests of children, birth parents and adoptive parents and eliminate opportunities for fraud and other abuses, such as baby selling.<sup>56</sup> The U.S. team met with Cambodian Government officials, representatives of human rights and child protection non-governmental organizations, members of foreign diplomatic missions in Cambodia.<sup>57</sup> The team also visited orphanages in and around Phnom Penh.<sup>58</sup> However, this was only a preliminary fact-finding mission, and the team did not make any decisions regarding the future of adoptions in Cambodia at this time.<sup>59</sup> Instead, the team reported that current information regarding the situation of children in Cambodia is needed in order to make

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<sup>52</sup> *Innocent*, *supra* note 43.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> U.S. Department of State, Bureau of Consular Affairs, Overseas Citizens Services, Office of Children Issues, U.S. Embassy Statement, *Important Notice Regarding Cambodia Adoptions*, at [http://travel.state.gov/Cambodia\\_Adoption\\_Notice\\_21902.html](http://travel.state.gov/Cambodia_Adoption_Notice_21902.html).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

informed policy decisions concerning adoptions, so that such policy meets the needs of children in need of permanent family placements.<sup>60</sup> It has been close to three years since the moratorium was imposed by the U.S.

As a result of the moratorium, many Cambodian children, who long to be placed with loving, permanent families continue to suffer alone. The moratorium is further compounded by Cambodia law which does not permit children over the age of eight to be adopted.<sup>61</sup> Consequently, the lengthy, bureaucratic-laden adoption investigations have changed many children's lives forever; some, in fact have lost their ability to ever be adopted by a family simply because they turned eight years old.<sup>62</sup> Had a uniform, protective international law been implemented, perhaps these children could have enjoyed their right to have a home and a family. In the meantime, the children of Cambodia continue to wait.

## II. THE POLITICS OF INTERNATIONAL ADOPTIONS

There is on-going debate over the advantages and disadvantages of international adoption as a viable solution to the worldwide plague of homeless children. Scholars and activists remain divided over the merit of international adoptions. Despite the wall of separation created between these two major groups, it is important to maintain focus on the heart of the international adoption debate: the children.

### A. ARGUMENTS IN FAVOR OF INTERNATIONAL ADOPTIONS

Adoption has become a realistic means for families who long to be connected with the child of their dreams. International adoptions are becoming increasingly popular because of long waits common in domestic adoptions. Looking beyond U.S. borders to international adoptions is one way that families can find a child in need while providing a positive option for homeless children living in horrifying environments devastated from

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<sup>60</sup> *Id.*

<sup>61</sup> No Child Left Out, *Cambodian Adoptions*, at <http://www.nochildleftout.org/Cambodia%20adoptions.htm> (last visited Feb. 1, 2004).

<sup>62</sup> *Id.*

the effects of intercountry conflicts. During the second half of the 20th century, adoption was transformed from a secretive and shameful act into a praiseworthy act by families, unable to care for a child in need.<sup>63</sup>

International adoptions provide a positive solution for children without families and families without children. When compared to living on the streets, temporary foster care, or institutional orphanages, international adoption provides the option of allowing a child to receive a caring, nurturing permanent home<sup>64</sup> with parents who are more than willing to cultivate the child's psychosocial, emotional, and cultural needs. For most homeless children, international adoption represents the only realistic opportunity to be part of a permanent family.<sup>65</sup> With abundant numbers of prospective parents reaching out to children in need of families, and a surplus of homeless children in countries devastated by national disasters, international adoption represents a perfect union between homeless children and families.<sup>66</sup> Moreover, international adoption is structured to maximize the positive outcomes for these children<sup>67</sup>

## B. ARGUMENTS AGAINST INTERNATIONAL ADOPTIONS

NOT everyone views international adoptions as an acceptable and viable solution for homeless children. Opposition has steadily grown as the number of international adoptions increases as many opponents of international adoptions argue that the practice operates primarily as a means for improper and unethical financial gain through the underground market of child trafficking.<sup>68</sup> Citing possible risks of abuse and exploitation, worries of the "Black Market" of baby selling remain at the forefront

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<sup>63</sup> Kim Clark & Nancy Shute, *The Adoption Maze*, U.S. NEWS & WORLD REP., Mar. 12, 2001, at 65.

<sup>64</sup> Stacie I. Strong, *Children's Rights in Intercountry Adoption: Towards a New Goal*, 13 B.U. INT'L L.J. 163, 170 (1995).

<sup>65</sup> BARTHOLET, FAMILY BONDS, *supra* note 15, at 142.

<sup>66</sup> *Id.*

<sup>67</sup> Liu, *supra* note 22, at 195 (citing INTERCOUNTRY ADOPTION: A MULTINATIONAL PERSPECTIVE (Howard Alstein & Rita J. Simon eds., 1991)).

<sup>68</sup> Bridget M. Hubing, *International Child Adoptions: Who Should Decide What Is In the Best Interests of the Family*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y

of arguments against international adoptions.<sup>69</sup> As a consequence, care should be taken to prevent international adoption from being used as a bargaining tool for inducing impoverished birth parents to give up their children for adoption.<sup>70</sup>

Imperialism is another criticism of the international adoptions alternative. Some developing countries have defined international adoptions as "imperialistic, self-serving, and a return to the form of colonialism in which whites exploit and steal natural resources."<sup>71</sup> The residual political animosity toward historical practices constitutes a major obstacle to international adoptions.<sup>72</sup> Opponents argue that it is unfair to separate children from their racial, ethnic, cultural, and national groups of origin.<sup>73</sup> In addition, opponents state that loss of the group link and heritage deprives children of their cultural backgrounds.<sup>74</sup> Further, anti-international adoption proponents suggest that raising children in foreign lands leads to an increased chance of discrimination.<sup>75</sup> For example, in India, Indian couples have priority in adopting displaced Indian children for this very reason.<sup>76</sup> That is, "adopted children, unlike birth children, do not share ancestry, genetic heritage, nor family resemblance with their adoptive parents."<sup>77</sup> Such strong opposition to international adoptions is shared not only by citizens of developing countries claiming imperialistic or risk of discrimination arguments, but also by international coalitions, such as UNICEF, which strongly opposes severing a child's native ties with their country of origin through international adoption.

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655, 665 (2001) (citing Kristina Wilken, *Controlling Improper Financial Gain in International Adoptions*, 2 DUKE J. GENDER L. & POL'Y 85 (1995)).

<sup>69</sup> *Id.*

<sup>70</sup> Elizabeth Bartholet, *International Adoption: Propriety, Prospects and Pragmatics*, 13 J. AM. ACAD. MATRIM. L. 181, 199 (1996) [hereinafter Bartholet, *International Adoption*].

<sup>71</sup> INTERCOUNTRY ADOPTION, *supra* note 67.

<sup>72</sup> Hubing, *supra* note 68, at 665 (citing JANE ROWE, PERSPECTIVES ON ADOPTION, IN ADOPTION: INTERNATIONAL PERSPECTIVES 6 (Euthymia D. Hibbs ed., 1991)).

<sup>73</sup> Bartholet, *International Adoption*, *supra* note 70, at 202.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> KALA LILANI, ADOPTION OF CHILDREN FROM INDIA 29 (Eliezer D. Jaffe, ed., 1995).

<sup>77</sup> *Id.*

### C. UNICEF: INTERNATIONAL ADOPTIONS SHOULD BE “LAST RESORT” OPTION

United Nations International Children’s Emergency Fund (“UNICEF”) is an outspoken opponent of international adoptions, and instead emphasizes and endorses the importance of tracing children to their biological families within the child’s country of origin before resorting to the international adoptions.<sup>78</sup> In a special report discussing the effects of war on children, UNICEF argues that tracing family members of orphaned children should be of utmost importance, and that international adoption should be permitted only when all tracing efforts have been exhausted.<sup>79</sup> UNICEF argues that international adoption increases the psychological trauma of separation from family members and places of familiarity, and harms children far more than attempting to trace any source of family ties.<sup>80</sup>

All of UNICEF’s contentions fall under the United Nations declaration which states that “every child whenever possible should be raised in the care and under the responsibility of his parents, and at the very least in an atmosphere of affection as well as moral and material security.”<sup>81</sup> However, UNICEF fails to address, much less acknowledge, the ill-effects children suffer while waiting for the tracing efforts to be exhausted. As statistics from UNICEF show, as in the Cambodian example, the risk of doing nothing and providing inadequate guidance to countries with a surplus of children result in increased violations of a child’s right to a healthy life.

The preamble of the Hague Convention recognizes UNICEF’s arguments against separating children from their families: “. . . Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin.”<sup>82</sup> However, in contrast to

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<sup>78</sup> Machel, *Unaccompanied Children*, *supra* note 4.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally*, G.A. Res. 41/85, U.N. GAOR, 41st Sess., Supp. No. 53, at 265, U.N. Doc A/RES/42/85 (1986) (adopted without vote).

<sup>82</sup> Hague Convention, *supra* note 10, at Preamble.

UNICEF's position, the Hague Convention attempts to serve the imminent needs of children longing for a permanent home who may not have the option of waiting for a link to their "family of origin."<sup>83</sup>

### III. THE ROLE OF INTERNATIONAL LAW IN INTERNATIONAL ADOPTIONS

The *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption* represents the most ambitious and monumental progress the international community has made in creating international child adoption regulations. This multilateral agreement signifies the beginning of a cooperative international adoption process, and exemplifies ongoing efforts to increase collaboration amongst several international states. Despite the earnest efforts put towards such collaborative international adoption law, more detailed, protective measures must be created and implemented to fully protect internationally adopted children. Currently, international law just scratches the surface in protecting children and families caught in the confusing maze of international adoptions. To better protect these children, birth parents, and adoptive families help them get past the bureaucratic red tape, the *Hague Convention* should be amended to include 1) greater clarification of key adoption terms to ensure uniformity of understanding between sending and receiving countries, 2) established enforcement mechanisms and a process for review of such enforcement mechanisms, and 3) sanctions for violations of international adoption law, thereby broadening and strengthening the safety net for children across all levels of international adoption services.

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<sup>83</sup> *Id.* ("Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of Origin.")

A. HAGUE CONVENTION ON PROTECTION OF CHILDREN  
AND CO-OPERATION IN RESPECT OF  
INTERCOUNTRY ADOPTION

The *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (“*Hague Convention*”) provides, for the first time, formal international and inter-governmental recognition of intercountry adoptions.<sup>84</sup> The *Hague Convention* primarily governs international adoptions that occur between sending and receiving countries, and sets forth minimum norms and procedures as they relate to such international adoptions.<sup>85</sup> The *Hague Convention* applies to any child who regularly resides in one contracting country,<sup>86</sup> and once adopted, will thereafter regularly reside in another contracting state, so long as the adoption creates a permanent parent-child relationship.<sup>87</sup>

There are three main objectives of the *Hague Convention*:

- to ensure an international adoption occurs only if it is in the child’s best interest;
- to establish a system of cooperation among participating nations in order to assure their agreements are upheld, as well as to help curtail the exploitive sale of children; and
- to ensure recognition of intercountry adoptions which conform to the *Hague Convention*’s requirements.<sup>88</sup>

The underlying goal of the Convention is to protect the children, birth parents and adoptive parents involved in intercountry adoptions, thereby preventing child trafficking and other abuses commonly related to the delicate business of international adoptions.<sup>89</sup> Countries that become party to the *Hague Convention* by

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<sup>84</sup> See generally *Hague Convention*, *supra* note 10.

<sup>85</sup> See generally *id.*

<sup>86</sup> A contracting country/state is any member state that has ratified the treaty. *Id.* at art. 44(3).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at art. 1; see generally Lisa M. Katz, *A Modest Proposal? The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, 9 EMORY INT’L L. REV. 283, 307 (1995) (describing the Hague Conference procedures that must be followed during the adoption if the prospective parents reside in a contracting state, and the child also lives in a contracting state).

<sup>89</sup> *Id.*



*signing, ratifying, or acceding to it* indicate their intent and commitment to promoting safe and legitimate international adoptions.

As of mid-March 2004, 46 countries had become parties to the *Hague Convention* and six had signed, but not yet not ratified.<sup>90</sup> By not ratifying, these six countries, including the United States, China, and Russia, are not legally bound by the internationally agreed treaty set out to streamline and unify the requirements and procedures involved in intercountry adoptions. However, the mere signing of the *Hague Convention* signals an intent to proceed with efforts to ratify the *Hague Convention*, and also places an obligation on the signing countries to refrain from any acts that are contrary to any of the Conventions rules.<sup>91</sup>

For example, the U.S. signed the *Hague Convention* on March 31, 1994, signaling its intent to proceed with efforts to ratify.<sup>92</sup> Since its signing by the U.S. in 1994, the *Hague Convention* has been transmitted through the U.S. federal government for advice and consent, with significant input from the adoption community.<sup>93</sup> Additionally, federal legislation – “The Intercountry Adoption Act of 2000” (“IAA”) – was passed by both Houses of Congress in September 2000, and efforts have been under way to prepare and issue specific federal regulations that comport with the *Hague Convention*.<sup>94</sup>

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<sup>90</sup> *Hague Conference Status Report*, *supra* note 34.

<sup>91</sup> *See Hague Convention*, *supra* note 10.

<sup>92</sup> U.S. Department of State, Bureau of Consular Affairs, Overseas Citizens Services, Office of Children Issues, *Hague Convention on Intercountry Adoption Flyer*, at <http://travel.state.gov/hagueinfo2004.html> (last visited Apr. 12, 2004) [hereinafter *Hague Convention Intercountry Adoption Flyer*].

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* The IAA federal regulations set forth the following:

- (1) Set out the requirements entities must meet to qualify for designation to accredit or approve adoption service providers as required by the Convention and the IAA;
- (2) Specify the standards to be met by agencies and individuals seeking to become Hague Convention accredited or approved to be able to provide adoption services for adoptions covered by the Convention; and
- (3) Set out the procedures to be followed for incoming and outgoing adoptions involving the United States that are safeguarded by the Hague Convention and the IAA.

The preparations for U.S. implementation of the *Hague Convention* and the IAA are expected to take until late 2005 or early 2006, over a decade after signing the *Hague Convention*.<sup>95</sup> Extensive preparation is expected by the federal government, State courts and authorities, accrediting entities and those seeking to become accredited or approved to provide *Hague Convention* adoption services, and will then permit the U.S. to ratify the *Hague Convention* and bring it into force between the U.S. and other countries that have become party to it. Accordingly, such preparations fall under Article 6 of the *Hague Convention*, which requires that each participating State establish a Central Authority within the State of origin of the child who is determined suitable for international adoption.<sup>96</sup> In addition, Article 5 sets forth that the Central Authority in each State must determine that the prospective adoptive parents are suitable and eligible to adopt, and that proper authorization has been granted for the child to enter and permanently reside in the receiving state.<sup>97</sup> In the U.S., the Central Authority will be established in the U.S. Department of State, and the Bureau of Consular Affairs, Office of Children's Issues will have primary responsibility.<sup>98</sup>

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<sup>95</sup> *Id.*

<sup>96</sup> *Hague Convention*, *supra* note 10, art. 6. Article 6 provides that:

- (1) A Contracting State shall designate a Central Authority to discharge the duties, which are imposed by the Convention upon such authorities.
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communications may be addressed for transmission to the appropriate Central Authority within that State.

<sup>97</sup> *Hague Convention*, *supra* note 10, art. 5. Article 5 states that:

- An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State –
- a) have determined that the prospective adoptive parents are eligible and suited to adopt;
  - b) have ensured that the prospective adoptive parents have been counseled as may be necessary; and
  - c) have determined that the child is or will be authorized to enter and reside permanently in that State.

<sup>98</sup> *Hague Convention Intercountry Adoption Flyer*, *supra* note 92.

Increasingly, countries of origin are expressing their preference or expected eventual preference to send their children to countries that have ratified the Convention regardless of whether they themselves have signed or ratified the Convention.<sup>99</sup> These countries have committed themselves to compliance with internationally agreed upon norms and procedures for the sole protection of the children and families involved, but may not have the resources, nor an established governmental structure to support such an intense Central Authority establishment as being prepared in the U.S.<sup>100</sup>

Countries that have not signed or ratified the it, but have affirmed their commitment to its policy goals, may still benefit from the delineated measures and safeguards of the *Hague Convention* by formally acceding to it. In accordance with Article 44(3) of the Convention, “the accession has effect only as regards to the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months following the date on which the depositary gave notice of the accession.”<sup>101</sup> By acceding to the *Hague Convention*, countries that are not party to the Convention, such as Cambodia, may take advantage of the adoption regulations and guidelines to facilitate legitimate international adoptions. As a result, these countries can join the international movement in safeguarding the international adoption process by applying the *Hague Convention’s* operative blueprint to aid international adoption authorities in their respective countries in promoting and initiating a tradition of safe and expeditious international adoption procedures, thereby depleting the market of vulnerable children available as trafficking pawns. As of March 19, 2004, 16 States have acceded to the *Hague Convention*.<sup>102</sup>

## B. A VAGUE HAGUE

Adoption recognition under the *Hague Convention* is vague, and subject to arbitrary, broad, and inconsistent interpretation.

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<sup>99</sup> Peter H. Pfund, *The Hague Intercountry Adoption Convention and Federal International Child Support Enforcement*, 30 U.C. DAVIS L. REV. 647, 655 (1997).

<sup>100</sup> *Id.*

<sup>101</sup> Hague Convention, *supra* note 10, art. 44(3).

<sup>102</sup> *Hague Conference Status Report*, *supra* note 34.

As it stands, the burden of clarifying what adoption means is up to each individual State, resulting in a global patchwork of varied and non-uniform definitions and understanding of what adoption is. For example, under Article 23 of the *Hague Convention*, “an adoption which is certified by the competent authorities of the state where the adoption was conducted as being in compliance with the above regulations shall be recognized by operation of law by all other contracting states.”<sup>103</sup> This statement represents the closest definition or explanation of what a legitimate adoption is under the *Hague Convention*. In plain language, the sending state must determine that the child being considered for adoption is (1) “adoptable,” (2) that “international adoption is in the child’s best interest,” and (3) that “consent from all necessary parties has been freely obtained without any illicit inducement.”<sup>104</sup> However, the term “adoptable” is not defined anywhere in the *Hague Convention*, which inevitably leads to arbitrary and unpredictable of what constitutes an adoptable child or an orphan.

In addition the hazy definition of adoption, Article 23 purportedly defines “adoption recognition” by acknowledgment of the following:

- 1) a legal parent child relationship that exists between child and adoptive parents;
- 2) parental responsibility of adoptive parents for child;
- 3) termination of prior relationship between the child and his/her natural parents.<sup>105</sup>

Further, the *Hague Convention* has an escape clause under Article 24, which provides that “a state may refuse recognition of an adoption if it is manifestly contrary to public policy when taking the child’s best interests into consideration.”<sup>106</sup> However, because “public policy” is not explicitly discussed anywhere in the treaty, this broad escape clause may be construed many ways to promote very different agendas and public policies. The deficiencies identified here constitute the *Hague Convention*’s overall weakness: the lack of clear and concise definitions of key

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<sup>103</sup> *Id.*; *Hague Convention*, *supra* note 10, art. 23.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at art. 23.

<sup>106</sup> *Id.* at art. 24.

adoption terms and procedures. Collectively, it is the absence of clarity and uniformity in the *Hague Convention* and the international adoption process that lends vulnerable children, birth parents and families to the dangers associated with international adoption that the *Convention* is set out to safeguard against.

In sum, the current *Hague Convention* provides a minimal framework for guiding protected international adoptions, even though it is a formal affirmation in support of international adoption as offering the “advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.”<sup>107</sup> Undoubtedly, the *Convention* established key measures ensuring that international adoptions take place in the best interests of the child, respecting his/her fundamental rights, as well as placing protection of children from exploitation from acts of abduction, sale, or trafficking at a paramount position. However, the *Hague Convention*, as it stands, reflects only the beginning of a realistic document that can adequately safeguard the international adoption process.

#### IV. THE *HAGUE CONVENTION* IS NOT ENOUGH.

To become an effective guiding force for children in need, the *Hague Convention* must streamline its administrative processes and clarify its definitions to provide more holistic protection for children, birth parents, and adoptive families involved in the international adoption process. Otherwise, the *Hague Convention* represents only a stack of paper documents that purport to protect people involved in international adoptions, but in reality merely sounds a hollow note in the hearts of orphans longing for of a loving, permanent home.

Uniform enforcement of international rules governing international adoptions will define the future role of international adoptions as a parenting alternative.<sup>108</sup> The *Hague Convention* represents only the beginning of protective international adoption regulations, and simply scratches at the surface of preventing the many harms associated with primitive international adoptions. The *Hague Convention* must be amended to include language that provides greater protection and uniformity to the

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<sup>107</sup> *Hague Convention*, *supra* note 10, at Preamble.

<sup>108</sup> BARTHOLET, FAMILY BONDS, *supra* note 15, at 150.

international child adoption process. The present document establishes minimal standards, policy, and procedures that address the protection of children who are the key figures in the international adoption realm.<sup>109</sup>

A. *HAGUE CONVENTION ANALYSIS*  
AND RECOMMENDATIONS.

To provide greater protection to children, birth parents, and adoptive families in the international adoption realm, the *Hague Convention* should be amended to include the following: (1) Distinct definitions of key adoption terms, and greater clarification of existing language to ensure uniformity of understanding between sending and receiving countries, (2) Enforcement mechanisms to determine the effectiveness of purported international adoption laws, including guidelines for a process of review or evaluation of such international law; and (3) Provisions detailing sanctions for violations of international adoption law under the *Hague Convention*, thereby broadening and strengthening the safety net for children across all levels of international adoption services. The inclusion of such amendments and clarifications to the *Hague Convention* will dramatically improve the practical effectiveness and usefulness of such measures intended to offer greater protection to internationally adopted children.

(1) *Distinct definitions of key adoption terms, and greater clarification of existing language to ensure uniformity of understanding between sending and receiving countries.*

The *Hague Convention* is broad, vague, and over-general. Some of this vagueness is intentional, possibly to allow for flexible application of this document to the multiple governments party to the *Hague Convention*. However, while multilateral considerations are important, the consequences are that the present *Hague Convention* lacks clear and uniform definitions of key adoption terms. As such, the *Hague Convention* sets forth an unclear and weak structure for implementation and fails to clarify what the meaning of key adoption terms. The *Hague Convention*

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<sup>109</sup> *Id.* at 141.

attempts to clarify jurisdictional issues, deferring definitional differences to the interpretations of each individual signatory to the *Hague Convention*. However, this dissociated manner of statutory interpretation dilutes the force of the its rules. The lack of a clear and uniform set of definitions leaves the task of defining and interpreting key adoption terms to the sole discretion of the Central Authority of each State. This lack of clarity results in an inconsistent global quilt of varied international adoption laws and procedures, thereby defeating the purpose of the *Hague Convention*.

To illustrate this point, terms such as “orphan” and “adoption” are found throughout the *Hague Convention*, but lack any concrete definition.<sup>110</sup> Depending on the country, key adoption terms may have very different meanings, possibly leading to very different outcomes for the children and families in question. Although such terms may appear obvious in their meaning, the slightest misinterpretation of “adoptable,” for example, may result in flagrant abuses and exploitation of a child not yet adoptable. Under what age is a child eligible, or conversely, ineligible, for international adoption? Are there State laws in place that define the eligible age of adoption? What if surrender of legal custody of a child by a parent or relative was given under duress or threat? In its vagueness, the *Hague Convention* fails to acknowledge these issues and relies on minimal standards or requirements to constitute a legal and valid understanding of what an “orphan” is, what “adoptable” is. This definition deficiency is of utmost concern because a child’s livelihood may depend on the very clarity of key adoption terms.

Also, the term “public policy” surfaces under Article 24<sup>111</sup> as a built-in escape clause for countries which refuse recognition of an adoption. Similar to the failure to provide definitions for key adoption terms, the Convention fails to provide a scope of coverage under which “public policy” is interpreted. Such a wide policy umbrella provides countries with several interpretations, which could be arguably brought under the *Hague Convention’s*

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<sup>110</sup> See generally *Hague Convention*, *supra* note 10.

<sup>111</sup> *Hague Convention*, *supra* note 10, art. 24. Article 24 provides that “the recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.”

purposes. Therefore, a child's adoption process may be abruptly halted based upon a country's agenda and interpretation of what may be against their "public policy," and taking into account the "best interests of the child," which is yet another vague term lacking definition.

The "best interest of the child" standard is mentioned in the *Hague Convention*<sup>112</sup> but lacks further discussion or clear definition of what this standard requires. Interpretation is again left to the authority of adoption official appointed by the government of the contracting state. The most notable attempt at defining "best interest at the child" occurs in the preamble,<sup>113</sup> which recognizes that the most ideal place for a child's growth is in a "family environment." Under Articles 16<sup>114</sup> and 21<sup>115</sup> of the *Convention*,

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.* The preamble states that:

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that the each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of Origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of nov. 20, 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special References to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of Dec. 3, 1986).

<sup>114</sup> *Id.* at art. 16(1)(d). Article 16(1)(d) provides that:

(1) If the Central Authority of the State of Origin is satisfied that the child is adoptable, it shall – d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

<sup>115</sup> *Id.* at art. 21(1). Article 21(1) provides that:

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State and the continued placement of the child with the prospective parents is not in the



the Central Authority is charged with determining what is in the “best interest of the child.” With no clear definition or criteria of what constitutes the “best interest of the child,” the adoption process becomes less certain, less uniform, and ultimately, more difficult to implement into practice.

After muddling through the vague definitions and policies of the *Hague Convention*, the international adoption process boils down to an interpretation contest between the contracting States to determine what exactly constitutes “the best interest of the child.” Many factors, including economic, environmental, and psychological stability, can have great impact on the decision regarding the “best interest of the child.” Again, interpretation is left to the discretion of each individual country, without consideration of what kinds of grave consequences may occur as a result of contrasting perspectives of this concept between the sending and receiving countries. Thus, the concept of what is truly in the “best interest of the child” is highly malleable, and may vary enormously depending on the cultural and religious beliefs, economical, and social status of the sending country.

Granted, the *Hague Convention* should allow for a degree of flexibility in its definitions to allow for such varying cultural, economical, and social differences. However, perhaps too much discretion and power placed in the hands of the Central Authority to unilaterally determine the meaning of such key definitions leads to the risks and dangers historically associated with illegitimate international adoptions, further perpetuating the lack of uniformity the *Hague Convention* attempted to streamline in the first place. Moreover, such subjective and non-uniform international adoption concepts only create more bureaucratic hoops that the children, birth parents, and adoptive families must jump through to get to the happy ending for all.

To remedy this deficiency of definitions, the *Hague Convention* should be amended to include an “introductory definitions” section designed expressly to define, with as much clarity and uniformity as possible, key adoption terms used throughout the *Hague Convention* and in international adoption procedures. A definitions section would aid in further streamlining the uniform

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child’s best interests, such Central Authority shall take the measures necessary to protect the child. . .

purposes of the *Hague Convention*, ultimately leading to increased protective measures for internationally adoption players.

(2) *Include enforcement guidelines or mechanisms to determine the effectiveness of purported international adoption laws.*

Although the *Hague Convention* has good intentions, it lacks any form of enforcement mechanism to ensure compliance. Pursuant to Article 6,<sup>116</sup> the Central Authority established by the contracting state is charged with the additional duty of enforcing the provisions of the *Hague Convention*. The problem arises in the self-executed authority that each country possesses to accredit and supervise its own Central authority, which essentially allows each country to continue policing international adoption as it sees fit despite the *Hague Convention* 's intentions to provide for and protect children based on the "child's best interest" guidelines. When each country's Central Authority is essentially its own judge, it is highly unlikely to admit to its own faults and failures with regard to international adoption procedures and harmful consequences, and instead may justify its acts as being in line with their understanding of "public policy" or "in the best interest of the child." For example, Article 7 of the *Convention* sets forth the scope of the Central Authority's clout and influence regarding international adoptions.<sup>117</sup> However, this Article remains purely subjective on the part of the individual State's

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<sup>116</sup> *Hague Convention*, *supra* note 10, art 6. Article 6 provides that:

- (1) A Contracting State shall designate a Central Authority to discharge the duties, which are imposed by the Convention upon such authorities.
- (2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

<sup>117</sup> *Id.* art. 7(1). Article 7(1) provides that:

- (1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

Central Authority, and has no force in or against another contracted State.

Moreover, there is no overseeing international body designated by the *Hague Convention* to ensure compliance by participating countries. As stated above, enforcement powers lie in the hands of the Central Authority established by the participating country. Therefore, the *Hague Convention* fails to institute measures to evaluate whether the regulations designed by a respective Central Authority are in conformance with the overall safeguarding purposes of the *Hague Convention* originally approved by not one, but several nations.<sup>118</sup>

Admittedly, by giving deference to each State's sovereign rights in allowing sole designation of the Central Authority, the *Convention* reduces the conflicts between States and encourages collaboration. Such bureaucratic favors are exemplified in Article 7(2)(a)(b), which explicitly discusses mechanisms by which pertinent information, including statistics and laws, may be exchanged between countries.<sup>119</sup> It is notable, however, that Article 7 fails to make mention of how children, the main subjects of the purported protective measures, are to be protected under this mechanism of information exchange.<sup>120</sup> Instead of discussing specific protective measures for the children involved in international adoption procedures, this section of the *Hague Convention* focuses solely on cutting the bureaucratic red tape for the States executing the international adoptions.

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<sup>118</sup> *Hague Convention Intercountry Adoption Flyer*, *supra* note 92 (“The final text of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague Adoption Convention), a multilateral treaty, was approved by 66 nations on May 29, 1993, at The Hague.”).

<sup>119</sup> *Hague Convention*, *supra* note 10, art. 7(2)(a)(b). Article 7(2)(a)(b) provides that:

- (2) They shall take directly all appropriate measures to –
  - a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
  - b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

<sup>120</sup> *Id.*

(3) *Provide sanctions for States where a violation concerning an international adoption occurs.*

Sanctions for violations of the *Hague Convention* correspond with the discussion of enforcement mechanisms aimed at protecting children adopted across international borders. The inherent voluntary nature of private international law limits the force of the *Hague Convention* and makes enforceability of sanctions difficult. To remedy this deficiency, the *Hague Convention* should be amended to include provisions for sanctions to address violations of international adoption law.

## V. CONCLUSION

Bolstering the current international cooperative effort and amending the *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* is the key to streamlining and safeguarding the international adoption process. To date, the *Hague Convention* represents great progress in developing protective international adoption measure. However, serious questions remain concerning its practical effectiveness on the lives of internationally adopted children, birth parents, and adoptive families. The current *Hague Convention* reveals deficiencies that fail to thoroughly protect the mobile population of children adopted across international borders.

Countries such as Afghanistan and Cambodia, continue to recover from devastating conflicts of war, while at the same time pulling themselves out from the legal vacuum that developed during such conflict. In addition to conflicts of war, millions of children hail from disease-devastated countries, where adults, who are themselves impoverished, are unable to or uninterested in caring for orphaned children.<sup>121</sup> To better safeguard the children, birth parents, and adoptive families involved in the international adoption maze, the global community must continue to make progress in the creation of uniform international adoption law by amending the *Hague Convention* to reflect a more clear and concise compass for the future of legitimate international adoptions. Amending the *Hague Convention* will prevent children from growing up in disparate conditions absent a “family

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<sup>121</sup> Katz, *supra* note 88, at 287 (citing Jennifer Horne-Roberts, *Intercountry Adoption*, 142 NEW L.J. 286 (1992)).

environment, in an atmosphere of happiness, love and understanding. . . .”<sup>122</sup> The amendments will assist orphaned children throughout the world in meeting loving and nurturing families that they desire and rightly deserve.

The *Hague Convention* provides, for the first time, formal international and intergovernmental recognition of intercountry adoption,<sup>123</sup> and signals positive recognition by the global community. However, without amendment and clarification the *Hague Convention* of its definitions, purposes and policies, ‘s reach is limited, and its ability to protect and serve children and families embroiled in the international adoption labyrinth remains restricted. Although the *Hague Convention* purports to safeguard and promoting legitimate international adoptions, it has yet to convey its true significance in the protection of children, birth parents, and adoptive families who cross international borders.

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<sup>122</sup> *Hague Convention*, *supra* note 10, at Preamble.

<sup>123</sup> *Hague Convention Intercountry Adoption Flyer*, *supra* note 92.

