

Appendix E - UNIVERSITY HONORS PROGRAM
SENIOR PROJECT - APPROVAL

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I have reviewed this completed senior honors thesis with this student and certify that it is a project commensurate with honors level undergraduate research in this field.

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It is well-written and organized.
The topic is interesting and timely.
Her analysis ~~is~~ is insightful. Overall,
it is an excellent project.

The Intercountry Adoption Argument: Variation in Policy and Perspective

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Table of Contents

- I. Introduction
- II. Overview of Intercountry Adoption
 - A. Emergence of Intercountry Adoption
 - B. Growth and Changes in the Practice
 - C. Policy Variations
- III. The Current Debate
 - A. Opponents' Arguments
 - B. Proponents' Arguments
- IV. Research
 - A. Prevalent Themes
 - B. Analysis
- V. Policy
 - A. Past Attempts to Address ICA Policy
 - 1. Leysin Seminar of 1960
 - 2. The Convention of Strasburg (1967)
 - 3. U.N. Articles
 - 4. Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption
 - B. Similarities in Past International Policy Recommendations
 - C. Possible Policy Recommendations
 - D. Problems with Uniform International Policies
- VI. Conclusion

INTRODUCTION

In every country children are born each day to parents who do not desire to care for them. Over the last sixty years, intercountry adoption has become a more common way to deal with the growing numbers of orphans in many countries. Intercountry adoption (or international adoption as it is sometimes called) is the term used to refer to the practice of a child being adopted by foreign parents and being taken by these parents to live in the parents' country of residence. Through intercountry adoption (ICA), less developed countries have allowed potential parents (usually from the United States, Canada, or Western Europe) to adopt children and make them residents of the parents' home country. Because ICA involves removing a child from his or her country of birth, it has become a contentious issue. Those who oppose the practice of ICA argue that displacing a child from its country of origin and that country's culture is so detrimental to the child that it should be avoided if at all possible. Proponents of the practice, however, contend that ICA is often in the best interest of the child. Proponents base their claims on empirical data showing that internationally adopted children adjust well to their new environments. This data is also used to support the idea that the benefits of becoming part of a family outweigh the supposed costs of a child leaving its birth country.

Due to strong arguments on both sides of the issue, policy-makers in some countries have begun to evaluate and limit the role of ICA. This analysis of international adoption will examine the arguments both for and against the use of ICA and demonstrate that the arguments for the practice prevail in strength and importance. It will also explore possible policy recommendations based on the concept of a prevailing proponent view.

OVERVIEW OF INTERCOUNTRY ADOPTION

In order to understand ICA, one must first place it in both its historical and current context. First, this section will describe the emergence of ICA as a widely used practice. Next, it will discuss the growth and changes in the practice of ICA from its beginning to the present, especially the changes in which countries are seen as sending and/or receiving countries. The terms sending country and receiving country are used often in literature addressing ICA. Sending countries are those from which large numbers of children are adopted out of said country and taken into another each year. Receiving countries are those in which people adopt children from other countries and bring them into the receiving country to live.¹ Last, this section will point to the greatly varying policies and approaches different countries currently use in regard to ICA.

Emergence of Intercountry Adoption

Though ICA is currently a controversial issue, it did not begin as such. The devastation of World War II left many children orphaned or permanently separated from their natural parents. Troops stationed away from their homes had fathered large numbers of illegitimate children, thus adding to the number of children in war-torn nations for whom adequate care could not be provided. As a post-war humanitarian effort, many North Americans began to adopt children in need of families after the war.² Americans adopted around 300 children from Poland, Greece, Germany, and Italy and around 3,000 children from Japan.³ Although previous instances of children being

¹ Judith Masson, "Intercountry Adoption: A Global Problem or a Global Solution," Journal of International Affairs Vol. 55 Issue 1 (1 Sept. 1991): EBSCO Host.

² Christopher Bagley, Loretta Young, and Anne Scully, International and Transracial Adoptions (Aldershot: Avebury, 1993) 135.

³ Madelyn Freundlich, Adoption and Ethics (Washington, D.C.: Child Welfare League of America, Inc., 2000) 89.

and Vietnam sent 384 less. The number of orphans released by Cambodia also significantly decreased, lessening by 130 children.⁸

Policy Variations

The fact that many countries are significantly increasing the number of children allowed to be adopted internationally while many other countries are lessening the number of orphans released shows the variety of policies regarding the practice. The varying policies can be categorized into three main groups: prohibited ICA, restricted ICA, and relatively open ICA. Although the group that prohibits ICA is small, it illustrates the broad range of current ICA policies. Sixteen countries in the world prohibit intercountry adoption. Afghanistan, Argentina, Bahrain, Bangladesh, Belize, Finland, Greece, Guyana, Iceland, Iran, Iraq, Kuwait, Qatar, Saudi Arabia, Slovenia, and Trinidad do not allow children to be adopted across borders by foreigners.⁹ Several of the countries on this list are predominantly Islamic, demonstrating the Islamic faith's overwhelming opposition to intercountry adoption.¹⁰

Even within the groups of countries restricting or prohibiting ICA, policy variation is rampant. On May 5, 2004, the country of Azerbaijan indefinitely suspended the allowance of ICA pending an investigation, adding it to the list of countries which do not allow the practice.¹¹ This use of "indefinite suspension" represents another avenue countries may follow in effectively prohibiting ICA. Besides complete prohibition, countries also take other routes toward limiting the practice of ICA, often through

⁸ Ibid.

⁹ U.S. Department of State, "International Adoption: Country Specific Adoption Flyers," 21 Sept. 2004 <http://travel.state.gov/family/adoption_country.html>.

¹⁰ Bagley et. al., *International and Transracial Adoptions*, 168.

¹¹ U.S. Department of State, "International Adoption: Azerbaijan; Azerbaijan Suspends Adoption," 14 June 2004, 21 Sept. 2004 <http://travel.state.gov/family/adoption_azerbaijan_notice.html>.

restrictive laws. One example of this is Romania. Legislation was recently passed in Romania that will greatly limit the number of children allowed to be adopted outside the country. Beginning on January 1, 2005, Romanian orphans cannot be adopted by foreigners unless the search for a Romanian family has been completely exhausted. If a child is under the age of two, he or she will not be eligible for international adoption under any circumstances.¹²

Because ICA policies stretch far beyond the government enforcing them and greatly affect prospective parents and orphans, these policies are important to analyze and understand. Currently, the varying policies employed by countries regarding ICA make the practice difficult to understand or regulate. No consensus exists on whether the practice should be allowed or prohibited. This lack of consensus is due to the two polar arguments that exist within the current debate on ICA. Proponents of the practice rely heavily on the idea that ICA is often in the best interest of the child; opponents argue that the damage done by removing a child from its cultural and ethnic background far outweighs any benefits of the practice.

This section described both the history of ICA and the current status of the practice. It explained ways the practice has changed and grown. It also pointed to variations and irregularities in ICA policy that need to be addressed. The remainder of this analysis of ICA will evaluate the arguments of both proponents for and opponents of ICA. Based on these arguments, this analysis will then examine the possibility of an internationally consistent ICA policy.

¹² Anca Teodorescu, "Prime Minister says Romanis will keep severe restrictions on international adoptions," Associated Press, 27 July 2004: LexisNexis.

THE CURRENT DEBATE

Opponents' Arguments

Much recent literature regarding ICA has described some of the reasons against the practice. The opponents' arguments examined here include: lack of racial and cultural identity for children removed from their birth countries, corruption within sending countries, lack of attention and resources for reforming system in sending country, national pride, media criticism, irregularities in the process, and problems in international law.

The arguments most often used by opponents of ICA rest on the idea that removing a child from its country of birth is so harmful to the child that no benefits of ICA could outweigh the costs. Opposition to ICA emphasizes the damage the practice has on internationally-adopted children's sense of cultural, ethnic, and racial identity.¹³ Opponents argue that an "irreparable loss" is created when a child is denied its cultural, ethnic, or national heritage. Lack of cultural, ethnic, or racial identity may continue throughout the adopted child's life, possibly causing problems during adolescence when children are of a different background than their adopted parents.¹⁴ Other problems caused by removing a child from its birth country are cited by opponents of ICA. They question whether a child's needs can be met outside its natural culture and whether a child can ever truly assimilate and become a part of a foreign culture. Some opponents add that the separation of a child from its original culture is a violent enough occurrence

¹³ Freundlich, Adoption and Ethics, 94.

¹⁴ Bagley et. al., International and Transracial Adoptions, 136.

to significantly add to the trauma already suffered by an orphan who has been separated from his or her family.¹⁵

In addition to issues with cultural identity for adopted children, opponents of ICA focus on the problems the practice creates or encourages in the sending countries. Claims are made that ICA may impede upon the growth of sending countries' child welfare services.¹⁶ These claims are based on the idea that ICA pulls attention and resources away from the adoption system in the sending country. Necessary reforms in child welfare services are not realized or funded. This inattention to the system in the sending country increases the difficulty of providing services to children who remain in the country.¹⁷

Some opponents of ICA suggest that the practice does more within the sending country than contribute to the neglect of the children left behind. Critics of the practice argue that the allowance of Westerners adopting babies from less developed countries encourages the abandonment of children. This encouragement is brought about by the hope or expectation that the child will be adopted into a more promising life.¹⁸ The opposition sometimes goes further, claiming that ICA "reflects an attempt to legitimize a profitable market for selling babies, the human capital of less developed countries, to people in the industrialized powers of the West."¹⁹ This comparison of ICA to a virtual baby market illustrates the fact that many believe that policies allowing international adoption make "legal" an immoral practice that should not be sanctioned under law. ICA

¹⁵ Freundlich, Adoption and Ethics, 98-99.

¹⁶ Bagley et. al., International and Transracial Adoptions, 136.

¹⁷ Jay W. Rojewski and Jacy L. Rojewski, Intercountry Adoption from China (Westport, Connecticut: Bergin and Garvey, 2001) 22.

¹⁸ Bagley et. al., International and Transracial Adoptions, 136.

¹⁹ Rojewski and Rojewski, Intercountry Adoption from China, 20.

opponents' arguments draw support from cases such as the arrest of seven suspected child traffickers in Madagascar²⁰ and the selling of babies by poor villagers in Cambodia,²¹ both of which occurred in 2004.

Proponents' Arguments

While many use the aforementioned arguments to oppose the practice of international adoption, many also contend that ICA is a necessary and beneficial policy that must be permitted. Proponents assert that they approach the issue of ICA with a focus on children's interests. A well-cited claim of ICA proponents is that international adoption is often in the best interest of the child. Proponents argue that ICA best serves the needs of children who have been abandoned and are homeless in their birth countries. These children, according to proponents, would likely face grim conditions such as institutionalization or death in their birth countries.²²

Proponents use several other arguments to substantiate the use of ICA. Proponents often cite research that has shown that the children involved in international adoptions adjust well to their new lives. They claim that "empirical literature on intercountry (and transracial) adoption has consistently discounted all claims of intellectual, social, or emotional harm to adoptees as a result of the practice."²³ Proponents of ICA also claim that allowing international adoption may shed light on the plight of children within sending countries. Increased awareness in developed countries of the conditions faced by orphans in less developed countries may bring aid and reform

²⁰ "Seven suspected child traffickers arrested in Madagascar," Agence France Presse, 4 May 2004: LexisNexis.

²¹ Robin McDowell, "Poor villagers in Cambodia still sell babies despite suspension of U.S. adoption program," Associated Press, 6 March 2004: LexisNexis.

²² Freundlich, *Adoption and Ethics*, 94.

²³ Rojewski and Rojewski, *Intercountry Adoption from China*, 21.

to the countries and children in need.²⁴ Another argument cited by proponents is that in many sending countries, ICA is an orphan's best (if not only) chance of being adopted into a family. For instance, cultural barriers and financial difficulties in Korea work against domestic adoption. This lack of domestic adoption leaves international adoption as the most likely avenue of placing a child within a family.²⁵

Some arguments of proponents are direct responses to claims made by the opponents of ICA. For instance, those for the practice respond in two ways to claims that a child adopted internationally will experience great discrimination. First, they state that the racism or prejudices faced by internationally adopted children are no different or worse than the racism or prejudices faced by others who are discriminated against. This factor, therefore, should not bear weight in the argument over whether to allow ICA. Secondly, proponents say that should a child remain in its birth country, that child will still face discrimination because of his or her homeless and abandoned status.²⁶ Another opposition argument that proponents of ICA respond to is racial awareness. Some proponents state that race should not be a major focus of the debate surrounding ICA, and it has only become such because of an effort to be politically correct.²⁷

The dispute regarding the practice of intercountry adoption is ongoing. Much research has been done regarding intercountry adoption and its affects on internationally adopted children. These studies have sought to explore whether or not either sides' arguments regarding ICA can be scientifically supported. The next section will focus on these studies and their findings.

²⁴ Ibid. 22.

²⁵ Freundlich, Adoption and Ethics, 93.

²⁶ Rojewski and Rojewski, Intercountry Adoption from China, 23.

²⁷ Ibid. 21.

RESEARCH

Prevalent Themes

There are several common themes throughout ICA research. This section will address some of the most common themes, including discrimination, academic achievement, health, familial integration, cultural integration, self-concept, and overall adjustment of international adoptees. By examining these concepts, a clearer picture of the costs and benefits of ICA will be achieved.

One concern of those opposed to intercountry adoption is that international adoptees will face discrimination in their adopted homeland.²⁸ Two specific studies have supported this claim, with 70% of the adoptees in one study²⁹ and over half of the adoptees in another study³⁰ reporting that they had faced some discrimination in their adopted countries. The large percentages shown in both of these studies leads one to the conclusion that discrimination may be a reality for internationally adopted children. Despite the high levels of reported discrimination, though, one study found that over 90% of the international adoptees studied were at least comfortable with their race and ethnicity.³¹

Academic achievement and general health in internationally adopted children have also been studied by researchers. Studies have found that the children of ICA tend to perform at an at least average level in schools, with many performing above average.³² A consensus also exists in the literature that ICA does not generally affect a child's

²⁸ Ibid. 23.

²⁹ Madelyn Freundlich and Joy Kim Lieberthal, "The Gathering of the First Generation of Adult Korean Adoptees: Adoptees' Perceptions of International Adoption," The Evan B. Donaldson Adoption Institute, June 2000, 15 April 2005 <<http://www.adoptioninstitute.org/proed/korfindings.html>>.

³⁰ "Encyclopedia of Adoption," 15 April 2005 <<http://www.encyclopedia.com/entry/Canada/74/1.html>>.

³¹ Ibid.

³² Rojewski and Rojewski, Intercountry Adoption from China, 180-183.

health. Adoptees have been found to have few long term medical needs and be in good physical condition.³³ One study even found international adoptees to be “extraordinarily healthy.”³⁴ Based on this research, ICA children seem to be thriving both physically and academically.

One benefit of ICA is that a child is placed within a family. This benefit would be invalid, though, if children were not integrated into their internationally adopted families. Many studies have researched the familial integration of an ICA child and found positive results. Adoption was found to minimally affect family dynamics,³⁵ with children of ICA experiencing feelings of family integration similar to their siblings who were birth children of the family.³⁶ International adoptees were reported to have a compelling feeling of belonging within their families.³⁷ These studies demonstrate that internationally adopted children are integrated into their new families; therefore, arguments resting on the benefits of a family are validly included in the case for ICA.

Like familial integration levels, research has also examined the level of cultural integration experienced by international adoptees. Research has indicated that adoptees may rapidly lose the cultural patterns of their birth countries.³⁸ Self-reporting, though, has shown that international adoptees view themselves as part of the dominant or mainstream culture.³⁹ In addition to positive acculturation findings, ICA research has also found positive results regarding international adoptees’ self-concept or identity. In general, the level of self esteem amongst adoptees has been found to be higher than the

³³ Ibid. 178-181.

³⁴ Ibid. 179.

³⁵ Ibid. 187.

³⁶ Ibid. 181.

³⁷ “Encyclopedia of Adoption,” <<http://www.encyclopedia.com/entry/Canada/74/1.html>>.

³⁸ Rojewski and Rojewski, Intercountry Adoption from China, 183.

³⁹ Ibid. 181.

level of self esteem of the general population. When comparing ICA children to children living with their birth parents, self esteem levels were found to be rather equivalent.⁴⁰ These findings are supported by research showing that adopted adolescents are no more vulnerable to identity development problems than are non-adopted adolescents.⁴¹

When self-reporting, 74% of ICA adoptees said they felt well adjusted.⁴² The majority of ICA children adjust well both socially and psychologically.⁴³ In conclusion, research has shown international adoptees tend to be well adjusted overall.⁴⁴

Analysis

Existing research on intercountry adoption clearly grants more support to the proponents' arguments than to the arguments of ICA opponents. Although one must recognize that many concepts related to ICA are difficult to conceptualize and measure, one must also appreciate the findings in this field. Although some negative effects of ICA have been documented through research, such as discrimination and loss of patterns of birth culture, they are not convincing enough to negate the overwhelming support research has shown for the practice. Children of international adoption perform well in school. They are healthy, both socially and psychologically. They consider themselves an integrated part of their adopted families and cultures. They have strong self-concepts and high levels of self esteem. These factors indicate well adjusted, thriving children. ICA gives children who once were orphans an opportunity to grow up in a family and community which they can consider their home. For these reasons, intercountry adoption

⁴⁰ Ibid. 181.

⁴¹ Peter L. Benson, Anu R. Sharma, and Eugene C. Roehlkepartain, "New Study Identifies Strengths of Adoptive Families," Search Institute, June 1994, 15 April 2005 <<http://www.search-institute.org/archives/gua.htm>>.

⁴² Rojewski and Rojewski, Intercountry Adoption from China, 183.

⁴³ Ibid. 181.

⁴⁴ Ibid. 179.

is a practice that must be continued and advanced throughout the nations of the world. Variations in intercountry adoption policy complicate the practice and may render it virtually useless. These variations, therefore, must be addressed.

POLICY

Intercountry adoption policies throughout the world vary greatly. Sets of laws concerning ICA are different in every European country⁴⁵. Implementing more uniform ICA policies throughout the world would make the process of international adoption simpler, more understandable, and more easily regulated. These changes would benefit not only the prospective parents and adoptees, but also governments and agencies that must work to ensure adoptions are performed correctly. In order to find a uniform path for future ICA policies, one must examine past attempts to do so.

Past Attempts to Address ICA Policy

Leysin Seminar of 1960

The first recognized attempt to evaluate and regulate intercountry adoption policies was the Leysin Seminar of 1960. At this seminar, approximately eighty child welfare experts convened to consider issues pertaining to ICA. These attendees came from sixteen countries in Europe, the International Social Service, the International Union for Child Welfare, and the United Nations, who financed the event. The seminar produced a report which has often been referred to as an “authoritative statement on practice in intercountry adoption.” The twelve principles laid out in this report, however, have seldom been followed in practice.

⁴⁵ Euthymia D. Hibbs, Adoption: International Perspective (Madison, Connecticut: International Universities Press, 1991) 208.

Principle one of the Leysin seminar states that adoption is the best option for a child not being raised by his or her parents or close relatives, so long as the adoption is primarily based on the best interest of the child. Care should be taken to ensure that the adoption is not for any selfish reasons of the prospective adoptive couple, such as wanting to fix a failing marriage. This principle suggests that the criteria that must be met by prospective parents to adopt internationally may be less stringent than the minimal criteria to adopt within one's country. The principle recommends changing this and enforcing more safeguards to ensure that unsuitable couples do not adopt.⁴⁶

Principle two of the Leysin seminar states that any options that would keep a child within his or her birth country should be considered before an intercountry adoption is decided upon. Each case should be examined separately, and options should be weighed on an individual basis.

Principle three recommends that at an early age, each child's case should be assessed and all ties to the birth country should be examined. If a child has slight family ties, a decision should be made regarding their value to the child and whether they should be an obstacle to adoption. Children that have historically been institutionalized indefinitely due to weak links to the birth country might be freed for adoption through this process.

Principle four states that children with certain mental or physical disabilities should be placed in adoptive homes within the country.⁴⁷ The principle goes on to assert, though, that in some cases adoption into a Western country which provides resources for

⁴⁶Bagley et. al., International and Transracial Adoptions, 138.

⁴⁷ Ibid. 139.

disabled persons may greatly benefit a child.⁴⁸ Principle four also explains that children whose family background would create a barrier in the adoption process should be placed within their birth countries, though numbers of these children have had successful intercountry adoption experiences.⁴⁹ Last, principle four addresses the status of a child when no contact can be made with a birth parent. It suggests that such a child should be free to be adopted into a family, even overseas.

Principle five provides that before a child is displaced from members of his or her family and adopted, “extremely careful consideration” must be granted to any and all possible options. A parent should be fully informed of what the adoption entails and should receive any help needed to understand the adoption process and its consequences. Also, social or economic considerations should be trumped by the concept of family welfare.⁵⁰

Principle six extends the understanding of the adoption to all people who have ties to the prospective adoptee. It states that all persons with legal or emotional ties should be made to fully understand the adoption, and the new status of the adopted child in his or her adopted country. If the child is at an age where he or she can comprehend such matters, the child should also be made fully aware of the adoption process and its implications. If those with ties to the child or the child cannot understand and prepare for the adoption, then this child should not be adopted internationally.

Principle seven of the Leysin seminar recommends that the prospective parents be studied in their home setting, not a temporary one, before a child is placed with them.

⁴⁸ Ibid. 140.

⁴⁹ Ibid. 139.

⁵⁰ Ibid. 140.

The child should also be studied regarding his or her background, physical health, and personality.⁵¹

Principle eight lays out the matching portion of the adoption, providing that the child welfare agency involved in the prospective parents' home study should work with the child welfare agency involved in the study of the child to determine a match. An international social agency can be the mediator between the two, but both should be involved. When making the match, all factors considered in domestic adoption in either country should be considered, and religion should be granted special attention.⁵²

Principle nine explains that there must be at least a six month trial period, during which the family is supervised by a social worker familiar with the culture of the adoptive parents as well as that of the child. The older the child, the longer this period should be. The adoption may not be finalized until after this trial period.⁵³

Principle ten asserts that necessary documents must be completed, especially all consents, and in a form legal in both the sending and receiving countries before the adoption is finalized. The ability of the adopted child to immigrate into his or her adoptive parents' country must also be established.

Principle eleven recommends that as soon as possible, legal responsibility for the adopted child should be established in his or her new country. Principle twelve states that measures should be taken to assure the adoption's legality and validity in both the sending and receiving countries.

These twelve principles represent the initial attempt to standardize ICA policy and have been drawn upon by many groups since their formation. When studying ICA

⁵¹ Ibid. 141.

⁵² Ibid. 142-143.

⁵³ Ibid. 143.

policy, the two most important principles to remember from the Leysin Seminar are that when a child is not being cared for by his or her natural family adoption is the best substitute and the interest of the child must always be the primary concern.⁵⁴

The Convention of Strasburg (1967)

Seven years after the Leysin seminar, the Convention of Strasburg was written. It was signed by sixteen European countries on April 24, 1967. The primary objective of the convention was to set forth conditions that should be met to make sure that intercountry adoption is “in the best interest of the minor.” The convention also gave guidance for evaluative interventions of intercountry adoption as a whole.

The articles of the Convention of Strasburg include many recommendations for ICA policy. First, the minor should be placed in a family environment as similar as possible to the environment of origin. Second, minors should be protected and granted preference in every part of the adoption process. Third, the family of origin should be evaluated, and the mother’s consent should be confirmed if possible. Fourth, the view of the minor regarding the adoption should be taken into account. Fifth, a pre-adoption period should take place before the adoption is final to evaluate the relationship between the adopted child and adoptive parents. Sixth, a detailed list of what must be examined case by case to determine the minor’s interests is included in the articles of the Convention of Strasburg. Last, the “characteristics and professional training of the operators who must intervene” is addressed.⁵⁵

One vital part of the Leysin seminar that the Convention of Strasburg left out was the requirement that the adoption be valid and legal in both of the involved countries.

⁵⁴Ibid. 146.

⁵⁵Hibbs, *Adoption: International Perspective*, 207.

This omission allows for possible legal and social consequences; if a minor's situation is not truly defined, this might "create a sense of insecurity, resentment, and a subjective feeling of exclusion which sometimes reemerges and aggravates problems of integration in the family and in the social group."⁵⁶

U.N. Articles

Although the U.N. funded the Leysin Seminar of 1960 to evaluate ICA policies,⁵⁷ the U.N. General Assembly did not adopt any policies regarding ICA until 1986.⁵⁸ At this time, they adopted six U.N. articles to serve as guiding principles for countries' ICA laws.⁵⁹

The first article states that intercountry adoption can be considered as a way to place a child in a family setting when acceptable situations for the child cannot be found in his or her country of birth. The second advises governments to monitor ICA through "policy, legislation, and effective supervision." The next article asserts that intercountry adoption matches should be made by those qualified to do so, and that these matches should undergo as much scrutiny as would domestic matches between adoptees and prospective parents. This article also prohibits the use of ICA for financial gain for anyone involved. The fourth U.N. article pertaining to ICA explains that one seeking to find a child for adopters outside of the adopters' country should take every precaution to ensure that the child's interests are protected. The fifth article addresses the necessity of making sure a child is completely free for adoption, and ensuring that said child will be able to enter and become a national of the adopters' country. The last article states that,

⁵⁶ Ibid. 208.

⁵⁷ Bagley et. al., International and Transracial Adoptions, 138.

⁵⁸ Ibid. 168.

⁵⁹ Ibid. 170.

before an ICA can take place, certainty must be established that the adoption will be legal in both the sending and receiving country.⁶⁰

Although these six U.N. articles served only as possible guidelines (unless a country absorbed them into their own statutes),⁶¹ they are important to consider in the progression of ICA policy because the body that adopted them is so vast and wide-encompassing. These articles showed the world what the U.N. believed were the most important components of ICA.

Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption

Of all the multi-national evaluations of ICA policies, the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption is the most recent treaty, having been adopted in 1993.⁶² The purpose of the Hague Convention was to evaluate the varying policies countries employ regarding ICA and to recommend some minimum set of procedures for all signatory countries of the treaty to follow.⁶³

The provisions of the treaty created at the Hague Convention addressed many ICA issues that had been previously examined. The treaty states that an adoption may only occur if the child's birth country has determined that the child is free for adoption; that ICA is in the best interest of the child; that all consents to the adoption have been given after counseling; that the prospective parents have been found to be suitable by the receiving country; and that the child will be able to enter and take up residence in the

⁶⁰ Ibid. 171.

⁶¹ Ibid. 170.

⁶² "The ABC's of Immigration—Intercountry Adoption: Hague Convention on Intercountry Adoption and the Intercountry Adoption Act of 2000," 18 Oct. 2004 <<http://www.visalaw.com/03sep4/2sep403.html>>.

⁶³ Rita J. Simon and Howard Altstein, *Adoption Across Borders* (Lanham, Maryland: Rowman and Littlefield Publishers, 2000) 32.

country of the adoptive parents. Prospective parents who desire to adopt a child must apply to the proper authority in their home country. They are not allowed to have contact with any caretakers of the child until specific requirements are met. All those who provide adoption services to people in signatory countries must be approved to provide such services under the Hague Convention.

According to the Hague Convention, the provisions of the treaty will apply to all adoptions between signatory countries.⁶⁴ Status as a signatory country, though, does not mean the country must follow all of the Hague Convention's provisions. It does mean, however, that the country intends to move further into the ratification process. As of 2000, thirty countries had ratified the Hague Convention, absorbing and implementing its statutes,⁶⁵ and as of 2003, fifty-four countries had signed onto the Convention.⁶⁶

The international adoption of the Hague Convention would set a minimum uniform standard for intercountry adoptions, while still allowing individual countries to implement conditions beyond those required in the treaty. As more countries sign onto and ratify the Hague Conventions, the world moves toward the first set of internationally and intergovernmentally approved ICA policies ever.⁶⁷

Similarities in Past International Policy Recommendations

Common concerns run through each of the four previously discussed attempts to address international ICA policy. First, all four sets of recommendations include language concerned with the protection of the child's interests. Second, all sets of recommendations addressed either making sure the child was free for adoption or

⁶⁴ "The ABC's of Immigration," <<http://www.visalaw.com/03sep4/2sep403.html>>.

⁶⁵ Simon and Altstein, *Adoption Across Borders*, 33.

⁶⁶ Kapstein, "The Baby Trade."

⁶⁷ "The ABC's of Immigration," <<http://www.visalaw.com/03sep4/2sep403.html>>.

ensuring that all necessary consents to the child's adoption had been given. The third common concern in the recommendations was that the adopted child must be able to enter and become a resident of the adoptive parents' country. This issue did not appear in the Convention of Strasburg, but it was addressed in each of the other three sets of policy recommendations. Since these three concerns have held such prominence in past evaluations of ICA policy, one should assume that they will be addressed in the future whenever ICA policies are evaluated or recommended.

Possible Policy Recommendations

Considering the historical evaluations of ICA policy, one can see that the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption sets forth recommendations for the most prevalent issues in ICA. The Hague Convention looks at ICA in a comprehensive manner, addressing the interests of the child, the role of service agencies, and the role of governments. Addressing each of these components in a uniform way is essential because many of the problems that arise in intercountry adoptions are due to the vast bureaucracy through which international adopters must maneuver. This bureaucracy damages the ICA process by increasing the amount of time it takes to arrange an adoption and, therefore, limiting the number of families who can be assisted with intercountry adoptions. These problems sometimes encourage those arranging international adoptions to avoid as many formal procedures as possible, leading to the exploitation of adoptive parents, adoptees, and sending countries.⁶⁸ The Hague Convention seeks to minimize this bureaucracy by having each sending or receiving country establish one central authority to conduct intercountry

⁶⁸ Masson, "Intercountry Adoption: A Global Problem or a Global Solution."

adoptions.⁶⁹ These central authorities would maintain the same standards throughout the world, thus granting uniformity and simplicity to the ICA process.

In addition to lessening the bureaucracy faced by international adopters, the Hague Convention contains several recommendations meant to right the injustices and inefficiencies currently allowed under ICA policies. The treaty sets forth a clear outline that should be followed in order to confirm a child's availability for adoption.⁷⁰ This regulation is vital to ensuring that all sending countries require appropriate consents to adoptions. The treaty also strictly prohibits any involved party from making a "financial or other gain" from the adoption.⁷¹ This prohibition is aimed at stopping the illegal and immoral selling of babies that has occurred in many countries. Last, the Hague Convention directs all signatory countries to recognize any adoption made in another signatory country. This provision eliminates the need for adoptive parents to spend time and money acquiring a valid adoption in both the sending and receiving country.⁷² Each of these provisions would greatly aid the intercountry adoption process, and should therefore be included in any future international policies.

Though the policy uniformity recommended by the Hague Convention would be very beneficial for ICA, the Convention does contain flaws. First, while citing needed standards for ICA policies, the Hague Convention does not ensure uniformity in policy because it allows governments to add conditions to the minimums set out by the treaty.⁷³ This allowance would enable countries to place restrictions that could completely change

⁶⁹ Susann M. Bisignaro, "Intercountry adoption today and the implications of the 1993 Hague Convention on tomorrow," Dickinson Journal of International Law Vol. 13 No. 1 (Fall 1994): 142.

⁷⁰ Ibid. 141.

⁷¹ Ibid. 143.

⁷² Ibid. 144.

⁷³ Lisa M. Katz, "A modest proposal? The Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption," Emory International Law Review Vol. 9 No. 1 (Spring 1995): 324.

their ICA policies, thus making the goal of uniformity void. For this reason, additional conditions to ICA policy should be at least monitored, if even allowed, when added to the minimal standards. Second, many sending countries will be unable to implement the treaty's provision because of their dismal economic state. Some aspects of the Hague Convention, such as establishing a central authority for intercountry adoptions, carry prohibitive costs and would require much foreign aid for many countries to execute.⁷⁴

The Hague Convention would make many necessary changes to international ICA policies, but the flaws contained therein must be addressed. A modified version of the Hague Convention that ensures uniformity and establishes an avenue of funding its implementation is a model that might be carried forth as an international policy. Intergovernmental organizations such as the United Nations and the European Union should work to further the progress of a treaty such as a modified version of the Hague Convention that will harmonize intercountry adoption policy throughout the world.

Problems with Uniform International Policies

The largest barrier to uniform ICA policies worldwide is the near impossibility of enforcing international law. International treaties and recommendations have no real teeth; they only serve as guidance to countries that choose to listen. Though this guidance can be useful, its usefulness is determined by whether countries decide to implement the recommended policies. Even the U.N. articles must be adopted into a country's own statutes in order to have any real affect, which is a choice the country must make. Without some form of power, international conventions can do nothing to force countries to follow any guidelines. Many countries are reluctant to allow these

⁷⁴ Kelly M. Wittner, "Curbing child-trafficking in intercountry adoptions: will international treaties and adoption moratoriums accomplish the job in Cambodia?," Pacific Rim Law and Policy Journal Vol.12 Issue 2 (March 2003): 618.

conventions to possess this power in fear that national sovereignty would be compromised.

In addition to being difficult to enforce, uniform ICA policies have met much opposition from Islamic nations. Members of the Islamic faith believe they are prohibited from adopting children. This belief makes Islamic countries reluctant to embrace any policies that allow for the adoption of children. Many Muslims say that adoption is not needed because the familial needs of the child will be met through them being absorbed “into the religious life created by communities of children.”⁷⁵ What this idea often looks like in reality, though, is overcrowded orphanages filled with children who are not available to be adopted into families who desire to raise them.⁷⁶

Despite the difficulties created by Islamic nations and international law, progress is being made toward a more uniform worldwide ICA policy. Much work is left to be done on ICA policies, and the changes made to these policies will shape the future of countless orphans around the world.

CONCLUSION

Since the days following World War II, intercountry adoption has become a dynamic worldwide phenomenon. Today, lines are clearly drawn between those who oppose and support the practice, with opponents citing the possible damage done to a child by removing him from his birth country and proponents arguing that being a member of a family is in the best interest of the child.

This analysis of ICA has provided a brief history of the changes and challenges faced by the practice since its beginning. It has examined the arguments both for and

⁷⁵ Bagley et. al., International and Transracial Adoptions, 168.

⁷⁶ Ibid. 168.

against ICA. It has also analyzed some of the most prevalent themes in research done regarding the affects of ICA. After evaluating previous studies, this analysis has come to the conclusion that research supports arguments for the practice of intercountry adoption, citing the positive overall adjustment found in children adopted internationally. After establishing that ICA is a beneficial practice and referring to the current variations in policy, this analysis reviewed past attempts to construct a uniform international ICA policy and made general recommendations for future uniform international policies.

Intercountry adoption is sure to remain a debated topic. Because this practice affects so many, careful consideration should be granted to all ICA laws. Current ICA policies have not done an adequate job of protecting children, prospective parents, or the countries involved in international adoptions. Lawmakers and adoption workers throughout the world must cooperate and work towards uniform intercountry adoption policies. The implementation of uniform policies is necessary for intercountry adoption to be rightfully continued.

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