

**Child Laundering and the Hague Convention on Intercountry Adoption: The Future and Past of Intercountry Adoption**

**I Introduction**

David M. Smolin\*

After long delay, the United States finally ratified the 1993 Hague Convention on Intercountry Adoption<sup>1</sup> on December 12, 2007, with an effective date of April 1, 2008.<sup>2</sup> Implementation of the Convention begins at a time of controversy and concern in relationship to intercountry adoption, marked by declining numbers and publicized adoption scandals.

Intercountry adoptions into the United States tripled from 1990 to 2003, moving from 7,093 to 21,616 annual adoptions.<sup>3</sup> The next year, 2004, saw intercountry adoptions peaking at 22, 884.<sup>4</sup> Over the last four years, intercountry adoption has declined, as follows:

2004: 22, 884 (peak year)

2005: 22,728

2006: 20,679

2007: 19,613

2008: 17,438<sup>5</sup>

The significance of this decline is highly contested. Professor Elizabeth Bartholet, a prominent adoption advocate, characterizes these numbers as a dramatic decline which deprives children of loving homes.<sup>6</sup> Professor Bartholet blames human rights organizations (prominently including UNICEF) and the State Department for creating pressures that have “led to the cessation of international adoption in half” of the significant sending countries.<sup>7</sup> She further complains that “critics of international adoption” believe that children belong in their countries of origin, and thus are either opposed outright to intercountry adoption, or perceive it as a last-choice option that should only rarely be employed.<sup>8</sup> She further blames critics for focusing on “abuses such as baby-buying,” which she perceives as largely irrelevant to the larger workings of the intercountry adoption system.<sup>9</sup> According to Professor Bartholet, there is “no hard evidence” of such systematic abuse; further, where such abuses occur, the “right response” is successful prosecution of individual instances of such abuse.<sup>10</sup>

Professor Bartholet’s work is representative of intercountry adoption advocates who increasingly express what could be described as a siege mentality. Their writings reflect concern with a widening circle of entities and persons allegedly opposed to intercountry adoption, including not only the commonly-blamed UNICEF, but also children’s and human rights’ advocates, the United States government, the Chinese government, and nationalist forces in various sending countries.<sup>11</sup> The media is also

blamed for reporting negative and sensationalistic intercountry adoption stories.<sup>12</sup> By contrast, intercountry adoption advocates rarely blame the individuals involved in abusive adoption practices, even when such persons receive criminal convictions or their wrongs are notorious.<sup>13</sup> Instead, focus on such abusive practices is seen largely as a tactic used by those intrinsically opposed to adoption, or generally as an inappropriate focus. Thus, intercountry adoption advocates often seem to be the last ones to condemn the abuses committed in the name of intercountry adoption, in part because they are reluctant to acknowledge the reality and significance of such abusive practices, in part because they fear that attention to such abusive practices will lead to restrictions on intercountry adoptions.

This author's writings have focused particularly on baby-buying, child-stealing, and similar abuses within the intercountry adoption system, under the rubric of "child laundering."<sup>14</sup> Child laundering involves obtaining children illicitly through force, fraud, or financial inducement, providing false paperwork which identifies such illicitly obtained children as legally abandoned or relinquished "orphans," and then offering or placing these so-called "orphans" for adoption.<sup>15</sup> The motivation for such child laundering is usually financial, although for some there is a significant ideological component based on an overriding desire to save children.<sup>16</sup> Despite Professor Bartholet's complaint of a lack of evidence, a variety of governmental, ngo, press, activist, and scholarly sources have provided what, in total, amounts to substantial documentation indicating systemic, rather than occasional, abuses within many sending countries.<sup>17</sup> Further, the existence of child laundering is symptomatic of poor practice standards in many aspects of intercountry adoption; those poor practice standards harm children and families profoundly, even when they do not involve child laundering or child trafficking.<sup>18</sup>

The article argues that poor practice standards and the harms they produce, prominently including child laundering, are the greatest danger to the future of intercountry adoption. Thus, so-called adoption "advocates" who minimize the significance of such child laundering scandals are themselves inadvertently facilitating the long-term decline of intercountry adoption. Such minimization of child laundering scandals undermines necessary efforts to reform intercountry adoption or to raise practice standards. When the predominate voices of adoption advocates, adoption agencies, adoptive parents, and prospective adoptive parents repeatedly respond to adoption scandals with skepticism about their seriousness and a singular focus on facilitating adoptions, it does sometimes achieve a short-term result of keeping adoption systems open. In the longer term, however, such attitudes defer, delay, and avoid the elevation of practice standards, and enforcement and reform efforts, allowing both poor practice standards and abusive adoption practices to become constantly festering wounds working to undermine the adoption system.

Intercountry adoption advocates are correct that there are some who are, in principle, opposed to intercountry adoption, based on concerns with neo-colonialism, power imbalances, the loss of children to their nation and culture, and the child's loss of their original culture, nationality, language, and identity.<sup>19</sup> Focus on such ideological opposition to intercountry adoption, however, has caused the intercountry adoption community to blame others for ills for which they are to blame. The current decline in intercountry adoption, and the recurrent shutdowns or slowdowns of intercountry

adoption in many sending countries, are not based primarily on pre-existing ideological opposition to moving orphans outside of their countries of origin. The primary problem is not ideological disagreement about intercountry adoption, but regulatory failure leading to recurrent child laundering scandals and other destructive practices. Recurrent child laundering scandals reveal intercountry adoption systems driven by a combination of profit-seeking and rich nation demand for children. Sustaining the legitimacy of intercountry adoption under conditions of recurrent child laundering scandals in the long term is vain, as the claim to operate for the good of orphaned children is fatally undermined in systems whose “orphans” are frequently purchased or stolen children. Thus, preventing child laundering and related abuses needs to move to the center of the intercountry adoption agenda, rather than remaining, as it is now, a largely peripheral concern.

One central question is whether implementation of the Hague Convention will provide the needed regulatory reform. Views of the Convention vary. Some adoption advocates fear that implementation of the Hague Convention will slow or prevent intercountry adoptions without providing real gains in adoption ethics, and hence object to the Convention.<sup>20</sup> Some perceive the Convention as legitimating intercountry adoption. Some complain that the Convention does not mandate intercountry adoptions or provide a right of children to an adoptive home, while others perceive the regulatory regime as inadequate, in itself, to prevent abusive practices.

Following sections of this article will examine various topics to illuminate the linked past and future of intercountry adoption. Section Two will examine the role of child trafficking/child laundering concerns in the creation and final language of the Hague Convention. Section Three will analyze the demographics of the tripling of intercountry adoptions to the United States from 1990 to 2004, and the more recent declines in adoption. Section Four will focus particularly on the Indian adoption system, as a means of evaluating the likely effectiveness of the Hague Convention in relationship to child laundering. Section Five (the Conclusion) will build upon prior sections to provide an evaluation of the Hague Convention, and its likely impacts on the future of the intercountry adoption system.

## **II. Child Trafficking, Child Selling, and Child Laundering in the Creation and Final Language of the Hague Convention on Intercountry Adoption**

Evaluating the place of child trafficking concerns in the Hague Convention involves a two step-process: evaluation of the language of the Convention itself, and review of materials related to the creation of the Convention. Since the final language of the Convention is the best evidence of the Convention’s purposes and concerns, the Convention will be analyzed first. Materials related to the preparation of the Convention will subsequently be explored, as a way of exploring how concerns with child trafficking shaped the work of preparation. The official preparatory materials provided by the Hague Conference on Private International Law are particularly helpful evidence regarding the Convention’s creation, although other materials also are relevant.

### **A. Final language**

The preamble to the Hague Convention sets out some of the concerns and principles underlying the Convention. These include the following:

1. Children “should grow up in a family environment...”<sup>21</sup>
2. Nations “should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,”<sup>22</sup>
3. “[I]ntercountry 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.”<sup>23</sup>
4. State parties recognize “the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,”<sup>24</sup>

It is important to recognize that the Hague Convention did not, by its own terms, implement all of these concerns. First, the Convention does not in any way *mandate* that ratifying nations place children in intercountry adoption when no family environment is available for the child within their country of origin. Thus, although the Convention states the principle that children should “grow up in a family environment,” the Convention does not create a right of an institutionalized child to intercountry adoption, in the absence of a domestic adoptive placement.<sup>25</sup> The Convention seeks to facilitate intercountry adoptions by safeguarding them from abusive practices, and by securing recognition in Contracting States of such adoptions;<sup>26</sup> it does not go so far as to require that Contracting States send their children in intercountry adoption in any particular circumstance.<sup>27</sup>

Similarly, although the preamble recognizes that the first priority of nations should be “appropriate measures to enable the child to remain in the care of his or her family of origin,” the Convention itself does not explicitly require such efforts to be made as a condition precedent to intercountry adoption.<sup>28</sup> Thus, the Convention’s operational terms never mention family preservation efforts. The Convention does require that birth parents consenting to an adoption be “counseled as may be appropriate and duly informed of the effects of their consents;”<sup>29</sup> in addition, consents cannot be “induced by payment or compensation of any kind.”<sup>30</sup> While such standards are necessary to prevent consents from being induced by fraud or misunderstanding, and to prevent baby buying, they fall well short of requiring any kind of active efforts to preserve the family. The Convention’s failure to require family preservation efforts contrasts with the law governing the foster care system within the United States, which generally requires reasonable efforts to maintain a child with their families before removal, and reasonable efforts to re-unite the foster child with their families prior to termination of parental rights and adoption.<sup>31</sup> I have argued elsewhere that international law, taken as a whole, does not recognize intercountry adoption as an appropriate intervention for extreme poverty, and requires that at least modest financial assistance be offered as an alternative to intercountry adoption.<sup>32</sup> It is notable, however, that the operational terms of the Hague Convention fail to specify any kind of family preservation efforts, financial or otherwise, as a condition precedent of intercountry adoption.

Thus, while the preamble to the Convention states these principles that children “grow up in a family environment,” and that “appropriate measures” be taken to “enable the child to remain” with their original family, those principles are not repeated in the

objects (goals or purpose) section of the Convention.<sup>33</sup> Some might argue that these principles be read into the statement, in the objects section, “to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law.”<sup>34</sup> Thus, some could argue that intercountry adoption is required to effectuate the best interests and rights of institutionalized children.<sup>35</sup> The difficulty with this argument, in terms of the Convention, is first of all that the Convention in this objects clause is addressing “safeguards.”<sup>36</sup> The emphasis is not upon intercountry adoptions as a means to facilitate the best interests and rights of children, but rather to ensure that those intercountry adoptions that do occur have adequate safeguards, such that the intercountry adoptions themselves do not violate the best interests and children’s rights standards. Given this context of “safeguards,” it is very difficult to read into the general language about best interests or children’s rights any requirement that nations allow their children to be placed internationally for adoption. The Guide to Good Practice, finalized in 2008 by the Hague Conference on Private International Law, confirms this interpretation, by stating “the general principle that the Convention does not oblige States to engage in intercountry adoption.”<sup>37</sup>

It would be possible to argue that providing family preservation assistance to birth families is a necessary “safeguard” to ensure that intercountry adoptions are in the best interests of children and protect their rights. As a matter of child welfare, it is generally recognized that it is usually in the best interests of children to remain with their original families, and it violates a number of rights in the Convention on the Rights of the Child for the child to lose their original family.<sup>38</sup> Thus, a requirement that parent(s) considering relinquishment primarily due to extreme poverty be offered modest aid to assist them to keep their child, would apparently be a safeguard necessary to protect the best interests and rights of children. Children should not needlessly lose their families, and it is rational to make reasonable family preservation efforts prior to accepting a relinquishment.<sup>39</sup> If that is an “object” of the Convention, however, it is notable that the Convention fails to explicitly state it anywhere in the Treaty, in either the objects or operational sections. This contrasts, for example, with the preamble’s principle that domestic adoption be preferred over intercountry adoption, which finds expression in the operational portions of the Treaty.<sup>40</sup> Thus, it would appear that the Hague Convention recognizes some principles that the Convention itself fails to adopt as either goals or operational rules. The Hague Convention, while preeminent, is not designed to be a comprehensive implementation of all the fundamental principles governing intercountry adoption.

If the Hague Convention does not comprehensively address all aspects of intercountry adoption, which aspects of intercountry adoption does it address? The answer can be found by finding those principles that are stated in the preamble, specified in the objects section, and addressed in the operational portions of the treaty.<sup>41</sup> The most obvious candidate is found in the language of the preamble and objects sections addressing “the abduction, the sale of, or traffic in children.”<sup>42</sup> The language of the objects section makes clear that a primary purpose of the Convention is to create an intercountry adoption system with safeguards against those specific abusive practices: the practices which I have characterized as “child laundering.”<sup>43</sup> The safeguards established by the Treaty are the creation of both a system of cooperation between

sending and receiving nations, and a set of specified roles and obligations for the State and non-State actors functioning within the intercountry adoption system.<sup>44</sup>

Even within this goal of combating child traffic in the intercountry adoption system, the Hague Convention is not designed to be comprehensive. Thus, the work of preparation indicates that the Convention is not designed to address criminal law responses to these practices; at most, the Convention would facilitate the reporting of criminal offenses to appropriate authorities.<sup>45</sup> The Convention is based on the assumption that other means, supplemental to the Convention, will address appropriate criminal law responses to such illicit practices. The Optional Protocol to the Convention on the Rights of the Child (Sale of Child), created about seven years after the Hague Convention on Intercountry Adoption, responds to this need by specifically requiring Contracting Parties to address in their criminal or penal law certain forms of buying children for purposes of adoption.<sup>46</sup>

Even within the civil or regulatory realm, the Hague Convention is designed to prevent “only indirectly...’the abduction, the sale of, or traffic in children’...because it is expected that the observance of the Convention’s rules will bring about the avoidance of such abuses.”<sup>47</sup> Thus, proposals to term the Convention ‘an instrument against illicit and irregular activities in this field’ were rejected, in favor of the ultimate title: “Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.”<sup>48</sup> Thus, while preventing the abuses of child trafficking within the intercountry adoption system was a central impetus and object of the Convention, the Convention attempted to do so through the indirect means of establishing safeguards to protect children in relationship to intercountry adoption. Those safeguards, in turn, included, or were to be implemented through, an orderly system of international cooperation.<sup>49</sup>

Upon closer examination, then, the Hague Convention, rather than representing a comprehensive approach to intercountry adoption, is primarily an anti-trafficking treaty, and a very incomplete anti-trafficking treaty at that. Its primary impetus and purpose is to prevent abusive adoption practices, specifically targeting abducting, buying, and trafficking in children; its response to this set of evils is to provide for a set of safeguards and international cooperation.<sup>50</sup> In a sense, the Convention is ambitious, for it aims to take the “chaotic, contradictory and unsatisfactory” practice of intercountry adoption which existed prior to the Convention, and replace it with an intercountry adoption system with regularized sets of procedures and accredited and defined sets of actors.<sup>51</sup> On the other hand, the Convention’s agenda is modest, as the Convention leaves unaddressed significant principles of child welfare or child rights at stake in intercountry adoption, while providing only partial coverage even to issues, such as abusive child laundering practices, which it does seek to address.

## **B. Child Laundering and the Work of Preparation**

### **1. The J.H.A. van Loon Report**

One of the most significant documents in the preparatory materials for the Hague Convention is the 1990 *Report on Intercountry Adoption* prepared by J.H.A. (Hans) Van Loon,<sup>52</sup> who would later become the Secretary General of the Hague Conference on

Private International Law.<sup>53</sup> On the occasion of the United States deposit of ratification on December 12, 2007, some seventeen years after his report, Secretary General Hans van Loon commented:

[A]t about the time work on the new Convention started, inter-country adoption itself was at risk, with countries closing borders or otherwise rendering adoption impossible. The Convention has created a global framework that provides stability by giving countries the control they need to trust their partners.<sup>54</sup>

Hans van Loon's comments are interesting, given the current propensity of some adoption advocates to blame the Hague Convention for reducing the number of intercountry adoptions.<sup>55</sup> From Van Loon's perspective, intercountry adoption had been under threat before the Convention, and its viability was saved by the Convention.<sup>56</sup>

What had placed adoption at risk? What had made nations mistrustful of intercountry adoption, and inclined to close their borders? Hans van Loon's 2007 comments do not answer that question. The 1990 Report, carefully read, suggests that the pre-Hague intercountry adoption system had been particularly subject to the risks of child laundering.<sup>57</sup> Certainly the report contains an excellent description of child laundering, although it does not use that term. The following are particularly notable regarding the Report's analysis of child laundering:

(1) Section E of the Report is titled "Abuses of Intercountry Adoption: International Child Trafficking."<sup>58</sup> There are no other sections specifically on the topic of "Abuses." Hence, the Report characterizes child trafficking as the primary abuse of intercountry adoption.

(2) The report discusses both "practices of international child trafficking either for purposes of adoption abroad, or under the cloak of adoption, for other—usually illegal—purposes."<sup>59</sup> Hence, the report characterizes practices such as buying children for intercountry adoption to be, in itself, a form of child trafficking.

(3) The Report describes the same three methods for illicitly obtaining children as have been described in more recent child laundering scandals. Thus, the Report states: "The three principal methods are the sale of children, consent obtained through fraud or duress and child abduction. Combinations are possible...."<sup>60</sup>

(4) The Report discusses the "extensive networks" involved in the "[o]rganization of the trafficking:" "In some countries lawyers and notaries, social workers (even in some cases those appointed by the courts), hospitals, doctors, children's institutes, sometimes turned into complete 'baby farms', and others work together to obtain children and make profit out of the despair of parents, in particular women, in difficult situations, sometimes by deceiving them."<sup>61</sup>

(5) Although the Report does not use the term "child laundering" for these forms of misconduct, it uses similar terminology and clearly describes the phenomenon. Thus, the Report refers to "those who bribe the competent authorities and 'wash' the 'commodity.'<sup>62</sup> The Report also reports on various means of "[c]oncealing of civil status" of the child, such as creation of falsified birth certificates and abandonment declarations.<sup>63</sup> "In order for the trafficking to be successful," Van Loon noted, "it is essential that the child leave the country of origin in a legal or seemingly legal way."<sup>64</sup>

Hence, the Report clearly describes the concept of “child laundering:” obtaining children illicitly, falsifying their status into properly relinquished or abandoned “orphans,” and then processing them through the intercountry adoption system.<sup>65</sup>

(6) The Report rejects rumors of a “traffic in children’s organs,” due to a lack of evidence, but notes that the investigation which found such rumors to be “without justification” also “attest to the existence of a large-scale traffic in children under the cloak of adoption” in two Central American countries.<sup>66</sup> Hence, the evidence of child laundering at the time of van Loon’s 1990 report was substantial.

(7) The Report focused on the centrality of money and profits to the problem of abusive child laundering practices: “Child-trafficking means profit making by intermediaries at the expense literally of the biological parents and the adopters (to the extent that they acted in good faith), and in a broader sense also of the child.”<sup>67</sup> Hence, van Loon labeled the corrupt intermediaries as “profiteers.”<sup>68</sup> The Report admitted, however, that “drawing the line” between trafficking and “legal and regular intermediary services is in practice not always easy.”<sup>69</sup> Van Loon noted that some, during preparation of the Convention on the Rights of the Child, had resisted the concept that there could be legitimate financial gain from adoption; however, the ultimate language of the CRC, in forbidding “improper financial gain,” had implicitly permitted proper financial gain. Van Loon failed to provide guidance as to how this critical line between child trafficking and permissible financial gain could be drawn.<sup>70</sup>

(8) Hans van Loon’s strategy for combating child trafficking in intercountry adoption seemed to be a new convention on intercountry adoption which would provide greater regulation and international coordination, and provide restrictions on “the freedom of agencies to act as intermediaries in intercountry adoption.”<sup>71</sup>

The van Loon report described three objectives of a new Convention. The first objective concerned the principal of subsidiarity: to “ensure that no child is adopted abroad unless it has been established that the original family cannot take care of him or her and that no other viable alternative in the country of origin is available.”<sup>72</sup> The second objective was to “define criteria and improve practice and procedures” for intercountry adoption.<sup>73</sup> The third objective was to “help eliminate abuses of intercountry adoption, in particular, abduction and/or sale of children.”<sup>74</sup>

Hans van Loon’s sketch of the operational provisions of a new Convention confirms the centrality of the anti-trafficking goal to the structure of the Convention. Hans van Loon believed that “combating international child trafficking” required “above all, strict control over the activities of intermediaries, which should meet the criteria defined for them.”<sup>75</sup> Similarly, “straightforward and well-structured procedures for intercountry adoption” would help prevent child trafficking.<sup>76</sup> Hans van Loon thus wanted to replace pre-Convention intercountry adoption practice, which he described as “chaotic, contradictory and unsatisfactory,”<sup>77</sup> and which often relied on profiteering intermediaries of dubious motivations,<sup>78</sup> with a highly ordered and regulated intercountry adoption system in which each significant actor was either the government, or else a non-profit entity accredited by the Government.<sup>79</sup>

Hans van Loon’s mechanism for achieving the required regulation, inter-governmental coordination, and ordered intercountry adoption system was a regime of “Central Authorities” modeled after prior Hague Conventions: especially the “Hague

Abduction Convention.”<sup>80</sup> Van Loon thus delineated a system whereby the Central Authorities were responsible either for carrying out all of the critical steps related to adoptions, or else licensing all actors involved.<sup>81</sup> Van Loon was particularly concerned to discourage or prevent “independent adoptions,” “with their inherent risks of failure because of insufficient preparation and of susceptibility to child trafficking.”<sup>82</sup>

A review of the final version of the Convention indicates that van Loon’s broad vision for the Convention, in terms of the objectives of the Convention and its method of achieving those objectives, are represented in the final version of the Convention. Thus, van Loon’s proposal of a system of Central Authorities, providing for an ordered, regulated, and internationally-coordinated intercountry adoption system, is well reflected in the Convention’s final language.

Not all of van Loon’s goals were realized in the final language of the Convention. In particular, the United States successfully insisted that the final version of the Convention permit what could be regarded as a form of independent adoptions: the participation of for-profit individuals and agencies in the intercountry adoption system. Indeed, it appears that the goals of the United States during the negotiations were somewhat distinct from that of van Loon. Thus, while Peter Pfund, the head delegate for the United States, acknowledged that the Hague Convention was created in the shadow of reports about child trafficking in the intercountry adoption system, these anti-trafficking concerns apparently were far less central to Pfund and the United States, than they had been to van Loon and other nations.<sup>83</sup> Indeed, it seems likely that the United States entered the negotiations primarily from the perspective of trying to maintain the availability of children for intercountry adoption, and in trying to maintaining the eligibility of small agencies and individuals as independent participants in intercountry adoption.<sup>84</sup> The ultimate compromise was to create a system of Central Authorities that left room for for-profit persons/organizations, which nonetheless would have to meet some minimum standards pertaining specifically to intercountry adoption, and hence would be licensed. Thus, the question of the respective role of government and private actors in intercountry adoption was largely left to national choice, with the treaty permitting systems like the United States that relied upon non-profit and for-profit individuals and agencies to carry out many of the critical tasks related to adoption, albeit subject to Central Authority regulation and oversight.<sup>85</sup> Similarly, the Hague Convention also permitted countries to implement the agreement through a government monopoly over all critical services and functions related to adoption, or to limit private agency involvement only to non-profit institutions.<sup>86</sup>

## **2. Preparatory Materials Beyond the Hans van Loon Report**

The creation of the Hague Convention on Intercountry Adoption was a large-scale and lengthy enterprise. The Permanent Bureau of the Hague Conference on Private International Law contributed “countless hours of preparation” in the five year effort, from 1988 to 1993, that created the Convention.<sup>87</sup> After dissemination of the Hans van Loon Report in April 1990 there were “three two-week preparatory sessions of a special commission of the Hague Conference...followed by the three-week Seventeenth Session...of the Hague Conference.”<sup>88</sup> Sixty-six nations, approximately half of which were sending countries, and eighteen organizations (mostly ngos) participated in the

Seventeenth Session which unanimously approved the final language of the Convention on May 29<sup>th</sup>, 1993.<sup>89</sup>

For the Hague Conference, the Convention has roots in the failure of an earlier, 1965 Hague Adoption Convention to generate a significant number of ratifications.<sup>90</sup> More fundamentally, the Convention was shaped by the Convention on the Rights of the Child (CRC), which was concluded in November 1989, just as the Hague Conference was beginning in earnest its work on a new adoption convention.<sup>91</sup> Article 21, the primary adoption article of the CRC, called on State Parties to promote that article's objectives by "concluding bilateral or multilateral arrangements or agreements."<sup>92</sup> Hence, the Hague Conference understood itself to be responding to the call of the CRC for a new multilateral adoption convention.<sup>93</sup> In addition, the Hague Convention's stated objective to "prevent the abduction, the sale of, or traffic in children" is a response to the call of the CRC to "take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."<sup>94</sup> Thus, the Hague Convention applies this general call to prevent child trafficking to the specific field of intercountry adoption, which by the late 1980's and early 1990s was already known as a field subject to the abusive practices of abducting, selling, and trafficking in children.

The preparatory materials beyond the van Loon Report confirm both the central role of anti-trafficking concerns in the creation of the Convention. and also the indirect and partial response of the Convention to those concerns. The following are two examples relating to the early stages of preparation:

(1) In November 1989, prior to the completion of the van Loon Report, the Permanent Bureau of the Hague Conference created a Memorandum "concerning the preparation of a new Convention...."<sup>95</sup> The Permanent Bureau noted:

"a need for a system of supervision in order to ensure that these standards are observed (what can be done to prevent intercountry adoptions from occurring which are not in the interest of the child; how can children be protected from being adopted through fraud, duress or for monetary duress; should measures of control be imposed upon agencies active in the field of intercountry adoption, both in the countries where the children are born and in those to which they will travel."<sup>96</sup>

(2) A decision was made at the outset (in 1988) that "any new work by the [Hague] Conference on adoption without the participation of those countries of origin which were not at present Members of the Conference, would be of little use."<sup>97</sup> Therefore, in 1988 contacts were made to ascertain the willingness of non-member nations to participate with the Conference in the creation of a new Convention, with encouraging results.<sup>98</sup> Ten Latin American countries, including both Member and non-Member countries, thus participated in the first session of the Special Commission.<sup>99</sup> The Secretary General of the Hague Conference "suggested that 'given the considerable importance which the Latin American countries have in the field of intercountry adoption, there would be a great advantage in facilitating' their participation by allowing them to speak in Spanish, and have their remarks translated into the "official working languages of French and

English.”<sup>100</sup> This proposal was accepted upon a vote of the Member Nations of the Hague Conference.<sup>101</sup> The Latin American countries subsequently demonstrated their “great interest” by holding a seminar in Quito Ecuador in April 1991, “to examine the problems related to intercountry adoption in the perspective of the convention to be drawn up in the Hague Conference and four working groups were created....”<sup>102</sup> Of the four working groups, two concerned child trafficking, including one titled “child-trafficking in Latin America,” and a second titled “possible forms of international co-operation relating to adoptions and trafficking of children.”<sup>103</sup>

These two examples indicate that both the Permanent Bureau of the Hague Conference, and also the participating Latin American sending countries, were at the outset of the preparatory process quite concerned with child laundering/child trafficking as a primary abuse of intercountry adoption.

At the same time, the preparatory materials also confirm that the Convention, while designed to respond to these concerns with child laundering/child trafficking, approached this concern only partially and indirectly.<sup>104</sup> Thus, the Explanatory Report which comprise a part of the preparatory materials states:

“Despite the last part of the fourth paragraph of the Preamble [“to prevent the abduction, the sale of, or traffic in children”], it is always to bear in mind that the fundamental objects of the Convention are the establishment of certain safeguards to protect the child in case of intercountry adoption, and of a system of co-operation among the Contracting States to guarantee the observation of those safeguards. Therefore the Convention does not prevent directly, but only indirectly, ‘the abduction, the sale of, or traffic in children’, as is repeated in sub-paragraph b of Article 1, because it is expected that the observance of the Convention’s rules will bring about the avoidance of such abuses.”<sup>105</sup>

This comment, which is that of the one individual (G. Parra-Aranguren) who authored the Report, rather than that of the various Special Commissions and Sessions who created the Convention, is interesting for its apparent conflict with the final language of the Convention.<sup>106</sup> G. Parra-Aranguren appears to be trying to state that the “fundamental objects” of the Convention are safeguards and international co-operation, and not the prevention of abduction, sale, or traffic in children, despite the inclusion of the latter clearly within both the preamble and the objections clause of the Convention.<sup>107</sup> G. Parra-Aranguren obviously lacks the authority, as the author of a Report, to contradict the actual language of the Convention. However, G. Parra Aranguren is attempting to express a theme that runs through all of the preparatory materials, including the van Loon report: the Convention is designed to address child trafficking and related wrongs in intercountry adoption only partially and indirectly.<sup>108</sup> Thus, while it is clear that child trafficking in intercountry adoption was a primary impetus for the Convention, and that the Convention was designed to respond to these abusive practices, the Treaty approaches these wrongs only indirectly. The Convention’s theory is that the ordered system of safeguards and international co-operation will prevent these wrongs. While G. Parra-Aranguren is wrong to try to remove the prevention of trafficking from the fundamental objects of the Treaty, he is correct that the Treaty’s primary strategy is the creation of

safeguards and international co-operation, rather than the creation of a comprehensive response to trafficking in the intercountry adoption system.

Thus, G. Parra-Aranguren notes the Special Commissions's rejection of a proposal to expressly term the Convention "an instrument against illicit and irregular activities in this field."<sup>109</sup> G. Parra-Aranguren also correctly noted the Hague Conference correspondence with Interpol concerning the Convention, which demonstrated that the Convention itself was not designed to address criminal law responses to child trafficking in adoption, but rather was to safeguard against such abuses while also facilitating the reporting such offenses to the proper authorities.<sup>110</sup> The Convention is not even a comprehensive response to the "abduction, sale of, or traffic in children," let alone a comprehensive response to all abusive practices in the intercountry adoption field.

### **III. THE HAGUE CONVENTION AND THE CHANGING DEMOGRAPHICS OF ADOPTION**

The prior Section of this article establishes that the purpose of the Hague Convention was to reform pre-Hague intercountry adoption practice, which was viewed as "chaotic" (van Loon), "incoherent," (pg. 129), and particularly subject to the abuses of child laundering/child trafficking.<sup>111</sup> Reform was to be accomplished by creation of an ordered intercountry adoption system to be characterized by safeguards and international co-operation, to the end of preventing the abduction, sale of, or traffic in children. The primary mechanism for this reform was a system of Central Authorities, who would provide the necessary supervision and accountability for all significant functions, persons, and organizations involved in intercountry adoption, under minimum standards delineated in the Convention. The system of Central Authorities was also intended to facilitate the necessary international co-operation.

This section of the article explores possible connections between the Hague Convention and the changing demographics of intercountry adoption. The first subsection explores the dramatic rise in intercountry adoptions to the United States during the first decade of the Convention's creation. The second subsection considers the decline in intercountry adoptions from 2005 – 2008, including the prospects for significant further declines, once again exploring any possible relationships to the Convention. Finally, the last subsection presents the controversy concerning the demographics of Latin American adoptions and the Hague Convention.

#### **A. The Hague Convention and the Rise in Intercountry Adoptions to the United States**

The initial decade after the creation of the Hague Convention saw intercountry adoptions to the United States nearly triple in number, from 7,377 adoptions in 1993 (the year the Treaty was finalized) to 21,616 adoptions in 2003.<sup>112</sup> The next year, 2004, saw intercountry adoptions reach a peak of 22,884.<sup>113</sup> It appears that overall trends for intercountry adoption worldwide paralleled this trend, with worldwide intercountry adoptions also rising substantially during this period, and also peaking in 2004.<sup>114</sup> Of

course the predominate place of the United States as a receiving country, often constituting more than half of all intercountry adoptions, is one reason why worldwide trends parallel those for the United States alone.<sup>115</sup>

The most obvious question that can be asked is whether this rise in intercountry adoptions is related to the Convention. Did the Hague Convention in its first decade succeed in its objectives of creating a well-ordered system, free from abusive child laundering/child trafficking practices, despite the failure of the United States, as the leading receiving country, to ratify the Convention? Is that why adoptions to the United States nearly tripled in the first decade?

Obviously, if that is the case, it was not due to the Convention's influence upon the United States, which did not ratify the Convention until December 12, 2007, effective April 1, 2008.<sup>116</sup> While the United States went through a substantial and lengthy effort to get ready for Hague implementation, the older, pre-Hague system remained largely unchanged and in effect until 2008. Thus, the rise in intercountry adoptions to the United States occurred with the United States employing its pre-Hague approach to intercountry adoptions.

More fundamentally, the Hague Convention's influence on sending nations cannot explain the rise in intercountry adoptions to the United States from 1993 through 2004. Statistically, the rise in intercountry adoptions during this period was produced by only three sending nations: China, Russia, and Guatemala.<sup>117</sup> China and Russia were the top two sending nations from 1995 – 2005, after which Guatemala overtook Russia for the number two spot.<sup>118</sup> Since 2002 China, Guatemala, and Russia have been the top three nations sending children, and have together generated, on an annual basis, between 67% to 75% of all intercountry adoptions.<sup>119</sup> Thus, the rise in intercountry adoptions is built upon the narrow foundation of three sending nations.

The rise of these three sending nations certainly cannot be attributed to the Hague Convention. China, the most important of the three nations, signed the Convention on 11/30/2000, but did not ratify until 11/16/2005, effective 1/1/2006.<sup>120</sup> Thus, the rise in Chinese adoptions pre-dated ratification of the Convention, and the first year in which the Treaty was effective was the first year of numerical decline. Thus, looking solely at the dates of effective implementation and the numbers, it is more plausible to blame the Convention for falling numbers than to credit it with rising numbers. Most likely, however, there is simply no association between the Hague Convention and the statistical rise and fall of Chinese adoptions to the United States. It is well documented that the rise in Chinese adoptions was precipitated by China's enforcement of strict population control policies, beginning in the late 1980s.<sup>121</sup> An unintended consequence of the so-called one-child policy was large-scale abandonment of baby girls: a phenomenon which itself is a part of a broader demographic issue of tens of millions of missing girls in China's population. The Chinese government responded to the large-scale abandonment, and the accompanying burgeoning population of Chinese social welfare institutions, in part through developing the largest intercountry adoption sending program in the world.<sup>122</sup> Thus, it is China's attempt to manage a part of the unintended consequences of their population control policy that precipitated the rise in Chinese adoptions, rather than the Hague Convention.

It is interesting that the Chinese government developed an intercountry adoption system that was, in structure, Hague compliant, long before China signed or ratified the

Convention. The Chinese system combines central government control of intercountry adoption with a system of government orphanages run at the provincial or local governmental level.<sup>123</sup> Thus, the Chinese system not only embodies the concept of a Central Authority, but also represents the ideal of those Hague Conference participants who would have preferred adoption to be run as a government monopoly in which all significant adoption functions, including the care of children, are performed by government. It is very doubtful, however, that the structure of the Chinese intercountry adoption system was due to the influence of the Hague Convention. The dominance of the Chinese government in social welfare institutions pre-dated the creation of the Hague Convention,<sup>124</sup> and it would seem characteristic of the Chinese government to open the country to intercountry adoption under the control and regulation of the Central government. From the Chinese perspective, intercountry adoption has diplomatic significance, and hence would be a matter subject to Central Government control.<sup>125</sup>

Thus, both the structure of the Chinese system, and the rise of intercountry adoptions in China from 330 in 1993, to 6857 a decade later in 2003<sup>126</sup>, appears totally unrelated to the Hague Convention. The rise in intercountry adoptions from China was driven by the response of the Chinese government to the unintended consequences of their population control policies, rather than by the influence of the Hague Convention.

Russia, while it signed the Hague Convention on 9/07/2000, has never ratified the Hague Convention.<sup>127</sup> Russia's increase in intercountry adoptions to the United States, from 746 in 1993, to 5221 a decade later in 2003, and peaking in 2004 with 5862 adoptions<sup>128</sup>, is, like China's, dramatic. Since Russia has never ratified the Hague Convention, this rise appears unrelated to the Convention. Like China, Russia's dramatic increase in intercountry adoption appears related to developments within Russia.

The first development within Russia was a longstanding failure of child welfare policy and practice within the Soviet Union and Russia.<sup>129</sup> Neither the old Soviet Union nor Russia developed a foster care system for abandoned, relinquished, abused, and neglected children.<sup>130</sup> In addition, children with disabilities have been abandoned and institutionalized in significant numbers.<sup>131</sup> Thus, the government and society failed to provide appropriate services to assist and encourage families in keeping their children, and failed to develop appropriate alternatives, such as foster care or other more family-based care, for children who could not be kept with their families. Domestic adoption also has been very underdeveloped.<sup>132</sup> Unfortunately, the condition and care of institutionalized children frequently has been very poor, leading to profound damage in the development and lives of children.

When the Soviet Union fell in 1991, the Russian Republic failed to appropriately address these shortcomings in child welfare.<sup>133</sup> The collapse of the economy after the fall of communism further aggravated the problems of abandonment and poor quality institutional care.<sup>134</sup> The problem of Russia's institutionalized children festered. At the same time, the fall of communism opened Russia in significant and practical ways to the West, making the large-scale development of intercountry adoption a practical possibility.<sup>135</sup> In this context, intercountry adoption developed as a way of getting Russia's children out of highly damaging institutional care. However, even at its height, intercountry adoption involved only a small percentage of Russia's population of institutionalized children, and thus never served as a primary solution to that problem.<sup>136</sup>

The third substantial contributor to the rise in intercountry adoptions was Guatemala. Guatemala exemplifies a country that rose in numbers while having a system clearly out of conformity to Hague Convention standards.<sup>137</sup> Indeed, Guatemala had the highest per capita rate of intercountry adoption of any sending country, at its peak sending approximately one in a hundred children in intercountry adoption to the United States.<sup>138</sup> Guatemala, unlike a number of other Latin American countries, did not participate in the creation of the Hague Convention.<sup>139</sup> Guatemala went through a very odd process of ratification of the Hague Convention (by ascension), and then an attempt to invalidate that ratification.<sup>140</sup> Guatemala was broadly viewed as an intercountry adoption system rife with abducting and buying children (child laundering), and in response many receiving countries halted adoptions from Guatemala.<sup>141</sup> The United States government responded to abuses by requiring a DNA test of mother and child; when this proved inadequate, the government added a second required DNA test.<sup>142</sup> The system operated through private attorneys, who were paid 15,000 – 35,000 USD per adoption by United States adoptive parents.<sup>143</sup> The rise of Guatemala appears to have been a classic case of an adoption system fueled by inordinately large amounts of money. In any event, it is clear that the Hague Convention made no contribution to Guatemala's adoption system during the period of its rise to the highest per capita sending country in the world.

Looking beyond the big three nations of China, Russia, and Guatemala, the most striking feature is the failure of the Hague Convention to create a stable and coherent system of intercountry adoption. In fact, few nations participate in the intercountry adoption system as sending nations to any statistically significant degree.<sup>144</sup> This statistic holds true when the picture is limited to the kinds of countries some might expect to be sending nations, such as poor or developing nations, nations with large numbers or significant percentages of poor, or nations with particularly large numbers of “orphans.” Most of the very poorest countries of the world have only minimal involvement as sending nations, and most of the countries with the largest numbers of literal orphans--- children whose parents are dead---also have minimal involvement with intercountry adoption. This pattern was true in the period from 1990 to 1993, when adoption into the United States ranged from 6400 to 8400 annual adoptions, remained true when intercountry adoptions peaked in 2004 at nearly 23,000 adoptions, and remains true through the recent decline to about 17,400 adoptions in 2008.<sup>145</sup>

The State Department's past practice of providing data on the top twenty countries in intercountry adoption had been helpful, but potentially misleading. The bottom six nations of the top twenty each had less than 100 adoptions in 2007;<sup>146</sup> with numbers this small, referring to them as “top sending nations” can give the false impression that they are contributing significantly to the statistical total of intercountry adoption. Beyond the “top twenty” nations are many poor and developing nations with significant numbers of literal orphans that send zero to ten children to the United States annually for intercountry adoption. Indeed, the entire continent of Africa, with its population of nearly a billion people, in 2007 sent less than half of what the tiny nation of Guatemala, population approximately 14 million, sent: and 68% of Africa's total came from one nation, Ethiopia.<sup>147</sup> Thus, most of Africa for most practical purposes was not a participant in the intercountry adoption system, at least in terms of sending children to the United States.

The Hague Convention's failure to create a sustainable, ordered system of intercountry adoption is also reflected in the cycle in which nations rise in numbers for a time, only to see its adoption system subject to significant abuses. In response, the intercountry adoption system is sharply curtailed or even closed down. This pattern subsumes the entire period of 1990 to the present, involving many Latin American countries, as well as Cambodia, Nepal, and Vietnam. Guatemala is a significant example of this pattern of cyclical, rather than stable, intercountry adoptions systems.

Overall, then, it is clear that the rise in intercountry adoptions in the first decade of the Convention was not caused by the Convention. Neither the most significant receiving nation, the United States, nor the most significant sending nations, China, Russia, and Guatemala, were significantly influenced by the Convention during this period. Moreover, the Convention failed to create a sustainable system of intercountry adoption; instead, most potential sending countries maintained minimal involvement in intercountry adoption, and many that rose in numbers for a time became subject to abuses and either closed or sharply curtailed intercountry adoptions.

## **B. The Hague Convention and Recent Declines in Intercountry Adoptions to the United States**

Intercountry adoptions to the United States have been declining since 2005.<sup>148</sup> These recent declines also are occurring in worldwide intercountry adoption statistics, in part because of the central place of the United States in the worldwide system, but also because declines are also occurring in other significant receiving countries.<sup>149</sup> The statistical story of intercountry adoption since 2005, like that from 1993-2004, can be told in three parts. On the one hand, China, Russia, and Guatemala, which were primarily responsible for the large rise in intercountry adoptions, also can be blamed for the recent (and possibly future) declines that have occurred from 2005 – 2008.<sup>150</sup> Second, there is the special case of Korea, which has had the most stable and long term intercountry adoption program of any significant sending country, but which has been for the last four years significantly reducing its involvement in intercountry adoption, in part through an increase in domestic adoptions. Third, there is the story of most of the rest of the prospective sending countries, which continue to contribute a relatively small percentage of intercountry adoptions. Significantly, within this second group of nations are countries, such as Cambodia, Nepal, and Vietnam, that rise significantly for a time, only to be brought down by significant scandal, usually related to corruption, profiteering, and child laundering.

### **1. China, Russia, and Guatemala**

#### **a. China**

The numbers of children coming to the United States from China peaked in 2005, a year after the overall peak of 2004, and have been sharply decreasing since. Intercountry adoptions from China to the United States have declined by over 50% in just three years:

2004: 7038  
2005: 7903  
2006: 6492  
2007: 5453  
2008: 3911<sup>151</sup>

The forces that made China the major sending nation now appear to have been a temporary phenomenon that is unlikely to be sustained. Whether due to relaxation of population control policies, increasing incomes, increasing domestic adoptions, or increasing numbers of sex selective abortions, it appears that abandonment of baby girls in China has decreased. One signal of this decrease has been significant baby trafficking scandals in China, some associated with intercountry adoption.<sup>152</sup> While the Chinese government has restricted press coverage of the child trafficking scandals associated with intercountry adoption, the information that is known suggests that the difficulties began as early as 2002, and have continued, despite sporadic prosecutions, to this time.<sup>153</sup> A country that was at one time overwhelmed with unwanted, abandoned babies now has a black market in both boy and girl babies, suggesting a shortage. Although China has become increasingly restrictive in regard to who is permitted to adopt,<sup>154</sup> those rules cannot be causing the decline in adoptions, for China anyway has increasingly long waiting times for prospective adoptive parents.<sup>155</sup> Thus, the problem is not a lack of potential adoptive parents, but rather a lack of adoptable babies.

China's intercountry adoption system is so large that it will likely remain a leading sending nation for some years to come. It appears, however, that the numbers of children coming from China are unlikely to reach anything close to their recent peaks anytime soon. China is now unable or unwilling to be such a prominent source of children for intercountry adoption.

#### **b. Russia**

Adoptions from Russia to the United States peaked in 2004, and have declined dramatically since then:

2004: 5862  
2005: 4631  
2006: 3702  
2007: 2303  
2008: 1857<sup>156</sup>

Some of the declines may be due to laudable Russian efforts to de-institutionalize children through foster care and domestic adoption.<sup>157</sup> Unfortunately, however, intercountry adoptions from Russia have also been negatively impacted by various abusive practices and poor practice standards, which have produced intermittent backlashes against intercountry adoption. Interestingly, child laundering is not the primary abuse within Russian adoptions, as few if any children come into orphanage care

through abduction or purchase. There are potential fraud issues related to the question of whether children are actually free for adoption, given a context where most of the children have some kind of family tie. More broadly, the Russian system has been chaotic and open to various forms of corruption.<sup>158</sup> Adoptive parents and adoption agencies from the United States have felt an over-riding impetus to get children out of the institutions in any way possible. They have been confronted with government officials who sometimes appear uncooperative or corrupt. The net result has been an often arbitrary and corrupted system with poor practice standards.

The poor practice standards have been fueled by a combination of a lack of professionalism and standards among agencies in the United States, and problems of corruption, chaos, and apathy in Russia. The most dramatic results of these problems have been the well-publicized horror of 14 Russian adoptees being killed by their American adoptive parents.<sup>159</sup> At least some of these deaths seem to be the result of sending psychologically damaged, post-institutionalized children into adoptive homes unprepared for such children, and a lack in post-adoption resources to assist adoptive families and their children. It turns out that getting children out of institutions at all costs, without proper evaluation of children, selection of adoptive homes, preparation of adoptive parents, and post-adoption evaluation and services, is a prescription for disaster. Although adoption advocates would want to point out that fourteen out of the thousands of Russian adoptions is a small number, it is nonetheless a striking phenomenon. Furthermore, the 14 dead children represent the extremes of a much broader phenomenon of post-institutionalized Russian children doing very poorly in their new environments. There is a much larger group of Russian children adopted into the United States who have been institutionalized, hospitalized, or otherwise failed to adapt to their adoptive placements.<sup>160</sup> Indeed, there is a significant literature and set of actors concerned with the profound problems of post-institutionalized Russian (and Eastern European) children.<sup>161</sup>

The poor practice standards involved in Russian adoptions was dramatically portrayed by the infamous adoption of Maria (Masha) Nikolaevna Yashenkova by the pedophile Matthew Mancuso.<sup>162</sup> Mancuso was a pedophile who, as a divorced, single male, requested adoption of a “girl between the ages of five and six of the Caucasian race.”<sup>163</sup> Mancuso turned Masha not only into a personal sex slave, but also made her into a prominent victim of child pornography, with an estimated half of those prosecuted for child pornography found to possess a photograph of Masha.<sup>164</sup> The question of how Mancuso had managed to adopt Masha through normal intercountry adoption channels, and abuse her for nearly five years, caused Congress to hold a hearing on her adoption.<sup>165</sup> Obviously critical steps in the intercountry adoption process, including especially the home-study and post-placement process, had totally failed, despite the involvement of mainstream intercountry adoption actors in Masha’s adoption. While Masha’s story is obviously extreme and unusual, the poor practice standards that produced it unfortunately are common.

A less dramatic, but still disquieting, episode associated with Russian adoptions has been the bankruptcy of Amrex. Amrex and its associated entities appears to have been significantly involved in a large number of Russian adoptions.<sup>166</sup> The Amrex story has never been well-researched by the mainstream press, and untangling the complex web of organizations, persons, and events associated with Amrex is beyond the scope of

this article. The Amrex story reveals the tendency of United States agencies to become reliant on intermediary persons and entities of questionable motivation and ethics. Such reliance presumably occurs because United States adoption agencies frequently place children from countries in which they lack any real experience or expertise, leaving them completely at the mercy of intermediaries they hire to perform critical functions within the sending countries.

The Russian government's response to scandal-prone intercountry adoption practices, and to the embarrassment of their large orphanage population, has been to place foreign agencies through difficult re-licensing/accreditation processes, and to begin promoting domestic adoption.<sup>167</sup> Recent rising incomes in Russia may also be contributing to a decrease in abandonments, but even if that is so, the numbers of older children in Russian orphanages remains very high.<sup>168</sup> Although Russia has not yet effectively implemented effective alternatives to institutionalization of children, it appears that the Russian government, due to poor practice standards and corruption, has decided to significantly limit intercountry adoption.

### **c. Guatemala**

Guatemalan adoptions peaked later than Chinese and Russian adoptions; thus, while overall adoptions to the United States peaked in 2004, Russian adoptions peaked in 2004, and Chinese adoptions peaked in 2005, Guatemalan adoptions were still rising as late as 2007:

1998: 964  
1999: 1002  
2000: 1516  
2001: 1610  
2002: 2419  
2003: 2328  
2004: 3264  
2005: 3783  
2006: 4135  
2007: 4727  
2008: 4122<sup>169</sup>

The Guatemalan and United States governments have both imposed a kind of moratorium on processing new cases from Guatemala to the United States, at least until Guatemala can implement a Hague compliant system.<sup>170</sup> Thus, the number of adoptions from Guatemala in 2009 can be expected to be comparatively very modest. If Guatemala successfully builds a new, Hague-compliant intercountry adoption system, the numbers of intercountry adoptions most likely will be much smaller than occurred over the former, and controversial, notarial system.

## **2. The Special Case of South Korea**

South Korea has been a significant sending nation for decades. Intercountry adoption from South Korea was initially a response to the poverty and dislocation associated with pre-development Korea and the Korean war, and the related issue of children fathered by United States soldiers.<sup>171</sup> South Korea has of course long ago ceased being a poor country, and the large-scale continuation of intercountry adoption has become in many ways an oddity. This continuation of intercountry adoption was based on two cultural factors: the propensity of single mothers in Korea to relinquish their children for adoption, and the unwillingness of South Korean couples and families to adopt.<sup>172</sup> These two cultural factors, coupled with the institutional momentum of the intercountry adoption system, led to the aberration of a country of substantial incomes and wealth remaining a substantial sending nation decades after attaining advanced economic development. Logically, a country of South Korea's income strata should be able to absorb into Korean families all of its own children in need of adoption. Hence, it should come as no surprise that the numbers of children leaving Korea for adoption has been falling for approximately the last four years.<sup>173</sup> It appears likely that South Korea will virtually eliminate intercountry adoption within the next five years, as South Korea seeks to finally make good on its hope of taking care of its own children. This hopefully will not be a matter of mere nationalism dooming children to institutional care, but rather will represent a country which, through economic development and cultural change, finally will be in a position to properly care for her own children.

### **3. Declining Adoptions and the Failure to Create Sustainable Intercountry Adoption Systems in Most Prospective Sending Nations**

The failure of most of the rest of the likely sending nations to develop sustainable intercountry adoption programs of any statistical significance is just as important to past and (likely) future declines in intercountry adoption. Concerns with child trafficking in intercountry adoption were prominent enough to play a major role in the creation of the 1993 Hague Convention on Intercountry Adoption.<sup>174</sup> It took some fifteen years after creation of the treaty for the United States to ratify the agreement.<sup>175</sup> In the meantime, the Treaty has failed to create conditions under which significant numbers of children can be adopted internationally in adoption systems free of significant profiteering, corruption, child trafficking, and child laundering. Instead, most countries avoid child laundering by minimizing or avoiding intercountry adoption itself, while other countries with even moderately significant intercountry adoption programs seem to suffer from continuing corruption and/or child laundering problems. This massive regulatory failure has made it impossible to develop a sustainable intercountry adoption system in the vast majority of potential sending nations.

Currently, with intercountry adoptions falling rapidly in China, Russia, and Guatemala, and adoption scandals limiting intercountry adoptions from Cambodia, India, Nepal, and Vietnam, United States intercountry adoption agencies have been attempting to open and scale up new sending nations. The most prominent new nation in statistical terms is Ethiopia, which has thus far experienced extreme rates of growth:

2000: 95  
2001: 165  
2002: 105  
2003: 165  
2004: 284  
2005: 442  
2006: 731  
2007: 1254  
2008: 1724<sup>176</sup>

No one anticipates, however, that Ethiopia will be able to replace more than a small fraction of the declines in China, Russia, and Guatemala. There are no indications, moreover, of more Ethiopias: of other nations that can scale up within a few years to sending a thousand or more children annually to the United States for intercountry adoption.

Indeed, a look at the top fifteen countries for 2008 indicates why there is anticipation of severe declines in intercountry adoptions in 2009:

1. Guatemala 4123
2. China 3909
3. Russia 1861
4. Ethiopia 1725
5. South Korea 1065
6. Vietnam 751
7. Ukraine 457
8. Kazakhstan 380
9. India 307
10. Columbia 306
11. Haiti 302
12. Philippines 291
13. Taiwan 267
14. Liberia 249
15. Nigeria 148<sup>177</sup>

Of the nations in the top fifteen, three of them: Guatemala, Vietnam, and Liberia, representing more than five thousand adoptions in 2008, are currently closed to new cases, all of them due in significant part to significant allegations of abusive adoption practices.<sup>178</sup> Haiti and India are both subject to significant and repeated charges of abusive adoption practices. China, Russia, and South Korea all appear to be in the process of permanently reducing the number of children they send for intercountry adoption. Under these circumstances, significant declines in intercountry adoption are expected, and it appears more and more likely that the prior period, from 1993 to 2004, will in retrospect appear as an extraordinary and temporary boom.

#### **IV. The Hague Convention and Latin America**

The impact of the Hague Convention on intercountry adoption from Latin America is controversial. As the preparatory materials reveal, Latin American countries, excluding Guatemala, played a significant role in the creation of the Convention. Further, those countries were particularly concerned with child laundering/child trafficking issues.<sup>179</sup>

Statistics reveal that some Latin American countries were sending significant numbers of children to the United States in the early 1990's, immediately before and after the creation of the Convention.<sup>180</sup> In many instances, those numbers sharply declined.<sup>181</sup> The following chart represents the high statistical point for some Latin American countries, compared with the numbers for 2007:

Brazil	228 (1990)	55 (2007)
Columbia	521 (1991)	310 (2007)
Costa Rica	64 (1992)	1 (2007)
Chili	302 (1990)	0 (2007)
El Salvador	123 (1991)	16
Honduras	249 (1992)	22
Paraguay	483 (1994)	0
Peru	705 (1991)	37

Commentators have drawn sharply different lessons from the large-scale statistical decline in most Latin American sending countries. Some adoption proponents blame anti-adoption ideology and organizations for promoting anti-adoption laws and policies in Latin America, which have (they argue) wrongfully led to the virtual shutdown of intercountry adoption from much of Latin America. This lesson has led some adoption proponents to defend Guatemala's adoption system, which like others had been significantly involved in adoption in the early 1990s, but unlike the others increased even those significant numbers nearly tenfold.<sup>182</sup> Thus, Guatemalan adoptions to the United States rose from a high in the early 1990s of 512 adoptions (1993), to a remarkable 4,728 adoptions in 2007.<sup>183</sup>

The contrary view is that Guatemala demonstrates what can happen when a long-standing pattern of child trafficking and related abuses in Latin American adoptions goes unchecked. This perspective perceives in the Guatemalan adoption system an extraordinary degree of unbridled profiteering and trafficking. From this point of view, Guatemala confirms the wisdom of limiting intercountry adoptions in other Latin American countries, or at least the dangers of failing to respond adequately to adoption systems significantly affected by child laundering and related abuses.

Under either interpretation, the interpretation of child laundering and profiteering charges is central to the interpretation of Latin American adoptions. Some adoption advocates tend to perceive child laundering charges as misleading or sensationalist means to further an underlying anti-adoption ideology. The contrary view is that abusive child trafficking/child laundering has been a real and significant phenomenon, which undermines the ideological legitimacy of intercountry adoption. The issues thus are not

only the extent of such abuses, but also whether charges of child laundering are motivated by, or cause, anti-adoption ideology.

Latin America thus illustrates, as a region, the difficulty of establishing sustainable intercountry adoption systems in a context of charges of child laundering and profiteering. The most common results seem to be either a virtual shutdown, or large-scale adoptions in a context notorious for profiteering and child-laundering. The third option, of a sustainable, ethically clean system, is rare: intercountry adoptions from Columbia have been statistically significant and stable over a substantial period of time, but Columbia has been the exception that proves the rule.

## **V. Intercountry Adoption and the Failure of the Hague Convention to Prevent Abusive Practices: The Example of India**

India, with a population of more than one billion people, more poor people than any other country in the world, relatively friendly ties with the United States, common use of English in legal and business matters, and an extensive and successful non-Resident Indian (NRI) population in the United States of some two million people, might seem situated to send large numbers of children in intercountry adoption.<sup>184</sup> Instead, the numbers coming out of India to the United States are, on a per capita and absolute basis, consistently modest:

2008:	308
2007:	416
2006:	320
2005:	323
2004:	406
2003:	472
2002:	464
2001:	543
2000:	503
1999:	499
1998:	478 <sup>185</sup>

The numbers from 1990 – 1997 are similar, falling within a range from 331 to 445 annual adoptions.<sup>186</sup>

These modest numbers occur in the context of a country that ratified the Hague Convention on Intercountry Adoption, effective October 2003.<sup>187</sup> Ratification of the Hague Convention had little impact on either the numbers of children coming out of India, or on the operation of the Indian adoption system, presumably because the Indian system has long been compatible, in structure and philosophy, with the Hague Convention. Indeed, in 1984, almost a decade before the Hague Convention (1993), the Indian Supreme Court delineated a framework for Indian adoption that presaged, in significant ways, the Convention. Similarly, the Indian Supreme Court's adoption caselaw also presaged in significant ways some provisions of the 1989 Convention on the Rights of the Child (CRC)

A comparison of the Indian Supreme Court instigated system for intercountry adoption, and the Hague Convention, illustrate the following shared principles, concerns, and approaches:

**(1) Emphasis on the need of children to grow up in families, rather than in institutions, and acceptance of intercountry adoption where necessary to achieve this goal.** The language of the Indian Supreme Court and the Hague Convention on the need of children for families is similar. Thus, the Indian Supreme Court stated: “[E]very child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family.”<sup>188</sup> The Hague Convention preamble begins with the statement: “Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”<sup>189</sup>

**(2) The principle of subsidiarity.** The Indian Supreme Court established the following clear order of priority: (1) Child with biological family; (2) Child adopted within India; (3) Child adopted out of country by NRIs; (4) Child adopted out of country by “adoptive couples where at least one parent is of Indian origin;” (5) Child adopted out of country by non-Indian origin adoptive parent(s).<sup>190</sup> The Hague Convention and Convention on the Rights of the Child (CRC) include similar principles of subsidiarity, with the CRC in particular emphasizing the “desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.”<sup>191</sup> (The Hague Convention preamble indicates that it took into account the principles of the CRC.)

**(3) Concern that unregulated intercountry adoptions could, or had, become a form of “profiteering and trafficking in children.”** Both the Indian Supreme Court litigation and the Hague Convention on Intercountry Adoption were in significant part reactions to abusive practices, and thus were occasioned by the need to prevent child trafficking. Both the Indian Supreme Court and the Hague Convention sought to create a regulatory regime that would minimize or prevent child trafficking in the adoption system.<sup>192</sup>

**(4) Creation of a regulatory regime based on central government responsibility for the regulation of and integrity of intercountry adoption.** Thus, the Indian Supreme Court called for the creation of the Central Adoption Resrouce Agency (CARA), while the Hague Convention required the designation of a “Central Authority.”<sup>193</sup>

**(5) Requirement that the critical functions involved in intercountry adoption be performed either by, or under the supervision of, the government, or government-accredited entities.** Thus, in India the central government (via CARA) accredits Indian agencies involved in intercountry adoptions, while also reviewing each intercountry adoption.<sup>194</sup> The Hague Convention requires that the respective Central Authority of each country of origin (sending nation) and receiving country be responsible for their respective functions, either through governmental entities or accredited entities.<sup>195</sup>

**(6) Limitations on Financial Aspects of Intercountry Adoption as a Means of Avoiding Corruption and Trafficking.** The Indian Supreme Court instigated limitations/regulations on adoption fees, costs, and donations, based specifically on their concern that uncontrolled money in the adoption system would create the conditions for child trafficking and profiteering.<sup>196</sup> The Hague Convention provisions are much vaguer, but do forbid “remuneration which is unreasonably high in relation to services rendered,” and “improper financial or other gain,” while requiring professional fees to be “reasonable.”<sup>197</sup> Accredited bodies are limited to “non-profit objectives” and are subject to financial supervision by the state.<sup>198</sup>

India’s creation of a Hague-like system even before the creation of the Treaty creates a test case for the hope that the Convention will succeed in its stated objective to “prevent the abduction, the sale of, or traffic in children.” Unfortunately, the lessons from India are not encouraging. Significant adoption scandals in Andhra Pradesh, India have led to the shutdown of adoption from that Indian state since 2001.<sup>199</sup> Those scandals undermined the central premises of the Hague Convention, as they involved repeated and systematic patterns of obtaining children illicitly; further, the repetitive nature of the scandals undermined the hope that a regulated system free of these abuses could be established. Additional adoption scandals in Chennai and Pune further undermined that hope.<sup>200</sup>

Indeed, the irony of the Indian adoption system is that it is simultaneously over-regulated and under-regulated. It is over-regulated because the Indian government has created an unusually large set of institutional actors who must pass upon each intercountry adoption, giving the impression of a slow and over-bureaucratic system.<sup>201</sup> Given the difficulties of governmental corruption in India, the creation of multiple actors increases the opportunities for corruption, as each person who must sign-off on any particular adoption are in a position to demand an illicit payoff for their approval. The system, however, is simultaneously under-regulated, in the sense that one of the most important of the anti-corruption regulations in the system, the limitations on adoption fees, costs, and donations, have been systematically ignored and un-enforced.<sup>202</sup>

The result seems to be a system that, on a per capita basis sends relatively few children for adoption, while still being unable to ensure that those few are truly orphans who were in need of adoption. In addition, the complex and bureaucratic nature of the system makes India appear as an unreliable, slow, and difficult country from which to adopt.

Underlying these difficulties are unresolved questions as to the number of children truly in need of intercountry adoption. On the one hand, some adoption advocates perceive in India the characteristics of a society that should be filled with adoptable orphans: large-scale poverty, strong social disapproval of single motherhood, large numbers of children living in institutions and on the streets, and cultural and legal obstacles to domestic adoption. Based on these perceptions, some might expect that there would literally be hundreds of thousands of children in need of intercountry adoption in India at any given time. Instead, India is sending generally around 400 children a year to the United States, and perhaps 1000 a year to all receiving countries.<sup>203</sup>

In a context where 27 million children are born annually in India, and some 164 million children age 6 and under live in India, it is clear that intercountry adoption is only affecting a tiny percentage of Indian children.<sup>204</sup>

The contrary viewpoint is that cultural norms in India have changed to the point where there generally are not enough healthy infants available for infertile Indians wishing to adopt. India, after all, not only has a substantial number of poor people; it also has a dynamic and growing economy, a rapidly increasing middle class, and hence potentially large numbers of prospective adoptive parents---even if domestic adoption was limited to the infertile and/or the middle class, which are themselves questionable limitations.<sup>205</sup> Thus, there are, at a minimum, millions of moderate to high income infertile couples in India who could be interested in domestic adoption, in a society where adoption is increasingly socially acceptable. From that perspective, it is entirely possible the only Indian children truly in need of intercountry adoption are much older and special needs children. The placing of other children outside of India could therefore be viewed as a violation of the Indian and international standards of subsidiarity, and as a distortion largely created by the financial incentives of large adoption fees and donations associated with international placements.

The lessons of adoption from India are therefore quite contestable. Central to the controversy, however, are the issues of child laundering/child trafficking. The Indian Supreme Court, faced with the spectre of an unregulated adoption system subject to abusive practices, simultaneously tried to prevent the abuses while justifying the system based upon the best interests of children.<sup>206</sup> If the regulations are ineffective, it therefore undermines the entire ideal of intercountry adoption serving the needs of children for families. A profit-driven adoption system that buys and steals children to supply the wishes of rich Western nation adults for Indian children lacks any defensible legitimacy.

Some might infer from the Indian experience that regulatory systems are hopeless, and thus that we must either permit intercountry adoptions in the hope that it does more good than harm despite the abuses, or ban intercountry adoption based on the view that it does more harm than good. My own view, however, is that the Indian system instead presents a different, yet unapplied lesson. India teaches the difference between effective and ineffective regulation of intercountry adoption. The specific lesson is that multiplying levels of bureaucracy, review, and institutional actors does not itself prevent or effectively limit child laundering, so long as the financial incentives for such child laundering remain. Thus, so long as permitted adoption fees and related donations are large enough to provide a substantial incentive for child laundering, the system will be vulnerable.

The real irony of the Indian adoption system is that at the outset, more than two decades ago, the Indian Supreme Court correctly stated the necessity of limiting financial aspects of intercountry adoption in the interest of avoiding child trafficking.<sup>207</sup> Yet, over more than two decades, those limitations have been published and then ignored. Thus, on the eve of United States implementation of the Hague Convention in late 2007, the adoption fee and donation policies of most United States agencies were violative of CARA regulations.<sup>208</sup> Further, the media had frequently found prominent Indian agencies to be demanding fees and donations well beyond CARA guidelines.<sup>209</sup> The primary response of CARA to such violations of its rules was apparently to raise fees limits while banning donations, leaving open the question of whether the new rules would

be any more subject to enforcement than the old ones had been, as well as the worry that the new, higher fee limits would essentially build into legitimate fees ample incentives for child laundering.

## **V: Conclusion**

The Hague Convention was a response to the chaotic, corrupt, and abusive practices endemic to pre-Hague intercountry adoptions. The purpose of the Convention was to engender an orderly, ethical, intercountry adoption system free of child trafficking. Adoption advocates also saw the Hague Convention as providing a greater measure of legitimacy for intercountry adoption than exists under the Convention on the Rights of the Child.

Sixteen years after the creation of the Hague Convention, the treaty thus far has failed to meet its goals. Child laundering/child trafficking scandals have continued to arise in the Hague era in sending countries such as Cambodia, China, Guatemala, Haiti, India, Liberia, Nepal, Samoa, and Vietnam. Many potential sending countries, particularly in Africa and Latin America, have decided to close themselves to all or almost all intercountry adoptions, in significant part based on concern over abusive practices, including particularly child trafficking. Years of determined cheerleading by the adoption community have failed to cleanse intercountry adoption from its associations with scandal, corruption, trafficking, and profiteering. The boom in intercountry adoption that accompanied the initial decade after the creation of the Hague Convention is now abating, with further declines anticipated. The legitimacy that intercountry adoption sought has been diminished by a sense of lawlessness, despite the extensive regulation and bureaucratic procedures which often accompany it.

Ironically, then, the United States is entering its own initial period of Hague implementation at a time of failure and decline for intercountry adoption. One danger is that the Treaty itself will be seen as the cause of these declines. In fact, the Hague Convention neither caused the boom in intercountry adoptions that occurred from 1993 to 2004, nor has been a primary cause of recent declines. The boom in intercountry adoption was fueled largely by developments in China, Russia, and Guatemala that operated either independent of, or even in spite of, the Hague Convention. The declines in these key sending nations are not due primarily to the Hague Convention, but have arisen because of developments within those nations.

It is true that sometimes nations that choose to close themselves off to intercountry adoption adhere to the Convention. Many other nations, however, which have never ratified the Convention are also largely closed to intercountry adoption. Similarly, some significant sending nations have joined the Convention, while others have not. The Convention, in short, is flexible enough to encompass sending nations which are either open or closed to intercountry adoption. The Convention concerns minimum safeguards that must be put in place for intercountry adoptions; nations are left free to impose additional safeguards and limitations, or not, as they choose. Thus, it is wrong to blame the Convention itself for the choices some nations make to close themselves to intercountry adoption.

Proponents of the Hague Convention could argue that the Treaty has not yet been given a fair chance to work. The Treaty could hardly be effective when the United States, by far the most significant receiving nation, stood outside of its terms, and thus the fifteen year delay in United States ratification necessarily slowed the progress of the Convention. The most significant sending nation, China, did not implement the Convention until 2006 (although in structure the Chinese adoption system has been Hague compliant for many years). Many significant sending nations, including South Korea, Russia, Ethiopia, and Vietnam, have not yet ratified the Convention. Some significant child laundering scandals occurred in nations, like Guatemala and Cambodia, that had, at the time of the scandals, not yet implemented the Treaty.

If the Treaty is going to be given a chance to work, however, certain lessons should be gleaned. Otherwise, the ratification by China, the United States, and other significant nations in the intercountry adoption system may prove vain.

A brief summary of the relevant lessons would include the following:

1. The example of India teaches that merely having a central authority, accredited actors, and other formal procedural and bureaucratic features of the Hague Convention, are not sufficient to prevent significant corruption and child laundering practices. Although India did not ratify the Hague Convention until 2003, it has had in formal terms a Hague-style intercountry adoption system since approximately 1990---three years before the Hague Convention was even adopted. Yet, India, both before and after formal Hague ratification has suffered from very significant adoption scandals involving child laundering, profiteering, falsified documents, and corruption.
2. The example of India also teaches that it is critically important for governments to enforce strict limitations on fees and donations. The failure to do so is particularly dramatic in India, as the Indian Supreme Court as far back as 1984 emphasized the necessity to do so to avoid child trafficking, and the Indian government has for several decades published limitations. Yet, the evidence is clear that those limitations have been systematically ignored by mainstream Indian and foreign (i.e., United States) actors in intercountry adoption. Both India and the United States have lacked the political will to enforce India's published limitations on fees and donations; without such political will, the formal and external features of the Hague Convention may facilitate, rather than limit, child trafficking.
3. The example of China teaches that a virtual government monopoly of a nation's child welfare and intercountry adoption practice does not eliminate the risks of corruption and child laundering/trafficking. Some have argued that it is largely the presence of private, non-governmental actors that has caused intercountry adoption to be subject to abusive practices. China is a test case of that theory, as its system has not only been Hague compliant in structure long before China formally ratified Hague, but also has relied entirely on governmental actors, including a central authority and governmental human welfare institutions/orphanages. Unfortunately, recent evidence indicates that once China ceased to have overwhelming numbers of abandoned babies in its institutions, some institutions which had become dependent on intercountry adoption

donations/fees began offering money for babies. Government orphanages, in short, are also subject to monetary incentives and corruption.

4. The past treatments of significant child laundering scandals in many sending nations, including Cambodia, China, Guatemala, India, Samoa, and Vietnam, indicate how difficult it can be for both receiving and sending nations to respond to this kind of wrongdoing. Authorities in sending nations often minimize the extent and significance of the misconduct; ironically, by the time authorities take action, political and public pressure has built, and the government imposes a moratorium or ban. Receiving nations seem to only seriously investigate the unusual cases where their own nationals were knowingly involved in intentional misconduct. Thus, the most common situations, where the institutions/agencies in receiving nations are merely negligent, while the intentional misconduct is done by foreign facilitators/intermediaries/orphanages, often escape real investigation by receiving nations. Further, even when investigations occur, receiving nations sometimes have a tendency to simply accept on faith the sometimes faulty assurances of authorities in sending nations. Sadly, in most child laundering cases the affected persons, including the original families, children, and adoptive parents, are left to largely fend for themselves, abandoned by their own agencies as well as the government actors who facilitated and allowed children to be laundered and trafficked.

These lessons suggest that if the Hague Convention is to be successful in its fundamental task of reducing “the abduction, the sale of, and traffic in children,” the following steps will be necessary:

- (1) Strict limitations on fees and donations related to intercountry adoption must be created and vigorously enforced by both sending and receiving countries. All financial aspects of intercountry adoption must be made fully transparent.
- (2) Receiving nations must recognize that they cannot simply outsource their own responsibilities for intercountry adoption to sending nations, due to limited government capacities, lack of political will, and corruption issues in many sending countries. Thus, receiving nations must be willing to seriously investigate the critical steps occurring in sending countries, including especially the processes by which children are obtained and labeled as eligible for intercountry adoption. Although the Hague Convention may understandably give sending nations an important role in determining the child’s eligibility for adoption, receiving nations as a matter of national sovereignty must make their own determinations of which children are eligible to enter their countries as adopted orphans. An interpretation of the Hague Convention that prevents or discourages receiving nations from independently investigating and evaluating the history and status of “orphans” would render the Convention itself counterproductive. The Convention was intended to create safeguards for intercountry adoption, not remove them, and receiving country investigations and evaluations of orphan status are an important safeguard.

- (3) Specific cases of child laundering and child trafficking in the intercountry adoption system must be investigated in a manner analogous to an airplane crash. Such situations are tragic, but create opportunities to learn what has gone wrong, and what can be done to avert future disasters. The current tendency to essentially privatize such wrongdoing as simply a problem for adoption triad members, without significant government investigation and involvement, must end.
- (4) Hague receiving countries, including particularly the United States, must apply equally vigorous regulatory and investigative approaches to adoptions from both Hague and non-Hague countries. While intercountry adoptions from non-Hague countries may still be permissible, receiving countries should be equally vigilant in regard to all intercountry adoptions. Otherwise, even if the Convention eventually proves effective, a two-tier system will develop in which agencies are constantly opening up adoptions in non-Hague countries in order to escape increased safeguards. The current approach by the United States of only applying increased regulatory safeguards to adoptions from Hague countries seems nonsensical and should be discontinued.

The first sixteen years of experience since the creation of the Hague Convention teach that without these specific steps, the Convention itself will be ineffective or even counterproductive in relationship to the harms of child trafficking, profiteering, corruption, and abusive adoption practices. The question for the future, therefore, is whether there will be the political will to impose, through the Convention or otherwise, the necessary regulatory and investigatory safeguards. Mere ratification of the Hague Convention will not, in itself, be sufficient.

Optimistically, it is possible to hope that governments, institutions, and persons with a stake in intercountry adoption will act to implement the necessary reforms. Pessimists could point out the avoidant rhetoric and behavior of adoption advocates, which suggests that the adoption community itself will be the greatest danger to the future of intercountry adoption. For if the adoption community continues to avoid and minimize the significance of child trafficking in the past and present of intercountry adoption, the future of intercountry adoption will be dismal indeed.

---

\*Harwell G. Davis Professor of Constitutional Law, Cumberland Law School, Samford University. The author wishes to thank Desiree Smolin as we have worked together in analyzing and seeking reform of the current intercountry adoption system. I also want to thank Shannon Hardin and Rachel Winford for their research assistance.

<sup>1</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1138 [hereinafter Hague Convention].

<sup>2</sup> See Status Table, Hague Conference on Private International Law, available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

<sup>3</sup> See U.S. Department of State, Immigrant Visas Issued to Orphans Coming to U.S., [hereinafter State Department Intercountry Adoption Statistics], available at [http://adoption.state.gov/news/total\\_chart.html](http://adoption.state.gov/news/total_chart.html).

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*; see also U.S. State Department, Table VIII, Immediate Relative Visas Issued Fiscal Year 2007, available at <http://www.travel.state.gov/pdf/FY07AnnualReportTableVIII.pdf> [hereinafter cited as 2007 Statistics]; U.S. Department of State, IR3 – IH3 – IR4 – IH4 Visa Issuances for FY 2008, available at <http://www.adoption.state.gov/pdf/total.pdf>; see also [http://www.adoption.state.gov/news/total\\_chart.html](http://www.adoption.state.gov/news/total_chart.html) (including slightly different statistic for FY 2005 than previously reported – 22,739 instead of 22,728); David Crary, AP National Writer, Foreign Adoptions by Americans drop sharply, Nov. 17, 2008, available at [http://www.usatoday.com/news/nation/2008-11-17-3481490130\\_x.htm](http://www.usatoday.com/news/nation/2008-11-17-3481490130_x.htm).

<sup>6</sup> See Elizabeth Bartholet, Slamming the Door on Adoption, Washington Post, Nov. 4, 2007, at pg. B07, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/02/AR2007110201782.html> [hereinafter cited as Bartholet editorial].

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See *id.* (critical of UNICEF, United States State Department, and other human rights organizations); Elizabeth Bartholet, International Adoption: Thoughts on the Human Rights Issues, 13 Buffalo Human Rights Law Review 151 (2007)(critical of human rights activists, UNICEF, and U.N. Committee on the Rights of the Child).

<sup>12</sup> See *id.*; Elizabeth Bartolet, International Adoption: The Child’s Story, 24 Georgia State University Law Review 333, 340 (2007)(complaining that “many who claim they speak for children, including powerful organizations like UNICEF, and many NGOs that purport to represent children’s rights, take a negative view of international adoption.”); Sara Dillon, The Missing Link: A Social Orphan Protocol to the United Nations Convention on the Rights of the Child, Human Rights & Globalization Law Review, Fall/Spring 2008, 39 (complaining about negative press coverage of intercountry adoption, UNICEF, the International Social Service, Save the Children Foundation, and the Chinese government).

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

---

<sup>14</sup> See David M. Smolin, Child Laundering, 52 Wayne L. Rev. 113 (2006)[hereinafter cited as Child Laundering]; David M. Smolin, Child Laundering as Exploitation: Applying Anti-Trafficking Norms to Intercountry Adoption Under the Coming Hague Regime, 32 Vermont Law Review 1 (2007)[hereinafter cited as Child Laundering as Exploitation].

<sup>15</sup> See Child Laundering, supra note 14.

<sup>16</sup> Kim Clark & Nancy Shute, *The Adoption Maze*, U.S. News and World Report, vol. 130, is.10 March 12, 2001

<sup>17</sup> See, e.g., Embassy of the United States, Adopted Children Immigrant Visa Unit, Summary of Irregularities in Adoptions in Vietnam, April 25, 2008, available at: [http://vietnam.usembassy.gov/irreg\\_adoptions042508.html](http://vietnam.usembassy.gov/irreg_adoptions042508.html); Richard Cross, Rushton Distinguished Lecture Series – Reforming Intercountry Adoption: Present Realities and Future Prospects, Cumberland Law School, Samford University, “What Really Happened in Cambodia,” (Apr. 15, 2005), available at: <http://www.cumberland.samford.edu/faculty/david-m-smolin>; Trish Maskew, Child Trafficking and Intercountry Adoption: The Cambodian Experience, 35 Cumberland Law Review 619 (2005); U.S. Immigration and Customs Enforcement, Backgrounder, Operation Broken Hearts (Nov. 19, 2004); Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography 5-18, U.N. Comm’n on Human Rights, 56<sup>th</sup> Sess., Provisional Agenda Item 13, U.N. Doc. E/CN.4/2000/73/Add.2 (2000) available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G00/101/54/PDF/G0010154.pdf?OpenElement> ; Esben Leifsen, Child Trafficking and Formalisation: The Case of International Adoption from Ecuador, 22 Children & Society 212 (2008); <http://fleasbiting.blogspot.com/> (web blog by Desiree Smolin and Usha Smerdon collecting numerous press and other reports concerning abusive intercountry adoption practices in a variety of countries).

<sup>18</sup> Cindy Freidmutter, Esq., Testimony before House Committee on International Relations, May 22, 2002, available at <http://www.adoptioninstitute.org/policy/hagueregs.html#background> .

<sup>19</sup> Hague Convention, supra note 1, at preamble.

<sup>20</sup> *Id. Id.*

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

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

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

<sup>25</sup> See Sara Dillon, supra note, Human Rights and Globalization L Rev, Fall/Spring 2008 39, at 79.

<sup>26</sup> See, .e.g. Hague Convention, art. 1; see also infra notes and accompanying text.

<sup>27</sup> See Hague Conference on Private International Law, The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention, Guide to Good Practice, Guide No. 1 (2008), at pg. 100, 102 [hereinafter cited as Hague Good Practice Guide.]

<sup>28</sup> Hague Convention, supra note 1, at preamble.

<sup>29</sup> Hague Convention, supra note 1, at art 4(c)(1).

<sup>30</sup> Hague Convention, supra note 1, at art. 4(c)(3).

<sup>31</sup> See Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980)(codified as amended in scattered sections of 42 U.S.C.)[hereinafter AACWA]; Adoption and Safe Families Act, Pub. L. No. 105-89, 111 Stat. 2115 (1997)(codified at 42 U.S.C. sections 620-632, 670-679 (2000)[hereinafter ASFA]; see specifically 42 U.S.C. 671(a)(15). Under ASFA reasonable efforts to reunite are not required under certain aggravated circumstances, such as torture or sexual abuse. 42 U.S.C. section 671(a)(15)(D).

<sup>32</sup> David Smolin, Intercountry Adoption and Poverty: A Human Rights Analysis, 36 Capital University Law Review (2007)[hereinafter Intercountry Adoption and Poverty].

<sup>33</sup> Hague Convention, supra note 1, preamble and art. 1.

<sup>34</sup> Hague Convention, supra note 1, at art 1(a).

<sup>35</sup> See, e.g., Sara Dillon, supra note 25 .

<sup>36</sup> Hague Convention, supra note 1, at art. 1(a).

<sup>37</sup> Hague Good Practice Guide, supra note , at 102.

<sup>38</sup> See Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 at art. 7, 8, 9 [hereinafter CRC].

<sup>39</sup> See generally Intercountry Adoption and Poverty, supra note 32.

- 
- <sup>40</sup> See Hague Convention, *supra* note 1, at preamble, art. 4(b).
- <sup>41</sup> See Hague Convention, *supra* note 1 at preamble, art 1 and art.14-22.
- <sup>42</sup> See Hague Convention, *supra* note 1, at preamble, art. 1(b).
- <sup>43</sup> See Hague Convention, *supra* note 1, preamble and art. 1.
- <sup>44</sup> See Hague Convention, *supra* note 1.
- <sup>45</sup> Letter from the Secretary General of Interpol giving some information on the sphere of activities of this Organization concerning crime prevention in connection with intercountry adoption, Preliminary Document No. 5 of April 1991, Proceedings of the Seventeenth Session, 10 to 29 May 1993, Tome II Adoption – co-operation [hereinafter cited as Interpol Letter]; Explanatory Report by G. Parra-Aranguren, Proceedings of the Seventeenth Session, 10 to 29 May 1993, Tome II Adoption – co-operation, Hague Conference on Private International Law, at 555 [hereinafter cited as Explanatory Report].
- <sup>46</sup> See Optional Protocol to the Convention on the Right of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 263, U.N. GAOR, 54<sup>th</sup> Sess., Supp. No. 49, U.N. Doc. A/Res/54/263 (2000), at art. 3(a)(ii), [hereinafter Optional Protocol (Sale of Children)].
- <sup>47</sup> See Explanatory Report, *supra* note 45, at 555.
- <sup>48</sup> *Id.*, at 555.
- <sup>49</sup> *Id.*, at 555.
- <sup>50</sup> *Id.*, *Id.*, at 555
- <sup>51</sup> J.H.A. van Loon, Report on intercountry adoption, Preliminary Document No. 1 of April 1990, Preliminary Work, Proceedings of the Seventh Session, 10 to 29 May 1993 [hereinafter cited as J.H.A. van Loon Report], at pg. 101.
- <sup>52</sup> J.H.A. van Loon, Report on intercountry adoption, Preliminary Document No. 1 of April 1990, Preliminary Work, Proceedings of the Seventh Session, 10 to 29 May 1993 [hereinafter cited as J.H.A. van Loon Report]; see Peter H. Pfund, Intercountry Adoption: The 1993 Hague Convention: Its Purpose, Implementation, and Promise, 28 Fam. L. Q. 53, 54 (1994)(listing the “very comprehensive report on intercountry adoption prepared by Hans van Loon of the Permanent Bureau” as one of the significant preparatory documents in the creation of the Convention.
- <sup>53</sup> See, e.g., Statement by Hans van Loon, Secretary General of the Hague Conference on Private International Law, on the occasion of the deposit of the instrument of ratification of the Hague Convention...by the United States of America, 12 December 2007 [hereinafter Hans van Loon Ratification Statement]. Hans van Loon was First Secretary at the Permanent Bureau at the time that the Hague Convention on Intercountry Adoption was created. See, e.g., Proceedings of the Seventeenth Session, 10 to 29 May 1993, Tome II Adoption – co-operation, at 450.
- <sup>54</sup> Hans van Loon Ratification Statement, *supra* note .
- <sup>55</sup> See Bartholet Editorial, *supra* note 11.
- <sup>56</sup> J.H.A. van Loon Report, *supra* note 52 , at 51.
- <sup>57</sup> *Id.*, *Id.*, at 51.
- <sup>58</sup> *Id.* at 51.
- <sup>59</sup> *Id.* at 51.
- <sup>60</sup> *Id.* at 51.
- <sup>61</sup> *Id.* at 51.
- <sup>62</sup> *Id.* at 51.
- <sup>63</sup> *Id.* at 53.
- <sup>64</sup> *Id.* at 53.
- <sup>65</sup> See Child Laundering, *supra* note 14.
- <sup>66</sup> J.H.A. van Loon Report, *supra* note 52, at 53.
- <sup>67</sup> *Id.* at 53.
- <sup>68</sup> *Id.* at 53.
- <sup>69</sup> *Id.* at 53.
- <sup>70</sup> See *Id.* at 53.
- <sup>71</sup> *Id.* at 55
- <sup>72</sup> *Id.* at 93-95.
- <sup>73</sup> *Id.* at 93 – 95.
- <sup>74</sup> *Id.* at 93-95.
- <sup>75</sup> *Id.* at 95.

---

<sup>76</sup> *Id.* at 95.

<sup>77</sup> *Id.* at 101.

<sup>78</sup> *Id.* at 53, 95.

<sup>79</sup> *Id.* at 93 – 101.

<sup>80</sup> *Id.* at 95.

<sup>81</sup> See *Id.* at 95-99.

<sup>82</sup> *Id.* at 97.

<sup>83</sup> See Pfund, *supra* note 52 , at 56, 59 – 63.

<sup>84</sup> See Pfund,, *supra* note52, at 59 – 63.

<sup>85</sup> See Comments on the Final Regulations Implementing the Hague Adoption Convention, Ethica, March 2006, available at: <http://ethicanet.org/HagueRegComments.pdf> .

<sup>86</sup> See Pfund, *supra* note 52, at 59 – 63.

<sup>87</sup> See Pfund, *supra* note 52, at 54.

<sup>88</sup> *Id.* at 54.

<sup>89</sup> *Id.* at 54-55.

<sup>90</sup> See Hague Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions.

<sup>91</sup> See Conclusions of the Special Commission of June 1990 on intercountry adoption, Preliminary Document No. 3 of August 1990, at 129 (“The starting point for the Convention should be the United Nations Convention on the Rights of the Child...and which calls for the conclusion of multilateral agreements to promote the standards set by its Article 21.”).

<sup>92</sup> CRC, *supra* note 12, at art. 21(e); see also *supra* note 74 (Conclusions of the Special Commission, pg. 129).

<sup>93</sup> See *supra* note 91.

<sup>94</sup> CRC, *supra* note 12, at art. 35.

<sup>95</sup> See Permanent Bureau, Memorandum concerning the preparation of a new Convention on international co-operation and protection of children in respect of intercountry adoption, cited in G. Parra-Aranguren, Report of the Special Commission [hereinafter Report of the Special Commission], Preparatory Materials, at 179 & n. 12.

<sup>96</sup> See *id.*

<sup>97</sup> Report of the Special Commission, *supra* note , at 177.

<sup>98</sup> See *Id.* at 179.

<sup>99</sup> See *Id.* at 181 & n. 21.

<sup>100</sup> *Id.* at 181.

<sup>101</sup> *Id.* at 183.

<sup>102</sup> *Id.* at 183.

<sup>103</sup> *Id.* at 183.

<sup>104</sup> See Dillon, *Supra* note 12.

<sup>105</sup> G. Parra-Aranguren, Explanatory Report, para. 52, at pg. 555.

<sup>106</sup> *Id.* See *id.*

<sup>107</sup> See Hague Convention, *supra* note 90 , at preamble, art. 1(b).

<sup>108</sup> G. Parra-Aranguren, Explanatory Report, para. 52, at pg. 555.

<sup>109</sup> Explanatory Report, *supra* note 45, at para. 53, pg. 555.

<sup>110</sup> Explanatory Report, *supra* note 45, at para. 54, ,pg. 555; see also Interpol Letter, *supra* note .

<sup>111</sup> J.H.A. van Loon Report, *supra* note ? at 129.

<sup>112</sup> See [http://adoption.state.gov/news/total\\_chart.html](http://adoption.state.gov/news/total_chart.html)

<sup>113</sup> *Id.*

<sup>114</sup> See Peter Selman, The Movement of Children for Transnational Adoption: The Rise and Fall of Intercountry Adoption, Selected Tables from presentation at The Globalization of Motherhood Symposium (Oct. 2008); Peter Selman, Intercountry Adoption in the new millennium: the ‘quiet migration’ revisited, 21 Population Research and Policy Review 205 (2002).

<sup>115</sup> See *id.*

<sup>116</sup> See Status Table, Hague Conference on Private International Law, available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

---

<sup>117</sup> See State Department Intercountry Adoption Statistics (Immigrant Visas Issued to Orphans Coming to U.S.)

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> See Status Table, Hague Conference on Private International Law, available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

<sup>121</sup> See Nili Luo & David M. Smolin, *Intercountry Adoption and China: Emerging Questions and Developing Chinese Perspectives*, 35 *Cumb. L. Rev.* 597, 599-600 (2005)[hereinafter cited as Luo].

<sup>122</sup> *Id.* at 597; see generally also Kay Ann Johnson, *Wanting a Daughter, Needing a Son* (2004).

<sup>123</sup> Luo, *supra* note , at 602.

<sup>124</sup> See Status Table, Hague Conference on Private International Law, available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

<sup>125</sup> See Luo & Smolin, *supra* note ? at 616.

<sup>126</sup> See State Department Intercountry Adoption Statistics (Immigrant Visas Issued to Orphans Coming to U.S.)

<sup>127</sup> See Status Table, Hague Conference on Private International Law, available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

<sup>128</sup> See Table- Immigrant Visas Issued to Orphans Coming to U.S. (written table)

129

130

131

132

133

134

135

136

<sup>137</sup> See Status Table, Hague Conference on Private International Law, available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69); See also State Department Intercountry Adoption Statistics (Immigrant Visas Issued to Orphans Coming to U.S.), *Child Laundering*, *supra* note 14, at 163- 170.

138

<sup>139</sup> See *supra* notes and accompanying text.

<sup>140</sup> See Jennifer Banks, *The U.S. Market for Guatemalan Children: Suggestions for Slowing the Rapid Growth of Illegal Practices Plaguing the International Child Adoptions*, 28 *Suffolk Transnat'l L. Rev.* 31, 45 (2004)[hereinafter cited as Banks]; *Child Laundering*, *supra* note , at 167.

<sup>141</sup> Banks, *supra* note 140, at 46-47

<sup>142</sup> *Id.* at 42-43.

143

<sup>144</sup> See [http://adoption.state.gov/news/total\\_chart.html](http://adoption.state.gov/news/total_chart.html);

<sup>145</sup> See State Department Intercountry Adoption Statistics (Immigrant Visas Issued to Orphans Coming to U.S.)

<sup>146</sup> See [http://adoption.state.gov/news/total\\_chart.html](http://adoption.state.gov/news/total_chart.html)

<sup>147</sup> See State Department Intercountry Adoption Statistics (Immigrant Visas Issued to Orphans Coming to U.S.)

<sup>148</sup> See *supra* note 5 and accompanying text.

<sup>149</sup> See *supra* note 113 (Peter Selman sources).

<sup>150</sup> See *supra* 3 and accompanying text.

<sup>151</sup> U.S. Department of State, *China Country Report*, available at <http://adoption.state.gov/country/china.html>. [hereinafter cited as China Country Report].

<sup>152</sup> See Patricia J. Meier and Xiaole Zhang, *Sold Into Adoption: The Hunan Baby Trafficking Scandal Exposes Vulnerabilities in Chinese Adoptions to the United States*, 39 *Cumb. L. Rev.* 87, 91 (2009).

<sup>153</sup> See *id.*

<sup>154</sup> See China Country Report, *supra* note (listing China's restrictive policies on whom may adopt, which became effective May 1, 2007).

---

<sup>155</sup> See David Crary, Wait Times Expand Sharply for Adoptions from China, Boston Globe, 4/10/2008, available at [http://www.boston.com/news/nation/articles/2008/04/10/wait\\_times\\_expand\\_sharply\\_for\\_adoptions\\_from\\_china/](http://www.boston.com/news/nation/articles/2008/04/10/wait_times_expand_sharply_for_adoptions_from_china/)

<sup>156</sup> US Department of State, Russia Country Report, available at: <http://adoption.state.gov/country/russia.html>.

<sup>157</sup> See Foreign adoptions down in Russia as foster care grows, Moscow News Weekly, Nov. 27, 2008, available at <http://www.mnweekly.ru/news/20081127/55359067.html>.

<sup>158</sup>  
<sup>159</sup> BBC News, *New Adoption Death Alarms Russia*, BBC News, July 12, 2005, <http://news.bbc.co.uk/2/hi/europe/4676513.stm>.

<sup>160</sup> See Martin T. Stein et al., *International Adoption: A 4-Year-Old-Child with Unusual Behaviors Adopted at 6 Months of Age*, 114 *Pediatrics* 1425, 1425 (2004).

<sup>161</sup> *Id.*; see also Ronald S. Federici, Help for the Hopeless Child (1998) (“With Special Discussion for Assessing and Treating the Post-Institutionalized Child”).

<sup>162</sup> See generally David M. Smolin, Child Laundering as Exploitation: Applying Anti-Trafficking Norms to Intercountry Adoption Under the Coming Hague Regime 1, 18-29 (2007)(describing adoption of Masha by Matthew Mancuso).

<sup>163</sup> Home Study—Matthew Alan Mancuso, (Nov. 20, 1997), in *Sexual Exploitation of Children Over the Internet: Follow-up Issues to the Masha Allen Adoption: Hearing before the Subcomm. on Oversight and Investigations of the Comm. on Energy and Commerce* [hereinafter *Masha Allen Adoption Hearing*], 109<sup>th</sup> Cong. 1, 106-13 (2006).

<sup>164</sup> *Id.* at 3-5.

<sup>165</sup> See generally *Masha Allen Adoption Hearing*, *supra* note ?.

<sup>166</sup> See generally Michael Pearson, *Adoption Services Firm Investigated Over Missing Funds*, Atlanta Journal-Constitution, Oct. 3, 2006.

<sup>167</sup>

<sup>168</sup>

<sup>169</sup> See US State Department, Guatemala Country Report, available at <http://adoption.state.gov/country/guatemala.html>.

<sup>170</sup> *Id.*; see also <http://hagueevaluation.com/guatemala/> (

<sup>171</sup> Catherine M. Bitzan, *Our Most Precious Resource: How South Korea is Poised to Change the Landscape of International Adoption*, 17 *Minn J. Int’l L.* 121, 124-25 (2008).

<sup>172</sup> See *Id.* at 125-26.

<sup>173</sup> See State Department Intercountry Adoption Statistics (Immigrant Visas Issued to Orphans Coming to U.S.)

<sup>174</sup>

<sup>175</sup> See Status Table, Hague Conference on Private International Law, available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

<sup>176</sup> US State Department, Ethiopia Country Report, available at <http://adoption.state.gov/country/ethiopia.html> .

<sup>177</sup> US State Department, Total Adoptions to the United States, available at [http://adoption.state.gov/news/total\\_chart.html](http://adoption.state.gov/news/total_chart.html).

<sup>178</sup> See *supra* notes and accompanying text; Child Laundering, *supra* note , at ; US State Department, Liberia Country Report; Nadene Ghouri, Liberia’s ‘orphan’ trade, Nov. 14, 2008, BBC News, available at [http://news.bbc.co.uk/2/hi/programmes/crossing\\_continents/7726687.stm](http://news.bbc.co.uk/2/hi/programmes/crossing_continents/7726687.stm)

<sup>179</sup> See *supra* notes and accompanying text.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> The following summary of India’s intercountry adoption system builds upon the authors previous articles. See David M. Smolin, *The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals*, 35 *Seton Hall Law Review* 403 (2005); Child Laundering, *supra* note , at 146-58.

- 
- <sup>185</sup> See State Department Intercountry Adoption Statistics Supra note 3; International Adoption Facts, The Evan B. Donaldson Adoption Institute available at: <http://www.adoptioninstitute.org/FactOverview/international.html>
- <sup>186</sup> *Id.*
- <sup>187</sup> See Status Table, supra note 2, available at: [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).
- <sup>188</sup> David M. Smolin. "The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals" *Seton Hall Law Review* Thirty-Five.Number Two (2005): 403-493. Available at: [http://works.bepress.com/david\\_smolin/2](http://works.bepress.com/david_smolin/2)
- <sup>189</sup> See Hague Convention, supra note 1.
- <sup>190</sup> Smolin, *Seton Hall Law Review*, supra note 38 at 427&28 (quoting *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 251).
- <sup>191</sup> CRC Art 20(3),.
- <sup>192</sup> Hague Convention Supra note 1; See CARA, Guidelines for Adoption from India – 2006, available at: [http://cara.nic.in/guide\\_inter\\_country.htm](http://cara.nic.in/guide_inter_country.htm)
- <sup>193</sup> *Id.*
- <sup>194</sup> Arun Dohle, Inside Story of an Adoption Scandal, 39 *Cumberland Law Review* 131, 134 (2008)
- <sup>195</sup> Hague Convention supra note 1 Art 6,
- <sup>196</sup> *Id.* at 180.
- <sup>197</sup> Hague Convention, Supra note 1, art 32.
- <sup>198</sup> Hague Convention Supra note 1, art 11.
- <sup>199</sup> David M. Smolin. "The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals" *Seton Hall Law Review* Thirty-Five.Number Two (2005): 403-493.
- <sup>200</sup> *Id.*, Child Laundering, supra note , at 154-58; Arun Dohle, Inside Story of An Adoption Scandal, 39 *Cumberland Law Review* 131 (2008); Scott Carney, Meet the Parents: The Dark Side of Overseas Adoption, *Mother Jones*, March/April 2009, available at <http://www.motherjones.com/politics/2009/03/meet-parents-dark-side-overseas-adoption>.
- <sup>201</sup> Dohle, 39 *Cumberland Law Review* 131, 184.
- <sup>202</sup> See Gita Ramaswamy & Bhangya Bhukya, *The Labadas: A Community Besieged: A Study on the Relinquishment of Lambada Girl Babies in South Telangana*, 4-5 (2001) (on file with author).
- <sup>203</sup> Dohle 39 *Cumberland Law Review* 131, 184. .
- <sup>204</sup> See Census of India, available at .
- <sup>205</sup> Daniel H. Pink, *The New Face of the Silicon Ade: How India Became the Capital of the Computing Revolution*, *WIRED* Feb. 2004 at 7 available at: <http://www.wired.com/wired/archive/12.02/india.html>
- <sup>206</sup> See *Laxmi Kant Pandey v. Union of India*, (1984) 2 S.C.C. 244 (India).
- <sup>207</sup> See *The Two Faces of Intercountry Adoption*, supra note , at 435-37.
- <sup>208</sup> See summary available from author.
- <sup>209</sup> See Dohle, supra note .