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China's Newly Enacted Intercountry Adoption Law: Friend or Foe?

CRYSTAL J. GATES*

INTRODUCTION

"Abandoned at birth because of China's strict one-child-per-family [policy], Olivia was destined to grow up in one of [China's] 41,000 state-run orphanages had it not been for the determination of her new-found parents to make their family complete."¹ After five years of unsuccessful attempts at pregnancy, Olivia's parents decided that adoption was their last hope of ever having a child. Because their ages were thirty-five and forty-seven, however, Olivia's parents knew that the adoption laws of Great Britain would never allow them to adopt domestically. Thus, the couple chose to broaden their adoptive search and eventually adopted Olivia from China.²

Olivia's family story is not unique. Intercountry adoption is a growing, worldwide phenomenon. An intercountry adoption is "the adoption of a child born in one nation by adults who are citizens of another nation, who will ordinarily raise the child in their own country."³ The growing disparity in developed nations between the decreasing number of children available for adoption and the increasing number of parents wishing to adopt, coupled with the equally great disparity in developing nations between the supply of abandoned or orphaned children and the shortage of parents willing to adopt, have forced many families to turn to intercountry adoption.

Many developing countries are suspicious of intercountry adoption. They regard it as a vehicle for exploitation—a means by which developed nations can exploit developing nations and their children. As a result, many developing

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1. Lynn Cochrane, *They'd Never Have Let Us Adopt Olivia in Britain, but Baby Look at Us Now*, THE SCOTSMAN, April 29, 1999, available in 1999 WL 15111245.

2. *Id.*

3. Rosanne L. Romano, *Intercountry Adoption: An Overview for the Practitioner*, 7 TRANSNAT'L LAW. 545, 546 (1994) (internal citation omitted).

nations have enacted strict regulations aimed at restricting the process of international adoption. Unfortunately, these strict laws rarely achieve their goal of protecting children, and instead tend to perpetuate the number of children living in orphanages and private institutions.

Presently, China is “the leading source of babies for intercountry adoption.”⁴ Similar to other developing countries, China’s laws governing intercountry adoption have traditionally been highly restrictive and directed at phasing out international adoption. These laws have not only prevented many couples from becoming adoptive parents, but have also increased the number of children living in Chinese orphanages. Accordingly, in December of 1998, Chinese leaders enacted an amended law that lowers the parental age for adopters and allows couples with children to adopt healthy, abandoned babies. It is hoped that this amended law will reduce the number of abandoned and orphaned children living in institutions throughout China.

Part I of this Paper will explore the myriad factors that have contributed, and continue to contribute, to the development of intercountry adoption from the perspectives of both developing and developed nations. It will also examine the social and economic considerations that surround intercountry adoption with respect to prospective adopters. Moreover, Part I will discuss the international community’s legal response to this form of adoption. Part II will examine China’s law and policy regarding intercountry adoption, focusing on the period between 1988 and the present. Finally, Part III of this Paper will explore how the positive and negative attributes of international adoption correlate with stringent laws on intercountry adoption from sending nations.

I. RISE OF INTERCOUNTRY ADOPTION

Prior to World War II, intercountry adoptions in the United States were extremely rare.⁵ However, in the aftermath of the War, many U.S. citizens who sought to adopt children chose intercountry adoption because they felt compelled to “save” foreign children from the effects of famine, war, and other disasters.⁶ Their goal “was to give children deprived of their family the

4. Michelle Van Leeuwen, *The Politics of Adoptions Across Borders: Whose Interests Are Served?*, 8 PAC. RIM L. & POL’Y J. 189, 189 (1999).

5. Romano, *supra* note 3, at 549.

6. Magaret Liu, *International Adoptions: An Overview*, 8 TEMP. INT’L & COMP. L.J. 187, 191 (1994).

benefit of parental relations.”⁷ Despite this growing concern for international children, it was not until the Korean War that intercountry adoption gained widespread attention in the United States and other industrialized nations.⁸ Since that time, intercountry adoptions have steadily increased; the numbers have risen “from near zero in the era prior to World War II to 10,000 per year in the 1980s.”⁹ Presently, approximately fifteen to twenty thousand children leave their nations of birth to be raised by adoptive parents in another country each year.¹⁰

A. *The Growing Need for Intercountry Adoption*

The rising interest in intercountry adoption among Western nations has not only been motivated by concern for the welfare of foreign children, but also by the fact that the number of domestic, adoptable children has steadily declined in recent years as a result of social, medical, and demographic changes.¹¹ Four primary factors contribute to this growing interest in intercountry adoption. First, “a marked decrease in parents’ mortality rates [has left] fewer orphaned children available for adoption.”¹² Second, more single women are electing to keep children born out of wedlock, rather than relinquishing these children to adoption.¹³ Third, “the prevalence of birth control usage and abortion have reduced the number of unwanted pregnancies” in the United States and other developed nations, thereby reducing the number of adoptable infants.¹⁴ Lastly, while the supply of

7. INTERNAL AND INTERCOUNTRY ADOPTION LAWS, *Introduction* at INT-I-iii (International Social Services ed., 1997).

8. Liu, *supra* note 6, at 192; see also Jorge L. Carro, *Regulation of Intercountry Adoption: Can the Abuses Come to an End?*, 18 HASTINGS INT’L & COMP. L. REV. 121, 125 (1994).

9. Elizabeth Barthelet, *International Adoption: Propriety, Prospects and Pragmatics*, 13 J. AM. ACAD. MATRIM. LAW. 181, 183 (1996).

10. Alexandra Marvel, *Intercountry Adoption and the Flight from Unwed Fathers’ Rights: Whose Right is it Anyway?*, 48 S.C. L. REV. 497, 498 (1997); see also Peter H. Pfund, *The Hague Intercountry Adoption Convention and Federal International Child Support Enforcement*, 30 U.C. DAVIS L. REV. 647, 648 (1997). In fiscal year 1998, the total number of international adoptions to the United States equaled 15,774. Joint Council on International Children’s Services, *FY98 Orphan Visa Statistics* (visited Nov. 11, 1999) <<http://www.jcics.org/visasfy98.html>>.

11. Romano, *supra* note 3, at 549; INTERNAL AND INTERCOUNTRY ADOPTION LAWS, *supra* note 7, at INT-I-iii; see also Richard R. Carlson, *Transnational Adoption of Children*, 23 TULSA L.J. 317, 321 (1988) (stating that prior to World War II, intercountry adoptions were unnecessary in the United States because many American-born children were available at a low cost and without a lengthy delay).

12. Romano, *supra* note 3, at 558.

13. *Id.*

14. *Id.* In 1973, 19.3 percent of single Caucasian women “relinquished their children to adoption, as compared to 3.2 percent in the years between 1982 through 1988.” Carro, *supra* note 8, at 121. Also, in

adoptable children has decreased in the past few years, the demand for intercountry adoption has intensified because of an increase in infertility among families in developed countries.¹⁵

As a result of the decline in the number of children eligible for adoption in developed countries and the concomitant increase in infertility, very few children are available for domestic adoption compared to the large number of people eager to adopt.¹⁶ In 1998, an estimated two million families in the United States alone wanted to adopt a child.¹⁷ The shortage of adoptable infants in developed countries has forced these families to travel the four corners of the world in search of a child.¹⁸

The socioeconomic situation in many developing nations has also influenced the development of intercountry adoption.¹⁹ After World War II, “[t]he traditional extended family network which in the past took care of children without parents, or children with working parents, began to collapse due to migration to the cities and the situation prevailing in shanty towns.”²⁰ However, the disappearance of the extended family structure was not offset by any social protection programs; rather, there was a “decrease in health services, including family planning counseling.”²¹ Consequently, many of these developing nations have experienced an increase in the number of abandoned children available for adoption,²² and a decrease in the number of

1994, while two million U.S. families sought to adopt, only “approximately 400,000 U.S. children liv[ed] in foster care or orphanages, . . . 36,000 [of whom qualified] for adoption.” Susann M. Bisignaro, *Intercountry Adoption Today and the Implications of the 1993 Hague Convention on Tomorrow*, 13 DICK. J. INT’L L. 123, 124 (1994).

15. Anthony D’Amato, *Cross-Country Adoption: A Call to Action*, 73 NOTRE DAME L. REV. 1239, 1242 (1998). In 1998, research revealed that one in six couples experience infertility. Julie Brienon, *The Heartbreak of Infertility*, ILLAWARRA MERCURY, August 11, 1998, available in 1998 WL 28576590. Intercountry adoption provides these families with an alternative to infertility treatment and other arrangements such as donor insemination and surrogacy. Barholet, *supra* note 9, at 182.

16. Barholet, *supra* note 9, at 181-82. Many argue that what is described as a shortage of adoptable children is primarily a lack of Caucasian babies. Romano, *supra* note 3, at 558. Many U.S. citizens have strong views against interracial adoption. If this resistance were overcome, there would be no shortage of U.S.-born adoptable children. *Id.* This resistance forces adoptive parents to search for children in other countries. The irony is that “adoption of a foreign child is often an interracial adoption, and always a cross-cultural adoption.” *Id.* at 559.

17. D’Amato, *supra* note 15, at 1242.

18. Liu, *supra* note 6, at 190.

19. INTERNAL AND INTERCOUNTRY ADOPTION LAWS, *supra* note 7, at INT-I-iii.

20. *Id.*

21. *Id.*

22. Many underdeveloped countries “have an excess of orphans, due to the stigma of illegitimacy, absence of contraception and abortion services, and governmental instability.” Stacie I. Strong, *Children’s Rights in Intercountry Adoption: Towards a New Goal*, 13 B.U. INT’L L.J. 163, 170 (1995).

prospective parents wishing to adopt.²³ Additionally, in poorer nations such as China, Romania, and Guatemala, “war, political turmoil, and economic circumstances contribute to a situation in which there are few prospective adopters in comparison with the vast number of children in need of homes.”²⁴

Accordingly, some argue that the need for intercountry adoption should be analyzed in terms of supply and demand²⁵—the sending States (underdeveloped or developing nations) represent the supply side of the international adoption equation,²⁶ and the receiving States (typically developed countries) constitute the demand side.²⁷ Pursuant to this analysis, the world divides into two camps for intercountry adoption purposes: (1) countries with low birthrates and few children in need of homes; and (2) nations with high birthrates and many children in need of homes.²⁸ Viewed in this light, intercountry adoption is the most logical way to remedy the imbalance in the number of children without families and families without children.²⁹

B. Factors to Consider in Intercountry Adoption

Today, many nations accept intercountry adoption as the sensible solution to the problems of two distinct groups of people: couples in need of children and children in need of families.³⁰ However, the intercountry adoption process can be quite complex, expensive, and difficult. Accordingly, many factors should be considered when deciding whether to pursue an intercountry adoption, including time, cost, health concerns, and social influences.³¹

23. INTERNAL AND INTERCOUNTRY ADOPTION LAWS, *supra* note 7, at INT-I-iii.

24. Bartholet, *supra* note 9, at 182. Moreover, the Economic and Social Council of the United Nations (ECOSOC) has stated that intercountry adoption “is necessary in the lesser developed states which cannot internally find suitable adoptive parents ‘due to persistent prejudices against illegitimacy and apprehension[s] about heredity.’” Howard E. Bogard, *Who are the Orphans? Defining Orphan Status and the Need for International Convention on Intercountry Adoption*, 5 EMORY INT’L L. REV. 571, 580 (1991) (quoting *Protection and Welfare of Children: Convening of a United Nations Conference for an International Convention on Adoption Law: Report of the Secretary-General*, U.N. Doc. E/CN.5/504/Add.1 and Corr. 1 & 2 (1974)).

25. Bogard, *supra* note 24, at 581.

26. *Id.*

27. *Id.*

28. Bartholet, *supra* note 9, at 181.

29. Liu, *supra* note 6, at 190.

30. 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, 291 (1995).

31. Romano, *supra* note 3, at 553.

First, prospective adoptive parents may prefer the process of intercountry adoption because it is often quicker than comparable domestic adoption programs.³² Adoption experts “estimate that it takes an average of six months to two years, from the time of application, to adopt a foreign-born child.”³³ In contrast, a couple wishing to adopt a Caucasian infant from the United States through a public agency can expect to wait up to ten years before the adoption is final.³⁴ Couples who have enough “financial resources to adopt domestically through an independent source can usually expect placement within twelve to eighteen months;”³⁵ however, this attractive time period is offset by the fact that independent adoptions are prohibited in several states.³⁶ Accordingly, many prospective parents choose to pursue an intercountry adoption rather than a form of domestic adoption.³⁷

Another important factor couples should consider before choosing an intercountry adoption is the overall cost of the adoption process. The cost for an intercountry adoption varies “depending primarily on the home country of the child, if an agency is used, and whether travel to the sending country is necessary.”³⁸ Generally, fees for an intercountry adoption vary from \$4,000 to more than \$15,000, with an average fee ranging between \$11,000 and \$12,000.³⁹ Though these figures seem high, “they nonetheless appeal to many prospective adopters in the United States . . . because domestic adoptions commonly cost as much as \$20,000.”⁴⁰

In addition to adoption fees and travel expenses, adoptive parents must consider the cost of a home study, long-distance telephone calls, adoption agency fees, medical examination of the child, legal services, and U.S. Immigration and Naturalization Service paperwork.⁴¹ A home study “conducted in a foreign country can cost up to \$7,000 paid in advance to

32. *Id.* at 552-53.

33. *Id.* at 554.

34. Couples who use a private agency to facilitate the adoption can expect a slightly shorter wait of between two to seven years. *Id.* at 553. It must be pointed out that the average wait for adopting a healthy African-American child is only six months to one year. *Id.* at 582 n.74.

35. *Id.* at 553. This time period is shorter than other adoption processes because birth mothers privately select the adoptive parents. *Id.*

36. *Id.* at 582 n.82.

37. *Id.* at 553-54.

38. *Id.* at 554. Travel expenses may include airline tickets, lodging expenses, meals, ground transportation, and translation services. *Id.* at 555.

39. *Id.* at 554.

40. Katz, *supra* note 30, at 297. “An intercountry adoption normally costs more than a domestic adoption through an agency, but is comparable to most legal, domestic, independent adoptions.” Romano, *supra* note 3, at 554.

41. *Id.* at 555.

foreign attorneys or agencies,"⁴² and fees charged by intermediaries to handle adoptions can total \$30,000.⁴³ Thus, prospective parents must include these costs into the base-line fee for the adoption to determine the cheapest, and most efficient, method of adoption.

Prospective parents "should also be aware that a foreign-born child is often at increased risk for medical deformities."⁴⁴ The likelihood that the child will have or will develop "medical abnormalities depends on such factors as age, the country of origin, and whether the prior home was an orphanage or a private foster home."⁴⁵ Thus, most experts recommend an initial visit to a pediatrician within one week of the intercountry adoption, followed by a more thorough medical exam one month later.⁴⁶ Adoptive parents should choose a pediatrician who is cognizant of the various diseases endemic to the sending State.⁴⁷ In general, the doctor should be familiar with "ear and upper respiratory infections, sores, scabies, . . . low birth weight, small stature, . . . developmental delays," and gastrointestinal parasites, as these are common conditions of children from Third World countries.⁴⁸

Finally, before choosing an intercountry adoption, adoptive parents should consider the social (i.e., moral and economic) ramifications of adopting a foreign-born child. Presently, there is considerable moral debate surrounding intercountry adoption.⁴⁹ Some opponents of intercountry adoption argue that this form of adoption represents "a shameful admission to the world of the government's inability to care for its own, the loss of a vital national asset, and perhaps the ultimate example of the exploitation by rich nations of the poor nations of the world."⁵⁰ Others contend that the harm of intercountry adoption is that it is being used as a bandage to conceal the economic and social needs of the underdeveloped countries.⁵¹ However, supporters of international adoption assert that "intercountry adoption is the best solution

42. Katz, *supra* note 30, at 297.

43. *Id.* at 298.

44. Romano, *supra* note 3, at 555.

45. *Id.* at 556.

46. *Id.* at 555-56. The first visit serves to rid the child of any ear infection or lice. *Id.*

47. *Id.* at 556.

48. *Id.* In fact, many children from tropical countries "must be tested for parasites for a period of up to six months after leaving the sending country." *Id.* More serious diseases include Hepatitis B—a virus endemic to Eastern Asia and Central and South America—and Human Immunodeficiency Virus (HIV). *Id.*

49. Katz, *supra* note 30, at 290.

50. *Id.* at 291 (quoting Elizabeth Bartholet, *International Adoption: Overview*, in ADOPTION LAW AND POLICY § 10.04(1) (Joan Hollinger ed., 1988)). Not surprisingly, these opponents are typically officials in sending countries. *Id.*

51. *Id.*

for the millions of poor children who grow up without homes or decent food and shelter.”⁵² These proponents maintain that intercountry adoption provides children living in deplorable conditions a chance to grow and develop in a real family environment.⁵³

The debate surrounding intercountry adoption is also charged with economic considerations. Many people argue that analyzing adoption in terms of supply and demand reduces children to mere commodities by removing the personal nature of adoption.⁵⁴ These critics argue that the free market theory of intercountry adoption leads to corruption, such as black market adoptions and child trafficking.⁵⁵ In light of the social and economic debate, it is clear that intercountry adoption is not the solution for every family wishing to adopt. Rather, “prospective parents must want to become an interracial or intercultural family and be prepared to accept both the joy and possible criticisms that follow.”⁵⁶

C. *International Laws on Adoption*

From a legal perspective, intercountry adoptions “involve questions of jurisdiction and choice of law that relate to the conditions and effects of adoption.”⁵⁷ Today, many countries have enacted laws to govern the process of international adoption; historically, however, the process was complex and confusing.⁵⁸ Complexity arose because the process of intercountry adoption fell under the laws of as many as three different jurisdictions, and “[e]ach jurisdiction had its own requirements regarding parental fitness and status of the child.”⁵⁹

52. *Id.* at 292. Unlike their opponents, who focus on the good of the country, proponents of intercountry adoption focus their concern on the needs of children. *Id.*

53. *Id.*

54. *Id.* at 293.

55. *Id.* For further discussion on Black Market Adoptions, see Part IV, *infra* at p.389. In fact “[t]he laws of supply and demand suggest that the lack of adoptable children at home coupled with the great quantity of children available for adoption abroad will cause a great increase in the ‘cost’ of ‘purchasing’ . . . a child from another country.” *Id.*

56. Robert S. Gordon, *The New Chinese Export: Orphaned Children—An Overview of Adopting Children From China*, 10 *TRANSNAT’L LAW* 121, 138 (1997).

57. Katz, *supra* note 30, at 288.

58. *Id.*

59. *Id.* These jurisdictions are as follows: (1) Federal law, which governs the admission of children into the United States and the granting of citizenship; (2) the law of the country of residence, which governs the child’s adoptability status and his or her emigration from that country; and (3) the laws of receiving States which govern the legal relationship between the parent and the child. Moreover, international law may soon apply and “[a]t any time, a country . . . may abruptly terminate or suspend its intercountry

In response to the confusion surrounding intercountry adoptions, the international community has struggled to draft a well-defined, comprehensive agreement concerning intercountry adoption.⁶⁰ Since the 1960s, it has made several attempts to bring "international consistency to the legal treatment of intercountry adoption."⁶¹

1. 1965 Hague Convention, European Convention, UN Adoption Declaration, and Children's Convention: Ineffectual Attempts at Regulation

In 1965, member States of the Hague Convention met to establish the first international uniform procedures for intercountry adoption.⁶² This Convention, entitled "Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption" (1965 Hague Convention) addressed many important issues circumventing intercountry adoption, such as "jurisdiction, choice of law, and mutual recognition of adoptions."⁶³ Pursuant to the 1965 Hague Convention, State Parties bind themselves to particular rules of jurisdiction and choice of law and agree "not to grant an adoption 'unless it [is] in the best interests of the child' and has been preceded by 'a thorough inquiry relating to the adopter or adopters, the child and his [or her] family.'"⁶⁴

Although the 1965 Hague Convention was a novel attempt at unifying the procedures of intercountry adoption, it suffers many limitations and has enjoyed little success with only three countries (Austria, Sweden, and the

adoption program." Romano, *supra* note 3, at 561.

60. Carro, *supra* note 8, at 148.

61. Katz, *supra* note 30, at 288. Presently, there are five primary international agreements involving intercountry adoptions: (1) the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption; (2) the European Convention on the Adoption of Children; (3) the 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; (4) the United Nations Convention on the Rights of the Child; and (5) the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. *Id.* Unfortunately, most of these international instruments have been unsuccessful because of both a sheer lack of participation by States and practical application of the intercountry adoption process. *Id.*

62. Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption, 4 I.L.M. 338 (1965) [hereinafter 1965 Hague Convention]; see also Bisignaro, *supra* note 14, at 132. The 1965 Hague Convention became effective on October 24, 1978, but it has had little success. Carro, *supra* note 8, at 148.

63. Katz, *supra* note 30, at 288-89.

64. *Id.* at 289.

United Kingdom) ratifying it.⁶⁵ First, the 1965 Hague Convention is too narrow in scope and enforceability. The Convention applies only when “the adoptive parent or parents . . . qualify as a national and habitual resident of one of the contracting states.”⁶⁶

Second, the 1965 Hague Convention grants concurrent jurisdiction of the adoption to the adopter’s national country and the adopter’s country of habitual residence.⁶⁷ As a result, the Convention divests the country of origin of its jurisdiction, “even though [that] country may be better able to determine if the adoption is in the child’s best interest.”⁶⁸ A final limitation of the 1965 Hague Convention is that it permits Contracting States to disregard any provision deemed to be against their public policy.⁶⁹ Rather than harmonize national laws on intercountry adoptions, this “escape clause” merely serves to satisfy nationalistic viewpoints on international adoption.⁷⁰ These limitations render the 1965 Hague Convention deficient in its efforts to centralize and unify the process of intercountry adoption.⁷¹

In a second attempt to standardize the process of intercountry adoption, Member States of the Council of Europe proposed and adopted the European Convention on the Adoption of Children (European Convention).⁷² This Convention applies “to children under eighteen years of age, who are unmarried and have not been deemed [by] law to have come of age.”⁷³ The European Convention stipulates that the adoption must be in the child’s best interest and be approved by a competent judicial or administrative authority.⁷⁴

Although the European Convention has enjoyed more success than the 1965 Hague Convention,⁷⁵ it has been criticized for its failure to establish

65. Carro, *supra* note 8, at 149. The United States has signed, but not ratified, the 1965 Hague Convention. *Id.* at 150. Many argue that because the 1965 Hague Convention is so limited in scope and enforceability, even if ratified, its effect on intercountry adoption would be minimal. Bogard, *supra* note 24, at 594.

66. 1965 Hague Convention, *supra* note 62, art. 1. If the adopting parents are married, the Convention requires both parents to be national residents of the same Contracting State. *Id.*

67. *Id.* art. 1.

68. Bisignaro, *supra* note 14, at 133.

69. 1965 Hague Convention, *supra* note 62, art. 15; *see also* Bisignaro, *supra* note 14, at 133.

70. Bogard, *supra* note 24, at 594.

71. Bisignaro, *supra* note 14, at 133.

72. European Convention on the Adoption of Children, Apr. 26, 1967, 634 U.N.T.S. 256. [hereinafter European convention]; *see also* Katz, *supra* note 30, at 289. The European Convention became effective on April 26, 1968. Romano, *supra* note 3, at 567.

73. Bogard, *supra* note 24, at 590-91 (internal quotations omitted); *see also* European Convention, *supra* note 72, art. 3.

74. European Convention, *supra* note 72, art. 8.

75. The “signatories to the European Convention include: Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Norway, Sweden, and the United Kingdom.” Bogard, *supra* note 24,

uniform procedures for intercountry adoption. The European Convention does not require States to respect the adoption laws and institutions of other States.⁷⁶ In the absence of such a requirement, there is simply no guarantee that an intercountry adoption in one State will be recognized and respected in another.⁷⁷

In addition, critics argue that many of the European Convention's provisions have become archaic in light of modern trends in child bearing and adoption. Specifically, the Convention applies only to unmarried children under the age of eighteen⁷⁸ and to adopters between the ages of twenty-one and twenty-five.⁷⁹ Unfortunately, these age brackets have become outdated in the modern era where many couples tend to delay marriage and children.⁸⁰

In recent years, the United Nations has taken significant action with respect to intercountry adoption by adopting the 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 (UN Adoption Declaration)⁸¹ and the United Nations Convention on the Rights of the Child (Children's Convention).⁸² These international instruments:

recognize the legitimacy of international adoption and demonstrate the international community's support for a number of basic principles regarding such adoption, for example, that there should be safeguards against abduction and against trafficking for profit and that there should be guarantees of citizenship and other appropriate legal status for the children when adopted.⁸³

at 616 n.98.

76. Katz, *supra* note 30, at 289.

77. *Id.* at 328 n.36.

78. European Convention, *supra* note 72, art. 3.

79. *Id.* art. 7. The European Convention does provide for the waiver of the minimum age requirement when the adopter is the child's father or mother, or when exceptional circumstances exist. *Id.*

80. Bisignaro, *supra* note 14, at 133. Moreover, "this [age] provision conflicts with national laws in France and Italy, where the minimum age of adopters is thirty-five." *Id.*

81. G.A. Res. 41/85, 41 U.N. GAOR, Supp. No. 53, at 265, U.N. Doc. 42/85 (1986) [hereinafter UN Adoption Declaration].

82. G.A. Res. 44, U.N. GAOR, 25th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989) [hereinafter Children's Convention].

83. Bartholet, *supra* note 9, at 191; see also Jennifer M. Lippold, *International Adoption From an American Perspective: The Need for Universal Uniformity*, 27 CASE W. RES. J. INT'L L. 465, 490 (1995).

Though these instruments have increased the international discourse on intercountry adoption, they have failed to establish undeviating standards. Instead, the UN Adoption Declaration and the Children's Convention prioritize national over transnational adoption, and consider "intercountry adoption . . . an alternative means of providing the child with a family."⁸⁴

2. 1993 Hague Convention

In 1993, in response to the prior unsuccessful attempts at standardizing intercountry adoption, delegates from over sixty nations met to discuss the delicate situation of intercountry adoption and initiated the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1993 Hague Convention or Hague Convention).⁸⁵ Unlike its predecessors, the 1993 Hague Convention offers "concrete suggestions on how each participating country should structure its foreign adoption scheme."⁸⁶ It establishes a specific legal framework for intercountry adoption with minimum standards and procedures for countries to follow.⁸⁷

84. Lippold, *supra* note 83, at 491; *see also* Richard R. Carlson, *The Emerging Law of Intercountry Adoptions: An Analysis of the Hague Conference on Intercountry Adoption*, 30 TULSA L.J. 243, 259 (1994). For example, Article 17 of the UN Adoption Declaration prioritizes national foster care over intercountry adoptions, by providing that "[i]f a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative means of providing the child with a family." UN Adoption Declaration, *supra* note 81, art. 17; *see also* Liu, *supra* note 6, at 213 n.77. Article 21 of the Children's Convention echoes this same preference as it provides in pertinent part:

State Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:
 . . . Recognize that [intercountry] adoption may be considered as an alternative means of the child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.

Children's Convention, *supra* note 82, art. 21(b); *see also* Alexandra Maravel, *The U.N. Convention on the Rights of the Child and The Hague Conference on Private International Law: The Dynamics of Children's Rights Through Legal Strata*, 6 TRANSNAT'L L. & CONTEMP. PROBS. 309, 313 (1996).

85. Bisignaro, *supra* note 14, at 139. The Hague Conference represents the first time that more than fifty nations have agreed to participate in a document devoted solely to intercountry adoption. Romano, *supra* note 3, at 562. The Convention entered into force on May 1, 1995, and has been signed by 28 countries and ratified by 12. (Canada and the United States have signed but not ratified the treaty). Joint Council on International Children's Services, *Letter to the Editor, Newsday* (visited Nov. 11, 1999) <<http://www.jcics.org/newsday.html>>; *see also* Maravel, *supra* note 10, at 526.

86. Dan Berger, *Improving the Safety and Efficiency of Foreign Adoptions: U.S. Domestic Adoption Programs and Adoption Programs in Other Countries Provide Lessons for INS Reform*, 5 CORNELL J.L. & PUB. POL'Y 33, 44-45 (1995); Hague Conference on Private International Law: Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, 17th Sess. (May 29, 1993) [hereinafter Hague Convention].

87. Lippold, *supra* note 83, at 493.

In fact, its goal is "to create rules of procedure, conduct, choice of law, international recognition of adoption decrees, and to establish institutions for international oversight and cooperation."⁸⁸

Unlike the international instruments upon which it is premised, the 1993 Hague Convention represents a new level of endorsement for intercountry adoption because it prefers adoption abroad over all other solutions except for adoption in the child's nation of origin.⁸⁹ The treaty's Preamble recognizes 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."⁹⁰

a. Scope of the Convention

The 1993 Hague Convention establishes norms and procedures for intercountry adoption to safeguard prospective adoptees and to protect the interests of both the birth and adoptive parents.⁹¹ The Hague Convention resolves many of the procedural problems associated with intercountry adoptions by offering "a logical allocation of responsibility between nations of origin and receiving nations."⁹² The Convention specifies that the State of origin shall establish that the child is adoptable, determine that an intercountry adoption is in the child's best interest,⁹³ ensure that consent for the adoption

88. Carlson, *supra* note 84, at 245. The Hague Convention does not require Contracting States to enact identical laws concerning intercountry adoption. Instead, it merely seeks to regulate adoption in a world which recognizes that there are many different attitudes and legal standards surrounding adoption. Marvel, *supra* note 84, at 316.

89. Bartholet, *supra* note 9, at 193.

90. Hague Convention, *supra* note 86, at Preamble. Further, Article 1 of the Hague Convention sets out the primary purposes of the Convention:

(1) to ensure that intercountry adoptions take place in a manner which serves the best interests of the child and with respect to his or her fundamental rights as recognized in international law; (2) to establish a means to enforce safeguards designed to prevent the abduction, sale, or trafficking of children; and (3) to set up a means for legal recognition of adoptions made in accordance with the Convention's terms.

Id. art. 1.

91. Marian Nash, *Contemporary Practice of the United States Relating to International Law*, 92 AM. J. INT'L L. 734, 734 (1998); *see also* Marvel, *supra* note 10, at 526. The Hague Convention applies "to any child under the age of eighteen who is habitually a resident of one Contracting State, and who is to be adopted into another Contracting State." Bisignaro, *supra* note 14, at 140-41 (construing Article 2 of the Hague Convention).

92. Carlson, *supra* note 84, at 251.

93. Hague Convention, *supra* note 86, art. 4(b). The sending state must first try to find placement for the child in his or her country of origin; however, if a family environment cannot be found, then an intercountry adoption can occur. *Id.*

was given freely, and counsel the child about the upcoming adoption.⁹⁴ At the same time, the receiving State must establish that the prospective adoptive parents are suitable for the adoptive process, ensure that the parents have been counseled, and determine that the child will be authorized to enter and reside permanently in the State.⁹⁵

To discharge these duties, the 1993 Hague Convention requires Contracting States to create "Central Authorities"⁹⁶ which comprise "local authorities, accredited agencies, or private adoption intermediaries."⁹⁷ If the Central Authority of the receiving State is satisfied that the prospective parents are eligible to adopt, "it shall prepare a report, including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, . . . [and] the characteristics of the children for whom they would be qualified to care."⁹⁸ The receiving State is required to submit this report to the Central Authority of the State of origin.⁹⁹ Likewise, the Central Authority of the State of origin must prepare, and submit to the receiving nation, a report describing the child's "identity, adoptability, background, social environment, family, . . . [and] medical history."¹⁰⁰

In addition to their responsibilities under the 1993 Hague Convention, these "authorities . . . process foreign adoptions in conjunction with their international counterparts, license domestic adoption agencies, and generally police the system."¹⁰¹ Lastly, if the competent authority of the State of the adoption certifies that an adoption has been made pursuant to the Hague Convention, the receiving State cannot refuse to recognize that adoption unless it is manifestly contrary to its public policy.¹⁰²

94. *Id.* art. 4(a)-(d); see also H. Wayne Elliott, *International Adoptions: Step By Step*, 6-APR. S.C. LAW. 37, 40 (1995).

95. Hague Convention, *supra* note 86, art. 5(a)-(c).

96. *Id.* art. 6(1). If a State designates 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." *Id.* art. 6(2).

97. Carro, *supra* note 8, at 150.

98. Hague Convention, *supra* note 86, art. 15(1).

99. *Id.* art. 15(2).

100. *Id.* art. 16(1)(a).

101. Berger, *supra* note 86, at 45.

102. Strong, *supra* note 22, at 178; Hague Convention, *supra* note 86, art. 23, 24; Maravel, *supra* note 84, at 315-16.

b. Implications of the 1993 Hague Convention

The 1993 Hague Convention represents a significant step forward in the process of fostering international cooperation in intercountry adoption as it "provides the most comprehensive plan for adoption uniformity to date."¹⁰³ By requiring States to set up a main coordinating adoption body, the Hague Convention will facilitate and expedite the process of intercountry adoption. The Convention will also establish consistency within and among Contracting Nations "by decreasing waiting periods, costs, confusion, and redtape; by increasing the availability of information; and by making it easier for each nation to internally monitor the [intercountry adoption] process."¹⁰⁴ Accordingly, every nation confronted with the issue of intercountry adoption should promptly ratify the 1993 Hague Convention (assuming it has not already done so) and actively implement its provisions.

II. CHINA'S INTERCOUNTRY ADOPTION LAWS

Intercountry adoption in China is seen as an important solution to the steady decline in available children in the United States, Canada, and other industrialized nations.¹⁰⁵ China's population is well over 1.2 billion, making China the most populous country in the world.¹⁰⁶ In 1979, as an attempt "to control population [growth] and prevent mass starvation, China implemented a one-child-per-family birth policy limitation."¹⁰⁷ As a result of this "one-child" policy, "approximately fifteen million female babies have disappeared from [China's] demographics" between 1979 and 1995.¹⁰⁸ Of the twenty-one million children born in China each year, an estimated "150,000 female infants are abandoned at train stations, along roadsides, or left in dustbins."¹⁰⁹

103. Lippold, *supra* note 83, at 498. Still, many argue that regardless of the problems associated with the 1993 Hague Convention—lack of enforcement mechanism, lack of definition section, and so on and so forth—the benefits of the Convention far outweigh the weaknesses. *Id.*

104. *Id.* at 497.

105. Gordon, *supra* note 56, at 131.

106. *China: Adoption Creates New Family*, CHINA DAILY, July 14, 1998, available in 1998 WL 7596759; see also Gordon, *supra* note 56, at 131 n.83.

107. Gordon, *supra* note 56, at 131.

108. *Id.* In China, "[m]ale children are preferred . . . because they perpetuate the family name and take care of their parents in old age." *Id.* Further, the idea that "kinship proceeded through the male line implied that the adoption of a female was of less ritual significance than that of the male." ANN WALTER, GETTING AN HEIR: ADOPTION AND THE CONSTRUCTION OF KINSHIP IN LATE IMPERIAL CHINA 49 (1990).

109. Gordon, *supra* note 56, at 131.

If they survive, these infants end up in one of China's seventy-three State-operated orphanages.¹¹⁰

The large number of Chinese children placed in orphanages makes intercountry adoption in China attractive for many childless couples. As a result, intercountry adoption in China has steadily increased in recent years. In 1990, with a total of only ninety-five adoptions, China had the lowest number of reported intercountry adoptions of any "sending" State to the United States.¹¹¹ In 1996, that number had risen to 3,333 adoptions,¹¹² and to 4,206 in 1998.¹¹³ Because China provides "an opportunity to adopt healthy children without the administrative difficulties often experienced in other foreign countries,"¹¹⁴ this upward trend continues. Moreover, Chinese babies are generally healthier¹¹⁵ than infants from other developing countries, since fewer Chinese mothers are alcoholics, drug addicts, or infected with HIV.¹¹⁶ Lastly, China's intercountry adoption procedures allow single individuals and persons in their forties or older—who may face eligibility hurdles elsewhere—to adopt Chinese children.¹¹⁷

110. *Id.* at 132. In addition to these State-run welfare institutions, "there are approximately 10,000 different social institutions throughout China that also serve the needs of orphaned children." *Id.* at 132 n.94.

111. National Adoption Information Clearinghouse, *Intercountry Adoption Statistics for 1990-1997* (visited Mar. 2, 1999) <<http://www.calib.com/naic/adptsear/adoption/research/intcostats.html>> (In 1990, China had 95 intercountry adoptions; Korea had 2,620; the Philippines had 421; and Romania had 121).

112. *Id.* (In 1996, Korea had 1,516 intercountry adoptions; the Russian Federation had 2,454; the Philippines had 229; and Romania had 555.).

113. *Id.* In fiscal year 1998, Russia led the number of intercountry adoptions to the United States with 4,491 adoptions; China trailed with 4,206; and Korea had 1,829. Joint Council on International Children's Services, *supra* note 85; see also Gordon, *supra* note 56, at 131.

114. Gordon, *supra* note 56, at 129.

115. Chinese infants are unlikely to experience gross abnormalities such as autism, retardation, or attachment disorder. *Id.* at 130. Moreover, "Chinese adoptees are typically healthy and experience few medical problems due to their young age and limited exposure to orphanage life." *Id.*

116. David Rennie, *International: Westerners Finding Hope in China's Baby Market*, THE DAILY TELEGRAPH, Feb. 3, 1999, available in 1999 WL 11741722. In fact, "[a] recent study conducted on over 150 newly adopted Chinese children showed that infectious diseases commonly found in international adoptees were uncommon among Chinese infants." Gordon, *supra* note 56, at 130.

117. *China Opens Doors For Foreign Parents: Nation Makes it Easier to take in Abandoned Babies*, ORLANDO SENTINEL, Jan. 17, 1999, available in 1999 WL 2780916 [hereinafter *China Opens Doors*].

A. China's Attempt to Regulate the Intercountry Adoption Market: 1988 to the Present

Prior to 1988, China did not officially recognize intercountry adoption as a viable alternative to childless families and abandoned children.¹¹⁸ Instead, Chinese officials resisted foreign adoptions and “maintained [that] the Chinese government could best raise [their] orphans.”¹¹⁹ However, in 1988, the Chinese government relaxed restrictions on adoption, making the process more accessible to foreigners.¹²⁰

Even with these less stringent restrictions, Chinese adoption procedures were marred with complications and difficulties.¹²¹ In fact, “[u]nder the 1988 adoption regulations, only foreigners of Chinese heritage, non-Chinese foreigners with strong ties to the country, or long-term foreign residents of China were eligible to adopt.”¹²² Thus, many childless, non-Chinese families preferred to adopt from Korea or Japan, where procedures for intercountry adoption were less stringent.¹²³ Consequently, despite the Chinese government's attempt to make intercountry adoptions more accessible, few Chinese children were adopted into the United States through the early 1990s.¹²⁴

1. 1992 Adoption Law

In response to an increasing foreign demand to adopt Chinese children, the Chinese government enacted the 1992 Adoption Law of China (Adoption Law).¹²⁵ The Adoption Law unified intercountry adoptions in China and eliminated much of the confusion and corruption associated with intercountry

118. Gordon, *supra* note 56, at 132-33. Traditionally, Chinese infants “were adopted within the confines of their extended family and even then, the adoption was usually done on a lending basis only.” *Id.* at 132. Thus, until 1981, China had no legislation governing intercountry adoption. *Id.* at 132-33.

119. *Id.* at 133.

120. *Id.* Although the restrictions for intercountry adoptions were reduced, “foreigners seeking to adopt [in China] still had to meet stricter requirements and endure a lengthier application process than did Chinese couples wishing to adopt.” *Id.* at 133 n.102 (citing Sheryl WuDunn, *Chinese Might Simplify Adoptions by Foreigners*, N.Y. TIMES, June 22, 1992, at A5).

121. *Id.* at 133.

122. *Id.*

123. *China: Adoption Creates New Family*, *supra* note 106.

124. Gordon, *supra* note 56, at 133.

125. Order of the President of the People's Republic of China No. 54, *Adoption Law of the People's Republic of China*, at 6, (visited Nov. 29, 1999) <http://www.fwcc.org/china_adoption_law_98.htm> [hereinafter *Adoption Law*]. The Adoption Law came into effect on April 1, 1992. *Id.*

adoption that existed at the local level.¹²⁶ Unlike the 1988 adoption standards, the Adoption Law “outline[d] a national policy that treated all foreigners, regardless of their heritage or connection to China, the same as its own nationals.”¹²⁷

China enacted the Adoption Law to protect lawful adoptions and to safeguard the rights of parties involved in the adoptive relationship.¹²⁸ Although the adoption process remains costly and time-consuming, the Adoption Law has encouraged many childless families from industrialized nations to adopt in China, provided they meet the specified requirements.¹²⁹ Pursuant to the Adoption Law, all U.S. citizens, single or married, who are over thirty-five years old and childless are eligible to adopt a child with no pre-existing medical conditions.¹³⁰ Prospective parents who are under thirty-five years old and already have children are only permitted to adopt orphans or handicapped children.¹³¹

In addition to satisfying the demand of foreigners wishing to adopt Chinese babies, the drafters of the Adoption Law wanted to eliminate black market adoptions.¹³² They intended to “prevent babies from leaving China through backdoor routes, which often included [bribes and] payoffs.”¹³³ Accordingly, the Adoption Law forbids the buying or selling of children under the cloak of adoption.¹³⁴ The Adoption Law also requires prospective parents to go through several procedural hoops—including certifying their adoption papers before a notary and registering with Chinese Civil Affairs—before

126. Gordon, *supra* note 56, at 134.

127. *Id.*

128. Adoption Law, *supra* note 125, art. 1. The Adoption Law provides that the “[a]doption shall be in the interest of the upbringing and growth of adopted minors, in conformity with the principle of equality and voluntariness, and not in contravention of social morality.” *Id.* art. 2.

129. Gordon, *supra* note 56, at 134.

130. Adoption Law, *supra* note 125, art. 6. Prospective adopters can only adopt one child. *Id.* art. 8.

131. *International Adoption—China: Update* (visited Nov. 29, 1999) <http://travel.state.gov/adoption_china.html>. Restrictions on the age of adopting parent(s) and restrictions on adopting more than one child may be waived when: (1) the children being adopted are blood relatives of the adopting parents; (2) the children being adopted are orphans; or (3) the children are handicapped. Adoption Law, *supra* note 125, art. 7, 8.

Moreover, the Adoption law differentiates between an abandoned child (i.e., with one or both parents living) and an orphaned child (i.e., both parents deceased). *Id.* art. 4. Persons seeking to adopt orphaned or handicapped children are allowed to adopt more than one child. *Id.* art. 8. Article 9 provides that “[w]here a male person without spouse adopts a female child, the age difference between the adopter and adoptee shall be no less than 40 years.” *Id.* art. 9. Lastly, Article 11 of the Adoption Law allows the adoptee, if at least ten years old, to consent to the adoption. *Id.* art. 11.

132. See also Gordon, *supra* note 56, at 135.

133. *Id.*

134. Adoption Law, *supra* note 125, art. 19.

finalizing the adoption.¹³⁵ However, even with these procedural demands, “the Adoption Law was not entirely successful because illegal adoptions continued.”¹³⁶ Instead, many prospective parents bypassed the Adoption Law by locating Chinese families willing to facilitate in buying and smuggling a child adoptee out of China.¹³⁷

2. 1993 Procedures to the Adoption Law

In 1993, as a result of these illegal adoptions, the Chinese government “officially suspended all adoptions to further prevent child racketeering and abuse of the system which was wide-spread due to the ever-increasing supply of adoptable children.”¹³⁸ This suspension lasted for a period of ten months, during which time the Chinese government revised the procedural framework for intercountry adoptions by approving the “Implementation Measures on the Adoption of Children by Foreigners in the People’s Republic of China” (1993 Adoption Procedures).¹³⁹

These Adoption Procedures established an administrative body, the China Adoption Organization (CAO), to allow Chinese officials to supervise closely the intercountry adoption process.¹⁴⁰ The mission of the CAO is to centrally coordinate the adoption of Chinese children by foreigners.¹⁴¹ Before the adoption process can begin, the CAO must receive a completed application with “proof of age, marital status, occupation, financial status, health condition, and a police record.”¹⁴² Once these items are received, the CAO conducts a rigorous investigation into the qualifications of the prospective

135. *Id.* art. 20. The Adoption Law specifies that “the adoptive relationship shall be established as of the date of the notarization.” *Id.*

136. Gordon, *supra* note 56, at 135.

137. *Id.* at 135 n.117.

138. Gordon, *supra* note 56, at 136.

139. *Id.*; see also Order of the Ministry of Justice and the Ministry of Civil Affairs of the People’s Republic of China No. 28, *Implementation Measures on the Adoption of Children by Foreigners in the People’s Republic of China*, *supra* note 125, at 10 [hereinafter 1993 Adoption Procedures]. Article 1 of the 1993 Adoption Procedures explains that “these implementation measures are formulated in accordance with the Adoption Law.” *Id.* art. 1.

140. Gordon, *supra* note 56, at 136.

141. *Id.*

142. *Id.*; Adoption Law, *supra* note 125, art. 20; 1993 Adoption Procedures, *supra* note 139, art. 4, 6, 7. All of these documents must be notarized, certified, and authenticated with the seal of the Embassy or Consulate of China. Gordon, *supra* note 56, at 136. “All documents submitted must also be accompanied by a certified Chinese translation bearing a notary’s seal.” *Id.*

parents wishing to adopt Chinese children.¹⁴³ If the CAO approves the adoption, it will assist the adopter in finding a prospective adoptee.¹⁴⁴

By establishing the CAO, the 1993 Adoption Procedures have streamlined the adoption process for foreigners.¹⁴⁵ The Procedures have also encouraged foreign adopters to work with adoption agencies.¹⁴⁶ In 1996, the Chinese government announced that it would strictly adhere to these new standards and the existing Adoption Law because “stern policies prevent children from being adopted by parents with criminal records, financial difficulties, or severe health disorders.”¹⁴⁷ The Chinese government also announced that it would “strictly adhere to the requirement that only parents who are 35 to 40 years old, and childless, may adopt healthy Chinese children.”¹⁴⁸

B. Amendment to the Adoption Law which Came into Force in April 1999

In theory, the Adoption Law, complemented by the 1993 Adoption Procedures, comprehensively unified the process of intercountry adoption and protected the interests of both the adoptees and adopters. However, in practice, it has prevented many couples from ever becoming adoptive parents, and “has added to the overcrowding of orphanages” in China.¹⁴⁹ Thus, two years after the Chinese government declared that it would adhere to the mandates of the Adoption Law, Chinese officials adopted an amendment to the Law which lowered the minimum parental age for adopters and allowed couples with children to adopt healthy abandoned babies.¹⁵⁰ Under the revised law, which was passed in November of 1998 and went into effect on April 1, 1999, “[b]oth married and unmarried persons who are 30 years old or older, with or without biological or adopted children, can apply for adoption of abandoned or orphaned children from China.”¹⁵¹ The amendment to the

143. *China: Adoption Creates New Family*, *supra* note 106.

144. 1993 Adoption Procedures, *supra* note 139, art. 5.

145. Gordon, *supra* note 56, at 136; see also Chris Yeung & Agence France Presse, *New Agency to Monitor Child Adoption*, S. CHINA MORNING POST, Feb. 14, 1994.

146. Gordon, *supra* note 56, at 138.

147. *Id.* at 142.

148. *Id.*

149. *Amendment Eases Adoption* (last revised Nov. 5, 1998) (visited Mar. 22, 1999) <<http://www.fwcc.org/newrules3.htm>>. Approximately 100,000 children have been orphaned on the mainland of China and it is estimated that millions more have been abandoned. *Id.*

150. *China Opens Doors*, *supra* note 117.

151. Associated Services for International Adoption, *Basic Requirements* (last modified Nov. 4, 1998) (visited Nov. 29, 1999) <<http://www.asiadopt.org/pages/reqmnts.htm>>. See also Order of the President of the People's Republic of China No. 10, *Adoption Law of the People's Republic of China*, *supra*

Adoption Law also includes stricter regulations protecting the rights of children; adoptive parents must register with the relevant departments and obtain residency for the adoptees.¹⁵²

An official with the Ministry of Civil Affairs maintained that China's main goal for passing the amendment was "to relax the adoption requirements and establish a more standardized adoption procedure."¹⁵³ The amended law signifies that the Chinese government has recognized that welfare institutions and orphanages are less than ideal places to promote the healthy growth of abandoned and orphaned children.¹⁵⁴ Although the revised Adoption Law will not completely solve the problem of these abandoned and orphaned children, the hope is that it will allow more of them to escape poor living conditions and enjoy familial relationships.

IV. LOWERING THE RESTRICTIONS ON INTERCOUNTRY ADOPTION—OTHER DEVELOPING COUNTRIES

China is not the only developing country grappling with the issue of intercountry adoption. As discussed in Part I(B), this form of adoption is highly controversial, as it is embedded with moral, political, and economic concerns. As a result, many lesser developed nations have placed heightened restrictions on the process of intercountry adoption. The primary

note 125, at 1, art. 8 [hereinafter Amended Adoption Law]. Some assert that "[t]he most significant change to foreign adopters in China's adoption law is that it allows another exception to the adopter-must-be-childless requirement." Laura A. Cecere, *October 1998 Amendment of China's Adoption Law* (visited Nov. 29, 1999) <http://www.autocyt.com/china_seas/chinaslaw.html>.

Under the Adoption Law, couples with children could only adopt orphans or children with special needs. However, under the revised law, these same couples can also adopt abandoned children "whose biological parents cannot be ascertained or found." Amended Adoption Law, *supra* note 151, art. 8. Therefore, "adopters are still required to be childless to adopt a healthy child, unless that child has a special need, has been orphaned, or has been abandoned and is in the care of a social welfare institution." Cecere, *supra* note 151.

152. Amended Adoption Law, *supra* note 151, art. 15. The revised law "removes the exception which formerly allowed under-aged adopters to adopt special needs children . . . [thus] no one under age 30 may adopt" in China. Cecere, *supra* note 151. Moreover, Article 6 of the amended Adoption Law requires adopters to have "no illness which is deemed medically as inappropriate for the adopter to adopt children." Amended Adoption Law, *supra* note 151, art. 6. In addition, the amended law specifically forbids Chinese couples from giving their children up for adoption as a way to bypass family size limits. *China Opens Doors For Foreign Parents*, *supra* note 117.

153. *Rescuing the Unwanted Waifs*, S. CHINA MORNING POST, Sept. 13, 1998, available in 1998 WL 22028689.

154. *Id.*

consideration—at least purportedly—for these countries is whether intercountry adoption effectively serves the best interests of child adoptees.¹⁵⁵

Presently, children enjoy a panoply of rights: the right to proper health services, psychological care, and an education.¹⁵⁶ However, millions of children are being deprived of these basic rights because they are forced to live in shelters or institutions with limited resources and few caregivers.¹⁵⁷ Accordingly, one of the strongest arguments in support of lowering the restrictions on intercountry adoption is that homeless and abandoned children “deserve the right to grow up and live in a community [or family] that can give them security, stability, and love.”¹⁵⁸ Proponents argue that since children will only develop “in environments conducive to their psychological and emotional growth,”¹⁵⁹ intercountry adoption should be a viable option to give orphaned and abandoned children an escape from institutional living and a chance at family life.

Although intercountry adoption “appears to be a practical solution to the problem of children without families and families without children,” many opponents argue that strict laws are necessary to combat the evils associated with intercountry adoption.¹⁶⁰ These opponents favor restrictive laws on intercountry adoption because they fear that, by transporting children from one nation and culture to another, it forces adoptees to lose critical ties with their native culture.¹⁶¹ These critics also worry that “[t]here may be some

155. Liu, *supra* note 6, at 193.

156. For more information on these rights, see Children’s Convention, *supra* note 82.

157. Liu, *supra* note 6, at 193-94; see also Bogard, *supra* note 24, at 616.

158. Liu, *supra* note 6, at 193. Many argue that “eager parents should be permitted to save poor children otherwise victimized by the conditions in the world’s poorest countries.” *Id.*

159. Bogard, *supra* note 24, at 616. The situation in Romania serves as a probative example of the detrimental effects of institutionalized living conditions. In Romania, prior to his fall, dictator Ceausescu “illegalized birth control measures, including abortion, and pressured women to have at least five children.” Bisignaro, *supra* note 14, at 128. The combination of women having five or more children and widespread poverty forced approximately 140,000 children “into conditions of malnutrition and neglect in unsanitary institutions.” *Id.* at 128-29. Living conditions in these State-run institutions were deplorable. D’Amato, *supra* note 15, at 1240-41. In fact, one commentator referred to these institutions as “warehouses for babies,” because “[o]ne room contained twenty-five children who wallowed in urine-sodden diapers and bedding, two to a crib, without a toy.” One untrained attendant cared for these twenty-five children. *Id.* at 1241. Tom Jarriel reported on the television show *20/20* that “[c]hildren . . . are filthy and unattended. They lie in their own waste, covered with flies, crippled by years of disease and confinement.” *20/20* (ABC television broadcast, Oct. 5, 1990); See also Maureen Evans, *International Adoption: Changes and Challenges* (visited Nov. 29, 1999) <<http://www.jcics.org/afa.html>>.

160. Liu, *supra* note 6, at 194.

161. *Id.* at 193; but see Debra Jopson, *Baby Boom Goes Bust*, SYDNEY MORNING HERALD, June 19, 1998, at 17, available in 1998 WL 12595057 (arguing that institutionalized children are not party to their nation’s culture).

problems of acceptance of a foreign-born child in the community where he or she is placed."¹⁶² In addition, many developing nations wish to restrict intercountry adoption because they view it as a tool for Western nations to exploit poorer, lesser developed countries. These nations contend that international adoption is merely another form of colonialism, whereby children are distributed from the poor to the middle and upper classes.¹⁶³

The most significant criticism of lessening the restrictions on intercountry adoption is that intercountry adoption increases the role of black and gray markets—which “have begun to surface in many struggling countries.”¹⁶⁴ The black market describes the outright sale of children for profit, and the gray market refers to the process by which prospective parents eschew agency involvement, and arrange to adopt an orphan child on their own.¹⁶⁵ Black and gray markets have “been created by weak adoption laws in developing nations, and by corrupt intermediaries who are driven by personal financial gain,” as opposed to the best interests of child adoptees.¹⁶⁶ These shrewd profiteers financially and emotionally exploit desperate families in want of children and use financial incentives to “coerce birthmothers to relinquish legal rights to their babies.”¹⁶⁷ Some of these agencies have reportedly told mothers that their children were being taken just temporarily, “until the mother could better afford the child.”¹⁶⁸ However, once the agents had possession of the child, they sold the infant to adoptive parents, leaving the birth mother without her child or compensation.¹⁶⁹ Many opponents believe that the only way to abolish black and gray markets is to severely restrict, or even ban, intercountry adoption.

162. Strong, *supra* note 22, at 171.

163. Liu, *supra* note 6, at 194.

164. Katz, *supra* note 30, at 300; see also Michael S. Serrill, *Going Abroad to Find a Baby*, TIME, Oct. 21, 1991, at 86-87 (arguing that gray and black market adoptions have developed to fulfill the needs of couples who have been stymied by the legitimate adoption process).

165. Bogard, *supra* note 24, at 588 n.93. “Agency placement affords a child four safeguards: (1) the natural parents are investigated; (2) a physical, mental, and psychological profile is performed; (3) an evaluation of the prospective parents is performed; and (4) an investigation of the adopter’s home, commonly called a home study occurs.” *Id.*

166. Lippold, *supra* note 83, at 487.

167. *Id.*; see also Liu, *supra* note 6, at 194. Transnational trading of infants for adoption is quite lucrative. “Organized syndicates sell babies to prospective parents for a price between \$5,000 and \$10,000, while adoptions through traditional means cost less than \$2,000.” Bisignaro, *supra* note 14, at 127. Babies are sometimes stolen, and parents are exploited by paying exorbitant fees and never receiving the child. *Id.*

168. *Id.*

169. *Id.*

However, outlawing, banning, or significantly restricting intercountry adoption will only aggravate the negative effects associated with international adoption. Where there is a supply, there will be a demand; where there is a demand, there will be a supply. Parents who suffer from infertility and who can afford adoption will always find ways to adopt, and if the supply of domestic adoptable children is low, they will adopt abroad through legal or illegal means. For example, in South Korea, the government enacted strict laws geared toward phasing out intercountry adoption because it wanted to encourage domestic adoption.¹⁷⁰ Unfortunately, domestic adoptions in South Korea are rare.¹⁷¹ As a result of these strict laws on intercountry adoption, approximately 17,000 children now live in public orphanages throughout South Korea.¹⁷²

CONCLUSION

One important lesson to be gleaned from the immense debate surrounding intercountry adoption is that international adoption is not the solution for every prospective parent and adoptee. As outlined in this Paper, there are many negative attributes associated with the process of intercountry adoption. Still, “the disadvantages to the child of intercountry adoption are slight when compared to the disadvantages of living in an institution or in a series of foster homes.”¹⁷³

Thus, rather than enact laws which severely restrict intercountry adoption, and typically lead to an increased number of children in state or privately-run orphanages, developing countries must regulate the adoption process to ensure that illegal adoptions are a phenomenon of the past. Moreover, international cooperation is necessary to safeguard the process of intercountry adoption.¹⁷⁴ China has slowly learned this lesson and has now lowered its restrictions on intercountry adoption. Other nations should follow China’s lead and regulate, rather than overly restrict, the process of intercountry adoption.

170. Valerie Reitman, *S. Korea Dramatically Reduces Number of Overseas Adoptions*, THE CINCINNATI ENQUIRER, Mar. 7, 1999, available in 1999 WL 9425074.

171. *Id.* (explaining that many South Koreans cling to “patriarchal blood lines”).

172. *Id.*

173. Strong, *supra* note 22, at 172; see also Liu, *supra* note 6, at 193 & n.60.

174. Bisignaro, *supra* note 14, at 130.