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INTERNATIONAL ADOPTION: THE HUMAN RIGHTS ISSUES

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I. Introduction

Human rights issues are at the core of the current debate over international adoption. Many of us who support international adoption see it as serving the most fundamental human rights of the most helpless of humans – the rights of children to the kind of family love and care that will enable them to grow up with a decent chance of living a healthy and fulfilling life. Many who oppose international adoption, however, argue that it violates the human rights of the children placed and of any birth parents that may exist, and serves only the interests of those who should be seen as having no rights – the adults who want to become parents.

Human rights activists in the international adoption arena have spoken with a relatively singular voice – a voice that is generally critical of international adoption, calling either for its abolition, or for restrictions that curtail its incidence in ways that I see as harmful to children, limiting their chances of being placed in nurturing homes with true families, and condemning even those who are placed eventually to unnecessary months and years in damaging institutions. This voice has had a powerful impact, in part because the international children’s rights organizations taking the negative view include such powerful ones as UNICEF and the U.N. Committee on the Rights of the Child. Also, opposition to international adoption that purports to be grounded in children’s human rights tends to be more politically palatable and thus persuasive, than arguments grounded in a country’s nationalist claims of ownership rights over its children, or nationalist pride

in not appearing unable to care for its children. It is important for those who care about human rights and about children to think through their position on these issues, rather than simply accepting without question the notion that the children's human rights establishment has a fix on the truth in this area. The future of international adoption, and of many children, is at stake.

In international adoption adoptive parents and children meet across lines of difference involving not just biology, but also socio-economic class, race, ethnic and cultural heritage, and nationality. Typically the adoptive parents are relatively privileged white people from one of the richer countries of the world, and typically they will be adopting a child born to a desperately poor birth mother belonging to one of the less privileged racial and ethnic groups in one of the poorer countries of the world. International adoption is characterized by controversy. Some see it as an extraordinarily positive form of adoption. It serves the fundamental need for family of some of the world's neediest children. The families formed demonstrate our human capacity to love those who are, in many senses, "other," in a world which is regularly torn apart by the hatred of alien others. But many see international adoption as one of the ultimate forms of human exploitation, with the rich, powerful and white taking children from poor, powerless members of racial and other minority groups, thus imposing on those who have little what many of us might think as the ultimate loss.

International adoption grew steadily and significantly over the half-century following World War II, with many thousands of children crossing national borders for adoption each year. But the controversy surrounding such adoption continues, and pro-adoption moves have recently been matched by moves in the opposite direction. In the past three years, adoptions from other countries into the U.S. have gone significantly down in number.² The prior general increase in numbers reflects the opening up of new countries willing to send some of their homeless children

abroad for purposes of finding adoptive homes. However the typical pattern has been for countries that do open up to close down again, either by prohibiting international adoption altogether, or by creating restrictions that limit the number of children placed and increase the waiting periods that those children who are placed spend in damaging institutions. This happens without regard to the fact that millions of children in these countries are growing up or dying in horribly inadequate orphanages or on the streets.

The 1993 Hague Convention on Inter-Country Adoption illustrates the conflict today in terms of directions for law reform. In many ways the Convention represents a step in the direction of legitimizing international adoption. Most of the countries involved in both sending and receiving children agreed to the terms of this Convention and many have ratified it, with more likely to do so soon. The Hague Convention recognizes international adoption as preferable for children as compared to any in-country placement other than adoption, by contrast to the earlier Convention on the Rights of the Child which prefers in-country foster care and other “suitable” institutional care to out-of-country adoption. However, the original goals of the Hague Convention included the idea of *facilitating* international adoption, and expediting the placement of children in need. International children’s human rights organizations succeeded in changing the focus of the Hague Convention negotiations so that this facilitation goal was eliminated and the thrust became more single-mindedly focused on preventing adoption abuses. In addition, the Hague Convention is being used by many adoption opponents to argue for the kind of state monopoly control over international adoption that often functions to effectively close, not open, opportunities for adoption. (See II at 18-20 *infra*)

UNICEF has played a major role in recent attempts to restrict international adoption.³ UNICEF’s official policy on international adoption makes clear its generally negative attitude. The

policy only grudgingly approves of such adoption, and places it low on the hierarchy of alternatives for children in need of care, even if perhaps not quite as low as institutional care.⁴ It states in pertinent part:

For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care, which should be used only as a last resort and as a temporary measure. Inter-country adoption is one of a range of care options which may be open to children, and for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution.

UNICEF makes clear in this policy statement and in discussions of its significance that “permanent family” care in the form of foster care in-country is preferred to out-of-country adoption. Of course there is little to no foster care in most sending countries today, and even in countries like the U.S. where foster care is the primary placement for children in state care, it is rarely “permanent” even when it takes the form of kinship foster care. Another paragraph in this policy statement argues that the money involved in international adoption, together with the lack of adequate regulation, has created an industry “where profit, rather than the best interests of children, takes centre stage,” and where “abuses include the sale and abduction of children, coercion of parents, and bribery, as well as trafficking to individuals whose intentions are to exploit rather than care for children.” UNICEF has, in recent years, issued a variety of statements indicating that large numbers of adoptions from any particular country should be seen as an indication of problems, requiring restrictive action. UNICEF has recently promoted forms of adoption “reform” law in Guatemala which have resulted in at least temporarily closing down international adoption in that country;⁵ many think that the proposed reforms will at a minimum limit any such adoption in the future to very small numbers. Along with many others, UNICEF has for years claimed that Guatemalan adoptions are plagued by problems including illegal payments

to birth mothers. However the extent of any illegal activity in Guatemala is subject to debate. Moreover Guatemala is one of the very few countries that have, in recent years, kept many babies pre-placement in decent foster care, rather than in damaging institutions, and one of the few that have placed for adoption in infancy, conditions that are central to the children's prospects for healthy, normal development. Guatemala has also freed up significant numbers of children for placement, ranking second in 2006 for the number of children sent to the U.S. for adoption, despite its relatively small size.⁶

The European Parliament was, in recent years, dominated by forces taking the position that international adoption was inherently a violation of children's human rights, and committed to making Eastern European countries agree to outlaw international adoption as a condition to joining the European Union. Romania, where ongoing poverty and dislocation resulting from the disastrous Ceausescu regime mean that vast numbers of children continue to be relegated to orphanages which deny them any decent life prospects, was induced by this pressure to enact in June of 2004, a law eliminating international adoption altogether (except for adoption by a child's grandparents).

Overall, as of 2003, *almost half of the forty nations that had made the top twenty list of nations sending children to the U.S. for adoption within the previous 15 years were either closed or effectively closed to intercountry adoption.*⁷

International adoption is not a panacea. It will never be more than a very partial solution for the problems of the homeless children of the world. There are millions on millions of those children. The best solution in any event would be to solve the problems of social and economic injustice that prevent so many birth parents from being able to raise their children themselves. But given the realities of today's world, and the existence of so many children who will not be raised

by their birth parents, international adoption does provide a very good solution for virtually all of those homeless children lucky enough to get placed. In my view it also pushes us forward on a path to creating a more just world. At the moment, most of those who matter in determining the world's

Policies on international adoption see the issues differently.

II. The Politics and the Policy Pros and Cons

There are three issues at the heart of the debate over international adoption. One has to do with the interests of existing children who need homes and could realistically be placed in international adoptive homes, but are unlikely to find in-country adoptive homes. Another has to do with the interests of the larger community, particularly in the sending country, and particularly including birth parents and homeless children with no prospects of international adoptive placement. The third has to do with adoption abuses such as baby buying and other violations of core adoption laws.

Opponents of international adoption range along a broad spectrum from those who believe that it is inherently a violation of human rights and should be entirely eliminated, such as Baroness Emma Nicholson, former Rapporteur to Romania for the European Parliament,⁸ to those who think it should be treated as a last resort, with the focus kept on improving in-country welfare services and on regulation designed to better ensure against adoption abuses. Supporters of international adoption range along a similarly broad spectrum, from those who think it should be treated as one of the best options for children who cannot expect to be reunited with their birth parents, to those who think that it should at least be kept open and be treated as a preferred option to institutional care in-country. Most of those who count themselves as supporters go along with the idea of a preference for in-country adoption over out-of-country adoption. Essentially all agree with the core

adoption law principles ensuring that children made available for adoption have been properly separated from their birth parents, with those parents having consented to adoption without any coercion or payment, and ensuring also that the children are placed with appropriately screened adoptive parents.

I place myself at the most enthusiastic end of the spectrum of supporters. I find it overwhelmingly clear that international adoption serves the best interests of existing children in need of homes. I take seriously the arguments based on larger community interests, but think in the end that encouraging and facilitating international adoption does more to serve those interests than does restricting and closing down such adoption. And finally, in addressing adoption law abuses, I think we need to work to eliminate the abuses but keep the focus on the bigger picture – ensuring that as many children as possible receive permanent nurturing homes as early in life as possible. We have to avoid, as the saying goes, throwing the baby out with the bath water.

A. Interests of Existing Children In Need of Homes Who Could be Placed Internationally

Here the case for international adoption rests on the social science and the child development expertise that demonstrates how harmful it is to children to grow up on the streets or in institutions,⁹ and how well children do when placed in international adoptive homes.¹⁰ Children placed early in life in international adoptive homes are likely to do essentially as well in their families and in life as children raised by their biological parents in those receiving countries. Children subjected to terrible experiences prior to adoptive placement, as many international adoptees have been, often show remarkable success in overcoming some of the damage done by these early experiences. By contrast, research on orphanages shows how devastatingly harmful institutional life is for children. Interestingly even the better institutions have proven incapable of providing the personal care that human children need to thrive physically and emotionally.

Research on children who started their early life in institutions demonstrates vividly the damage such institutions do even when the children are lucky enough to escape the institutions at relatively early ages.¹¹ Age at adoptive placement regularly shows up in adoption studies as the prime predictor of likelihood of successful life adjustment.

Opponents of international adoption argue that children are best served by remaining in their community of origin, where they can enjoy their racial, ethnic and national heritage. They argue that children are put at risk when placed with dissimilar adoptive parents in foreign countries, where they may be subject to ethnic and racial discrimination in addition to the basic loss of identity associated with their community of origin. But the opponents' claims are based on extreme romanticism, without any grounding in the available evidence and without support in common sense. Children doomed to grow up in orphanages or on the streets cannot expect to enjoy their cultural heritage in any meaningful way. And the real choice today for most existing homeless children in the countries of the world that are or might become sending countries, is between life – and often death – in orphanages or on the streets in their home country, and for a lucky few, life in an adoptive home abroad. Possibilities for adoption at home in the birth country are drastically limited by the poverty of the population and by attitudes toward adoption in most Asian and many other countries that are more blood-biased and otherwise discriminatory toward adoption than is the U.S.

Opponents argue that children might be placed in in-country foster care, and in that way benefit from remaining in their country and culture, as well as possibly still linked in some way with their birth family. But foster care does not exist to a significant degree in the sending countries and the poor countries of the world – overwhelmingly the homeless children of the world are living and dying in orphanages and on the streets. The U.S. is the country which has had the

greatest experience with foster care – for many decades now the vast majority of the children committed to state care here have been living in foster care because it has been seen as so superior to institutional care. Even with the resources that the U.S. has to support foster care, it does not work especially well for children. Social science demonstrates clearly that while foster care works better for children than living in birth families characterized by child abuse and neglect, it does not work nearly as well as adoption.¹² It is extraordinarily unlikely that foster care will work better in countries that are desperately poor than it has in the U.S. Moreover the bottom line for children who might find adoptive homes abroad now, is that foster care, whether good or bad, rarely exists as an option.

B. Larger Community Interests

Here the arguments are more amorphous, social science provides no clear answers, and in the end one must simply make a complicated judgment call. Opponents of international adoption argue that international adoption constitutes a particularly vicious form of exploitation of the impoverished sending countries of the world by the richer countries of the world, and the loss of the poor countries' "most precious resources." I see international adoptive families, in which parents and children demonstrate the human capacity for love across lines of difference, as a positive force for good in a world torn apart by hatred based on racial, ethnic, and national differences. I also question how impoverished communities will in fact be in any way enriched by keeping these children in institutions or on the streets.

Opponents point out that international adoption is, at best, only a very partial solution, providing homes to only a small fraction of the children in need in any sending country. They argue that the funds spent on giving homes to the handful would be better spent improving conditions that would benefit the larger group of children in need. A related argument is that the

governments of both sending and receiving countries should do more to change the conditions of poverty and the cultural attitudes that result in children being abandoned and surrendered for adoption, rather than making efforts to facilitate the transfer of such a limited number of children to adoptive parents. Opponents also argue that the huge amount of money involved in international adoption, much of which flows to adoption intermediaries and orphanage bureaucrats in the sending countries, creates pressure to keep the international adoption system going rather than to build up social welfare institutions which would better support birth parents, enabling them to keep their children.

These arguments raise hard issues. The history of the world has involved exploitation by the U.S. and some other receiving countries of the world, and it is understandable that many would see international adoption as a continuation of this pattern. Moreover, international adoption is unlikely ever to provide direct help for more than a limited number of children. Even if laws were changed to facilitate such adoption, it is unimaginable that it would ever begin to seriously address the needs for adequate nurturing of any significant percentage of the vast numbers of children in need. There are, after all, said to be some *100 million children with no available caregivers* – 65 million in Asia, 34 million in Africa, and 8 million in Latin America and the Caribbean.¹³ UNICEF estimates that at least 2.6 million children worldwide live in institutional care, noting that this is a significant under-estimate, since in some countries many institutions are not included in the reporting.¹⁴ In any event, the better, more humane solution would be the elimination of the kind of poverty and injustice that produce so many desperately poor people who are unable to keep and raise the children that they bear.

A central question is whether international adoption impedes the goals of helping the larger group of children in need and of addressing global poverty and injustice. It is hard to know for

sure. It *could* be that international adoption diverts energy and resources that would otherwise be devoted to these goals. But I see no evidence that this is the case, and I hear no claims by opponents that such evidence exists. Indeed I hear no developed arguments as to why this likely *would* be the case. Opponents instead tend simply to describe with outrage the picture of the rich American swooping in to carry the adoptive baby off to its new privileged life, paying the \$30,000 worth of adoption fees to various adoption agencies and other intermediaries, and they talk of all that that \$30,000 might mean if devoted to supporting birth parents or improving conditions in orphanages for the many children left behind. But the fact is that denying that prospective adoptive parent the opportunity to parent that child will not likely provide a substitute contribution of \$30,000 to the sending country's poor parents and children. It will much more likely result in that person deciding to pursue parenting through reproductive technology in the U.S. or simply giving up on parenting altogether. It's hard to see how closing down international adoption will likely work in any systematic way to help birth parents and children in poor countries.

It seems to me more likely that allowing international adoption will push us slightly forward on the path to improving conditions for parents and children and otherwise addressing poverty and social injustice in the poor and the sending countries of the world. And there is at least some evidence that this is true. Anecdotal evidence indicates that many international adoptive parents emerge from their experience with a much greater sense of commitment to contribute to social services of various kinds in their children's sending countries. Many of them form new organizations dedicated to providing funds for children and child-oriented social services in those countries. So, for example, adoptive parents of children from China have formed several major organizations that fund a wide range of services for the children left behind in orphanages, including medical and surgical services as well as funding for pre-schools, fostering, "hugging

grannies” and much else.¹⁵ The international adoption experience is also likely to make parents more supportive of efforts by their own government to contribute to foreign countries in need or to international organizations devoted to improving the lot of the world’s children and addressing world poverty.

Sending country officials that witness foreign adoptive parents gratefully taking into their homes children of different racial and ethnic backgrounds seem likely to realize new potential for placing these children in adoptive homes in their own country. There is some indication that this has happened in South Korea.¹⁶ The exposure that international adoption brings may provide helpful pressure on sending country officials and on people in the richer countries of the world to improve conditions for children in orphanages and on the streets. International adoption has created a new consciousness throughout the world of China’s one-child policy and of the related widespread killing and abandonment of baby girls. It has created awareness of the horrendous conditions in orphanages worldwide, as the media discovers and exposes the facts, as adoptive parents discover the ongoing problems these children suffer related to orphanage life, and as social scientists document these problems.

International adoption often brings significant new funds to poor orphanages in sending countries. For example, in many countries international adoptive parents are required to pay fees or make contributions that are designed to go directly to improving conditions in the orphanages from which the children are placed for adoption. In China there has for some time been a \$3,000 to \$5,000 fee¹⁷ required to be paid to the orphanages in connection with every adoption. Given the 6500 children adopted into the U.S. from China in 2006 and the 7900 so adopted in 2005, and assuming a minimum \$3,000 contribution, this would have meant some \$19,500,000 total contributions to orphanages in 2006 and some \$23,700,000 in 2005. Many international adoption

agencies provide support on an ongoing, systematic basis to a wide range of supportive services for children in sending countries who cannot be placed in adoptive homes.¹⁸ International adoptive parents often found and fund programs to provide services for children in the orphanages or areas from which their children came.¹⁹ In addition, international adoption saves sending countries significant costs by relieving them of the burden of support for the children adopted. Opponents see these kinds of contributions as creating problematic pressure to continue with international adoption rather than focusing on improving conditions in the sending country, but they fail to document any evidence justifying their concern or to show how closing down such adoption produces any comparable contributions to actually improving those conditions.

In the end it's hard to know for sure what impact international adoption has on the larger goal of helping address global issues of poverty and injustice, but there are reasons to think that it does more good than harm. Given this, the fact that we *do know* that such adoption radically improves life prospects for virtually all those children who are placed, provides a powerful argument for expanding, rather than restricting, international adoption.

C. Adoption Abuses

Here there is dispute as to the *extent* of abuses and as to what to *do* about abuses, but not as to whether they are a bad thing and should be eliminated. Opponents and supporters of international adoption agree that basic adoption law principles should apply: children should not be given to adoptive parents unless the birth parents have voluntarily relinquished or abandoned them; adoptive parents should raise children lovingly and not in any way exploit them. Universally applicable laws, including domestic law within sending and receiving countries, and international law such as the Hague Convention and the U.N. Convention on the Rights of The Child (hereinafter CRC), prohibit payments to birth parents and other practices that can fairly be characterized as baby buying or

selling. They also prohibit any exploitation in connection with adoption, and provide for the screening of international adoptive parents to ensure that they will be appropriately nurturing parents.²⁰

Opponents make some arguments that are simply absurd, but are nonetheless seriously problematic to international adoption because they are sometimes believed and thus give adoption an unjustified bad name. For example, some have claimed that adoption involves the murder of children for their organs so that the alleged adoptive parents can use the organs for their “own” children. Responsible agencies have investigated this rumor on numerous occasions, and have always rejected it as without any foundation.²¹

More common are the claims that international adoption regularly involves the kidnapping and the purchase of children from birth parents. There is some proof that on some occasions kidnapping has occurred. To prevent such abuses, the U.S. now requires, in some countries, DNA testing to match alleged birth parents with the children surrendered for adoption. There is also good reason to believe that in some countries payments have on some occasions been made to birth mothers in connection with their decision to relinquish children for adoption. Many claimed that this was common in Guatemala, and this was a major argument made by those who called for the current moratorium on international adoption there.

It is impossible to say how extensive abuses such as kidnapping and payments to birth parents are. However the opponents regularly make very misleading statements. For example, UNICEF links under the same “child trafficking” nametag, what it calls “illicit adoption,” which presumably includes all forms of illegal adoption, with vicious forms of exploitation of children like kidnapping for the purposes of prostitution, slavery, killing for the removal of organs, and child military service.²² Yet there is no evidence that even when international adoption involves

some illegality it results in the kind of *exploitation* of children that these other “trafficking” practices systematically do. Any fair minded observer of international adoption would have to admit that the children overwhelmingly end up in adoptive families where they are loved and nurtured, and that they grow up doing as well as most children raised in those same receiving countries, as the research discussed above at pp. 7-8 shows. Opponents also tend to equate all adoption with baby buying, citing the large amounts paid by adoptive parents, without regard to the fact that such payments may be and almost certainly generally are entirely legal, accounted for by the fees charged by agencies and other intermediaries authorized to receive payment for their services in connection with facilitating adoptions.

Opponents also ignore the distinction between payments made to birth parents which induce them to surrender children they would otherwise keep, and payments made to parents who would be surrendering in any event. The latter may be illegal, but the former is the problem at the core of the baby-buying prohibition. The idea is to prevent any form of coercion, including the proffer of money, having an influence on the decision whether to keep or surrender the child. It is an idea based on the felt value of enabling birth parents to keep their children, and children to grow up with those parents, if at all possible. It is extremely unlikely that much of this core form of baby buying is going on in the world. It is illegal everywhere, under a multitude of overlapping laws—laws of the sending country, laws of the receiving country, and international law. And overwhelmingly the reasons that birth parents in the sending countries of the world surrender their children for adoption have to do with extreme poverty and social devastation – they simply have no choice. They often will have had no choice in getting pregnant – no access to contraception is typical. They may have a job, if they are lucky, that they would lose if they kept their child. They may have one or two children they are struggling to keep alive, and know they are incapable of

supporting a third. It is entirely understandable that many of these birth parents might accept money if offered, or seek money if they know other birth parents are getting it in connection with surrendering their children. These birth mothers are in desperate need, and everyone else involved in the adoption process, most of whom have no such dire need, are getting paid handsome fees. It may be that we should still make such payments illegal – it would be hard to draw a clear legal line between such payments and the kind of payments that would induce surrender, and you need a clear legal line if you are going to hold people criminally responsible as we do for baby buying. But we should not see such incidental payments, payments that accompany but do not motivate the relinquishment of a child, as a terrible evil to be avoided at all costs.

There are no doubt some number of birth parents in sending countries who are getting payments that indeed do function to persuade them to surrender children for adoption that otherwise they might have kept, and even to get pregnant in order to surrender the children born. The latter practice we call surrogacy and in the U.S. it is legal today in almost all states, with an enormous surrogacy industry primed to expand the practice as we move forward to the future. I myself would prohibit commercial surrogacy both here and abroad, and I also believe we should maintain the existing prohibition on payments to already-pregnant women designed to induce surrender of the child. However I think we need to acknowledge that such payments are not the ultimate evil that they are often assumed to be. They may on balance be wrong, but they need to be weighed against other evils as regulators decide how to shape policy on international adoption.

Opponents of international adoption *never weigh the evils on each side*. Instead they focus solely on the evils represented by adoption abuses, and then argue for restrictive regulation to address those evils. They don't consider the evils represented by failing to place children in international adoptive homes, and the good that comes from placing them. And opponents find a

ready audience in policy-makers who have traditionally regulated adoption in a way that focuses on the negatives that come from transferring children from one set of parents to another and not on the positives.

Adoption opponents and adoption policy-makers often respond to alleged adoption abuses by calling for a moratorium on adoption, either temporary or permanent. One example is Romania, where after international adoption first opened up, it was closed down in 2000 in reaction to baby buying allegations, and remained closed for years, essentially until it was permanently closed by the new law banning all international adoption except grandparent adoption.²³ The evil represented by the fact that some number of impoverished Romanian birth parents accepted money incidental to the relinquishment of their children, with there likely being only a handful who were motivated by the money to relinquish children they otherwise would have kept was *minuscule*, in my view, by comparison to the evil represented by the thousands of Romanian children condemned to live and die in horrible institutions, who could have had loving, nurturing adoptive homes. Another example is Guatemala, discussed above. Whatever evil may be represented by the payments to birth mothers there that allegedly triggered the current moratorium pales in my view to the evil represented by the thousands of Guatemalan children per year who will now likely be relegated to institutions rather than being placed in international adoptive homes. See Appendix B *infra* (4135 placed in the U.S. in 2006).

Adoption opponents and policy-makers typically argue that if international adoption is to continue, the government in any given sending country should take over the adoption process, eliminating any private lawyers and other intermediaries. So do many others who see themselves as supportive of international adoption but focus on the importance of eliminating adoption abuses. They see the state as more likely motivated to enforce the laws, and the private actors as more

interested in facilitating adoption, and thus more ready to do what it takes to make it happen including making payments to birth parents. This tendency to look to the State – to government – as *the* way to solve human rights problems has been critiqued by Prof. David Kennedy in a recent book, *The Dark Sides of Virtue: Reassessing International Humanitarianism*:

The conflation of the law with the good encourages an understanding of international governance ... that is systematically blind to the bad consequences of its own action. The difficulty the human rights movement has in thinking of itself in pragmatic rather than theological terms – in weighing and balancing the usefulness of its interventions ... – is characteristic of international governance as a whole.²⁴

In the realm of child welfare, we often let private actors solve problems that occur when birth parents cannot care for children, and we often let them do this informally, without any state intervention. There is a powerful tradition in all countries of simply letting birth parents or others arrange for someone in the kinship or friendship group to take in children who need parenting care. The U.S.-sponsored Demographic and Health Surveys carried out in many developing and transition countries routinely show 10-20% of children under 15 living in households where their parents are not present, sometimes because they have been orphaned and sometimes – indeed the majority of time – because their parents simply cannot care for them.²⁵ Often these arrangements are characterized as informal adoption. In the U.S., in addition to such informal caretaking arrangements, “private” or “independent” adoption is also common – forms of official court-approved adoption in which birth parents and adoptive parents are directly responsible for making the agreement to transfer the child, with the state role limited largely to ensuring that certain basic rules of the adoption game are satisfied, namely that no financial or other pressure has been put on the birth parents, and that the prospective adopters satisfy basic fitness criteria. There is no reason

to think that children would be better off if the government in all these countries and in all the states throughout the U.S. intervened to control all these informal arrangements, and much reason to think that children would be far worse off. There is no significant move worldwide or within the U.S. to outlaw all these private arrangements, substituting state monopoly power. Yet in the world of international adoption it is common to assume that state monopoly power is the right answer.

In fact, our experience with international adoption helps demonstrate the danger with assuming that more state power will likely mean more protection for human rights. In many countries, state monopoly power over international adoption means that it grinds to a near or total halt. This has been the case in several countries in South and Central America, where as the state has taken over, adoptions dwindle to a small trickle, and children made available are no longer freed up as infants, but only after spending many months and typically at least two or three years in damaging institutions.

This is the battle that is now being fought in Guatemala, in terms of future regulation. Guatemala has had some of the most international adoption-friendly rules of any country in recent history. Guatemala had been releasing significant numbers of children for international adoption, as discussed above at 5, ranking as one of the major sending countries of the world. It placed many of the children surrendered by their birth parents in foster care immediately after birth, and moved many of them to their adoptive family within six to eight months. This is almost unheard of in today's international adoption world, and it of course meant that the children were spared the horrors of institutional life. These children had a good chance to develop normally, both physically and emotionally, in contrast to most international adoptees who, by virtue of spending most of their early infancy in institutions, are at high risk for developmental and ongoing problems. However those who called for the current moratorium on adoptions from Guatemala, are insisting

that any future regulatory system include a state monopoly over international adoption and the elimination of the private intermediaries who have made possible foster care, and the prompt placement of significant numbers of children.

We do need to pay attention to adoption abuses. We should enforce the laws that already exist making them illegal. In some cases we may need to redesign laws to make them more effective. But we must keep in mind that the main thing children need is a permanent nurturing home, and that this is also the main thing most birth parents want for the children they can't raise themselves but must relinquish. We should avoid any action that, in the name of eliminating abuses, causes children more harm than good by reducing their chances to obtain a nurturing family.

III. Reform Directions for the Future

Those committed to human rights and to children's rights should focus on the *genuine* and *most significant needs* of children, parents, and communities, rather than engaging in false romanticism. They should also focus on the *genuine* and *most significant evils* that children face. Children need loving, nurturing parents to raise them. They need food and shelter and affection. They need protection from disease and disaster. Large numbers of children in the poorer countries of the world live in truly desperate circumstances. Those in orphanages spend their infancy having bottles jammed in their mouths as they are propped in the corners of their cribs. Left unattended for hours in between bottle-propping events, they learn that screaming their hearts out, or making other demands for human attention, is meaningless. Those familiar with orphanages say that one of the most horrifying things is the silence that characterizes so many because the children have learned not to bother to ask for attention. Largely deprived of the human touch, human affection

and human relationships as they grow up, children who survive physically are unlikely to develop emotionally and mentally in ways that will make it possible for them to relate meaningfully and happily to other human beings, or to take advantage of educational and employment opportunities. The longer they spend in such orphanages, the less chance they will have at anything resembling normal development. By contrast, those placed in international adoption live comparatively blessed lives, and have an opportunity to overcome even very significant deficits caused by early deprivation, with the age of placement overwhelmingly predictive of the chance for normal life.

Those who believe in children's human rights need to promote children's basic right to be liberated from the conditions under which they live in orphanages or on the street, and to grow up with parents who can provide the loving nurturing that is essential for human flourishing. We should place as many of these children as we can in adoptive homes, since adoption generally works better for children than other options, such as foster care. There may be instances in which foster care will work better, and of course there should be room for exceptions to the general rule, but the step taken by the Hague Convention to preference international adoption over in-country foster care as a general rule is a step taken in the right direction.

Should in-country adoption be preferred over out-of-country adoption? Almost all who discuss this say yes. However there is no evidence that in-country adoption works better for children. While almost everyone tends to assume that children should be placed with birth parents of similar cultural and ethnic background, the issue has been examined fairly extensively in the area of domestic transracial adoption within the U.S., and there is not a shred of evidence in the entire body of social science studies following transracial adoptees from infancy into adulthood, and comparing them with control group samples of adoptees placed with same-race parents, that any harm comes to children from being raised by parents of a different racial or ethnic

background.²⁶ One might still find an in-country preference appropriate, for a range of reasons including a belief that, despite the absence of evidence, children will still likely do best when matched with similar parents, or that in-country parents deserve a preference because of the history of exploitation their group or country may have suffered, or simply that it looks better to those suspicious of international adoption and will therefore help limit opposition. Some might find an in-country preference important to counter the risk that the foreign parents' likely comparative wealth will bias the process against the in-country parent.

But the risk of any in-country preference is that it will function as another barrier to placement, delaying and perhaps entirely denying the chance for children to find an adoptive home. The overwhelming number of potential adoptive parents for children in poor countries will be in the more privileged countries of the world. If countries implement an in-country preference by a rule mandating an in-country search before the child can be placed internationally, there is a real danger that this will result not only in delaying adoption but in denying it altogether. This risk is made worse when the official rule prohibits international placement for a period of time, as some countries have provided. When Russia enacted its six-month waiting requirement, there was no realistic possibility of any but a tiny fraction of Russia's institutionalized children finding an in-country adoptive home during that six months. For almost all those children, the rule translates to a simple requirement that they spend an additional six months in damaging institutional care. Beyond that, it reduces the chances the child will ever be placed, both because older children are harder to place, and because risk-averse bureaucrats get the message from such rules that international adoption should be seen as a failure, a last resort that should be generally avoided. India recently adopted a rule requiring that 50% of adoptions be in-country, effectively precluding adoption for vast numbers of children given the limited number of in-country adoption prospects.

The history of race-matching policies in the U.S., which for many years gave a preference to placing black children with black as opposed to white prospective parents, is that such policies resulted in delaying and denying adoptive placement for many black children.²⁷ It is in large part because of recognition of this fact that Congress in the 1996 amendments to MEPA, eliminated *any preference* for placing children within their racial group.²⁸

Ideally, in my view, there should be no in-country adoption preference. Countries should simply place children as soon as possible in any available adoptive homes. But if countries institute such a preference, as under the Hague Convention they are required to, they should do so in a way designed to cause *no delay whatsoever* in placement for children. Concurrent planning is the term for the adoption program inside the U.S. that should serve as the model. In concurrent planning, adoption professionals work simultaneously to reunite children in foster care with their birth parents, while they work to prepare for adoption. At the point that a decision is reached not to reunite, the child can immediately move forward to adoption. Adapted to international adoption, this model would mean that adoption officials in the sending country would plan simultaneously for the international adoption, while they checked to see if any domestic placement would be possible, rather than planning the international adoption only after exhausting the possibility of domestic adoption.

All efforts should be made to avoid unnecessary delays in placement for children. Like Dr. Dana Johnson, a widely respected specialist in international adoption pediatrics, I think we should treat keeping children in institutions as an intolerable act of cruelty:

[P]utting a child in a long-term institution is an act of abuse. Children in institutional care have deteriorations in many things that we want to see children improve in during the earliest years of their life.... Their cognitive abilities are lower, their growth is terrible and their brain development is abnormal as well.... *A few days in an institution should be as*

*long as children are asked to endure.*²⁹

Assuming that adoption, including international adoption, is made the priority option, policy makers then need to focus on certain key reforms. First they need to ensure that children who cannot realistically be cared for by their parents are freed for adoption as promptly as possible. UNICEF and others emphasize that most of the children in institutions worldwide are not technically orphans, as if this demonstrated that few should be considered for adoption. But the reality is that almost all of these institutionalized non-orphans can expect to live out their youth or die in these institutions with few or no visits from their birth parents, unless they are made available for international adoption. Governments should be required to take action to either reunite these children with their birth parents when that can be done in a way that will be good for the child, or to move them promptly on to adoption. The ASFA legislation recently passed by the U.S. Congress³⁰ can serve as a model for other countries' domestic laws. ASFA provides that children can be held for no longer than 15 of the prior 22 months in foster or institutional care, before being moved either back to their birth parents or on to adoption. It provides for bypassing any efforts to pursue family preservation or family reunification in situations where there is no good reason to think the child will ever again be able to live with his or her birth parents. It provides that reasonable efforts must be made *not only* to keep children with their birth parents, *but also* in appropriate cases to move them on to adoption. Most countries have no adequate system for identifying children in need of adoptive homes and freeing them from their biological parents so that they can be placed. Orphanages world wide are filled with children who grow up with no meaningful tie to their parents except the technical tie that means they cannot be placed with adoptive parents. The same is true for street children. Law reform efforts need to focus on

creating systems for identifying and freeing up such children, and they need to create realistic methods of expediting the entire process for children, from birth to placement, so that they are moved to nurturing adoptive homes as early in life as possible.

Second, policy makers in both sending and receiving countries need to facilitate the adoption process so that it better serves the needs of prospective adopters. The primary reason to do this is not because it will promote their interest in parenting, although that interest should be understood as perfectly legitimate, but because it will maximize the numbers of parents for the children in need. Bureaucratic barriers serve to drive prospective parents away, either away from parenting altogether, or into the world of reproductive technology, where they will try to produce new children, rather than give homes to existing children in need.

Policy makers must also address the baby-buying and kidnapping problems that exist in the international adoption world. International adoption's opponents have grossly exaggerated the scope of these problems, using them deliberately to promote their larger anti-adoption agenda. But taking children from loving birth parents by applying financial or other pressures is wrong. And it victimizes not only the particular children and parents involved, but the larger group of children and parents whose opportunities for legitimate international adoption are thwarted by the negative regulation that is so often triggered by adoption abuses.

Finally, policy makers need to link their new adoption reform moves with efforts to improve conditions for the children who will not be adopted, and for their birth parents. International adoption's opponents are correct in arguing that it can never provide homes for all the children in need, and that we must address the problems of poverty and injustice that result in children being abandoned in large numbers in the poor countries of the world. International adoption provides a natural trigger for such reform efforts. Adoptive parents, agencies, and others

in receiving countries become more aware of the problems in the sending countries of the world by virtue of the adoption process. With this knowledge, and with the privilege of caring for these children, comes new responsibility for the children left behind.

APPENDIX A:

NUMBERS OF INTERNATIONAL ADOPTIONS IN THE UNITED STATES BY YEAR, 1990-2006

YEAR	INTERNATIONAL ADOPTIONS
2006	20679
2005	22728
2004	22884
2003	21616
2002	20099
2001	19237
2000	17718
1999	16363
1998	15774
1997	12743
1996	10641
1995	8987
1994	8333
1993	7377
1992	6472
1991	8481
1990	7093

Source: U.S. Department of State, "IMMIGRANT VISAS ISSUED TO ORPHANS COMING TO THE U.S.," available at http://travel.state.gov/family/adoption/stats/stats_451.html.

APPENDIX B:

**COUNTRIES SENDING LARGEST NUMBER OF CHILDREN TO THE UNITED STATES FOR
INTERNATIONAL ADOPTION, BY YEAR, 1990-2006**

FY 2006		FY 2005	FY 2004
1	6,493 - CHINA (Mainland)	7,906 - CHINA (Mainland)	7,044 - CHINA (mainland)
2	4,135 - GUATEMALA	4,639 - RUSSIA	5,865 - RUSSIA
3	3,706 - RUSSIA	3,783 - GUATEMALA	3,264 - GUATEMALA
4	1,376 - S. KOREA	1,630 - S. KOREA	1,716 - S. KOREA
5	732 - ETHIOPIA	821 - UKRAINE	826 - KAZAKHSTAN
6	587 - KAZAKHSTAN	755 - KAZAKHSTAN	723 - UKRAINE
7	460 - UKRAINE	441 - ETHIOPIA	406 - INDIA
8	353 - LIBERIA	323 - INDIA	356 - HAITI
9	344 - COLOMBIA	291 - COLOMBIA	289 - ETHIOPIA
10	320 - INDIA	271 - PHILIPPINES	287 - COLOMBIA
11	309 - HAITI	234 - HAITI	202 - BELARUS
12	245 - PHILIPPINES	183 - LIBERIA	196 - PHILIPPINES
13	187 - CHINA (Taiwan Born)	141 - CHINA (Taiwan Born)	110 - BULGARIA
14	163 - VIETNAM	88 - MEXICO	102 - POLAND
15	70 - MEXICO	73 - POLAND	89 - MEXICO
16	67 - POLAND	72 - THAILAND	86 - LIBERIA
17	66 - BRAZIL	66 - BRAZIL	73 - NEPAL
18	66 - NEPAL	65 - NIGERIA	71 - NIGERIA
19	62 - NIGERIA	63 - JAMAICA	69 - THAILAND & BRAZIL
20	56 - THAILAND	62 - NEPAL	57 - ROMANIA

FY 2003	
1	6,859 - CHINA (Mainland)
2	5,209 - RUSSIA
3	2,328 - GUATEMALA
4	1,790 - S. KOREA
5	825 - KAZAKHSTAN
6	702 - UKRAINE
7	472 - INDIA
8	382 - VIETNAM
9	272 - COLOMBIA
10	250 - HAITI
11	214 - PHILIPPINES
12	200 - ROMANIA
13	198 - BULGARIA
14	191 - BELARUS
15	135 - ETHIOPIA
16	128 - GEORGIA
17	124 - CAMBODIA
18	107 - CHINA-TAIWAN
19	97 - POLAND
20	72 - THAILAND

FY 2002	
6,119 - CHINA (mainland)	
4,939 - RUSSIA	
2,419 - GUATEMALA	
1,779 - S - KOREA	
1,106 - UKRAINE	
819 - KAZAKHSTAN	
766 - VIETNAM	
464 - INDIA	
334 - COLOMBIA	
260 - BULGARIA	
285 - CAMBODIA	
221 - PHILIPPINES	
187 - HAITI	
169 - BELARUS	
168 - ROMANIA	
105 - ETHIOPIA	
101 - POLAND	
67 - THAILAND	
56 - GEORGIA	
61 - MEXICO	

FY 2001	
4,681 - CHINA (mainland)	
4,279 - RUSSIA	
1,870 - S - KOREA	
1,609 - GUATEMALA	
1,246 - UKRAINE	
782 - ROMANIA	
737 - VIETNAM	
672 - KAZAKHSTAN	
543 - INDIA	
407 - COLOMBIA	
297 - BULGARIA	
266 - CAMBODIA	
219 - PHILIPPINES	
192 - HAITI	
158 - ETHIOPIA	
129 - BELARUS	
86 - POLAND	
74 - THAILAND	
73 - MEXICO	
51 - LIBERIA	

FY 2000	
1	5,053 - CHINA (Mainland)
2	4,269 - RUSSIA
3	1,794 - S. KOREA
4	1,518 - GUATEMALA
5	1,119 - ROMANIA
6	724 - VIETNAM
7	659 - UKRAINE
8	503 - INDIA
9	402 - CAMBODIA
10	398 - KAZAKHSTAN
11	246 - COLUMBIA
12	214 - BULGARIA
13	173 - PHILIPPINES
14	131 - HAITI
15	106 - MEXICO
16	95 - ETHIOPIA
17	88 - THAILAND
18	83 - POLAND
19	79 - MOLDOVA
20	60 - BOLIVIA

FY 1999	
4,348 - RUSSIA	
4,101 - CHINA	
2,008 - S - KOREA	
1,002 - GUATEMALA	
895 - ROMANIA	
709 - VIETNAM	
499 - INDIA	
323 - UKRAINE	
249 - CAMBODIA	
231 - COLOMBIA	
221 - BULGARIA	
195 - PHILIPPINES	

FY 1998	
4,491 - RUSSIA	
4,206 - CHINA	
1,829 - S - KOREA	
969 - GUATEMALA	
603 - VIETNAM	
478 - INDIA	
406 - ROMANIA	
249 - CAMBODIA	
236 - COLOMBIA	
200 - PHILIPPINES	
180 - UKRAINE	
168 - MEXICO	
151 - BULGARIA	
121 - HAITI	
96 - ETHIOPIA	
90 - BRAZIL	
84 - THAILAND	
77 - POLAND	
76 - LATVIA	
73 - BOLIVIA	

FY 1997	
1	3,816 - RUSSIA
2	3,597 - CHINA (Mainland)
3	1,654 - S. KOREA
4	788 - GUATEMALA
5	621 - ROMANIA
6	425 - VIETNAM
7	349 - INDIA
8	233 - COLOMBIA
9	163 - PHILIPPINES
10	152 - MEXICO
11	148 - BULGARIA
12	142 - HAITI
13	108 - LATVIA
14	91 - BRAZIL
15	82 - ETHIOPIA
16	78 - LITHUANIA
17	78 - POLAND
18	77 - BOLIVIA
19	72 - HUNGARY
20	66 - CAMBODIA

FY 1996
3,333 - CHINA
2,454 - RUSSIA
1,516 - KOREA
555 - ROMANIA
427 - GUATEMALA
380 - INDIA
354 - VIETNAM
258 - PARAGUAY
255 - COLOMBIA
229 - PHILIPPINES
163 - BULGARIA
103 - BRAZIL
82 - LATVIA
78 - LITHUANIA
77 - GEORGIA
76 - MEXICO
68 - HAITI
64 - POLAND
63 - CHILE
55 - THAILAND
51 - ECUADOR, HUNGARY

FY 1995
2,130 - CHINA
1,896 - RUSSIA
1,666 - KOREA
449 - GUATEMALA
371 - INDIA
351 - PARAGUAY
350 - COLOMBIA
318 - VIETNAM
298 - PHILIPPINES
275 - ROMANIA
146 - BRAZIL
110 - BULGARIA
98 - LITHUANIA
90 - CHILE
83 - MEXICO
67 - ECUADOR
63 - ETHIOPIA
63 - JAPAN
59 - LATVIA
53 - THAILAND
51 - GEORGIA

FY 1994	
1	1,795 - KOREA
2	1,530 - RUSSIA
3	787 - CHINA
4	483 - PARAGUAY
5	436 - GUATEMALA
6	412 - INDIA
7	351 - COLOMBIA
8	314 - PHILIPPINES
9	220 - VIETNAM
10	199 - ROMANIA
11	164 - UKRAINE
12	149 - BRAZIL
13	97 - BULGARIA
14	95 - LITHUANIA
15	94 - POLAND
16	85 - MEXICO
17	79 - CHILE
18	77 - HONDURAS
19	61 - HAITI
20	66 - ETHIOPIA
21	49 - JAPAN

FY 1993
1,775 - KOREA
746 - RUSSIA
512 - GUATEMALA
426 - COLOMBIA
412 - PARAGUAY
360 - PHILIPPINES
331 - INDIA
330 - CHINA
273 - UKRAINE
224 - PERU
179 - HONDURAS
161 - BRAZIL
133 - BULGARIA
124 - BOLIVIA
110 - VIETNAM
100 - ELSALVADOR
97 - ROMANIA
91 - MEXICO
70 - POLAND
69 - THAILAND
64 - JAPAN

FY 1992
1,840 - KOREA
418 - GUATEMALA
404 - COLOMBIA
357 - PHILIPPINES
352 - INDIA
324 - RUSSIA
309 - PERU
249 - HONDURAS
212 - PARAGUAY
206 - CHINA
179 - CHILE
138 - BRAZIL
121 - ROMANIA
117 - EL SALVADOR
109 - POLAND
91 - BULGARIA
91 - MEXICO
86 - THAILAND
73 - BOLIVIA
68 - JAPAN
64 - COSTA RICA

FY 1991	
1	2,594 - ROMANIA
2	1,818 - KOREA
3	705 - PERU
4	521 - COLOMBIA
5	445 - INDIA
6	393 - PHILIPPINES
7	329 - GUATEMALA
8	266 - CHILE
9	234 - HONDURAS
10	190 - PARAGUAY
11	175 - BRAZIL
12	131 - THAILAND
13	123 - EL SALVADOR
14	97 - MEXICO
15	92 - POLAND
16	87 - JAPAN
17	61 - CHINA
18	60 - CAMBODIA
19	56 - COSTA RICA
20	54 - TAIWAN
21	50 - DOMINICAN REPUBLIC

FY 1990	
2,620 - KOREA	
631 - COLOMBIA	
440 - PERU	
421 - PHILIPPINES	
348 - INDIA	
302 - CHILE	
282 - PARAGUAY	
257 - GUATEMALA	
228 - BRAZIL	
197 - HONDURAS	
121 - ROMANIA	
112 - MEXICO	
105 - COSTA RICA	
103 - EL SALVADOR	
100 - THAILAND	
66 - POLAND	
66 - TAIWAN	
64 - HAITI	
59 - ECUADOR	
58 - DOMINICAN REP	
57 - JAPAN	

Source: U.S. Department of State, "IMMIGRANT VISAS ISSUED TO ORPHANS COMING TO THE U.S.," available at http://travel.state.gov/family/adoption/stats/stats_451.html.

¹ Professor of Law, Harvard Law School. This chapter is a revised version of an article, *International Adoption: Thoughts on the Human Rights Issues*, published in 13 Buffalo Human Rights Law Review 151-203 (2007), which contains extensive documentation for the claims made. For other writings on international adoption by the author see ELIZABETH BARTHOLET publications listed at www.law.harvard.edu/faculty/bartholet/pubs.php. The author has been deeply involved in issues related to international adoption since 1985, and draws on this experience as well as cited materials throughout this chapter.

² Numbers of International Adoptions in the United States by Year, 1990-2006, *available at* http://travel.state.gov/family/adoption/stats/stats_451.html (last visited 2/4/08). *See* Appendix A [hereinafter App. A] *supra* at 27. While official statistics for 2007 have not yet been released, the State Dept. has revealed provisionally that the 2007 total is approximately 19,411, down about 16% from the 2004 total of 22,884. *Foreign Adoptions in U.S Decline for Third Year*, A.P. 11/30/07, <http://www.msnbc.msn.com/id/22045640/> (last visited 2/4/08); Margolis, *Who Will Fill the Empty Cribs?*, Newsweek, 1/28/08, <http://www.newsweek.com/id/105530> (last visited 2/4/08).

³ On Unicef's role see generally: Bartholet's *International Adoption: Thoughts on the Human Rights Issues*, *supra* n.1; Wingert, *When There's No Place Like Home*, 1/28/08, <http://www.newsweek.com/id/105531> (last visited 2/4/08).

⁴ *See* UNICEF's position on intercountry adoption, "Inter-country adoption," *available at* http://www.unicef.org/media/media_15011.html (last visited 2/4/08).

⁵ *See* U.S. Dept. of State Warning: Adoptions Initiated on or after Dec. 31, 2007 in Guatemala, dated January 9, 2008, http://travel.state.gov/family/adoption/intercountry/intercountry_3927.html (last visited 2/4/08).

⁶ Countries Sending Largest Number of Children to the United States for International Adoption, by Year, 1990-2006, *available at* http://travel.state.gov/family/adoption/stats/stats_451.html (last visited 2/4/08). *See* Appendix B [hereinafter App.B] *supra* at 28-31. The author has had extensive experience with the Guatemalan situation, including a trip to Guatemala in 2005 to give a keynote speech at a conference addressing the controversy over international adoption. Elizabeth Bartholet, Keynote Speech (at conference in Guatemala City, Guatemala, "In the Best Interests of Children: A Permanent Family") (Jan. 25, 2005) *available at* <http://www.law.harvard.edu/faculty/bartholet/speeches.php>.

⁷ Ethica, The Statistics Tell the Story, <http://www.ethicanet.org/item.php?recordid=statistics> (last visited 2/4/08).

⁸ *See* Emma Nicholson, *Red Light on Human Traffic*, GUARDIAN UNLIMITED, July 1, 2004, *available at* <http://society.guardian.co.uk/adoption/comment/0,,1250913,00.html> (last visited 2/4/08) (opposing international adoption, claiming with no substantiation that "[c]hildren exported abroad...are often subjected to paedophilia, child prostitution or domestic servitude"). Andrew Bainham, Fellow of Christ's College, University of Cambridge, provided intellectual backing for Baroness Nicholson, serving as Special Adviser to her in her role as Rapporteur for Romania. He takes the position that for any of the modern European democracies, engaging in international adoption "amounts to a fundamental failure ... to comply with the requirements of the European Convention [for the Protection of Human Rights and Fundamental Freedoms 1950]," together with the CRC [U.N. Convention on the Rights of the Child], since international adoption constitutes an admission of failure to provide for their own children, and accordingly that no country should be allowed to join the EU so long as they were engaging in such adoption. *See* Andrew Bainham, *International Adoption from Romania – Why the Moratorium Should not Be Ended*, 15 CHILD & FAM. L.Q. 223 (2003); *See also* *European parliamentarians break the Nicholson monopoly on international adoptions*, BUCHAREST DAILY NEWS, Mar. 8, 2006 (discussing Nicholson's position and its current rejection by many members of European Parliament, including her successor as Rapporteur to Romania).

⁹ *See generally, e.g.,* Nelson, *et al.*, *Cognitive Recovery in Socially Deprived Young Children: The Bucharest Early Intervention Project*, 318 Science 1937-40 (2007); Nelson, *A Neurobiological Perspective on Early Human Deprivation*, 1 Child Devel Perspectives 13 (2007) (summing up half century of evidence demonstrating damaging impact of institutionalization on children);

Charles H. Zeanah et al., *Designing Research to Study the Effects of Institutionalization on Brain and Behavioral Development: The Bucharest Early Intervention Project*, 15 DEV. & PSYCHOPATHOLOGY 885, 886-88 (2003). These articles sum up previous research on deleterious effects of institutional rearing, as well as ameliorating effects of early intervention. They also describe the Bucharest Early Intervention Project (BEIP), an ongoing randomized controlled trial of foster placement as an alternative to institutionalization designed to document scientifically both the effects of institutionalization and the degree of recovery that foster care can provide, and to assist the government of Romania in developing alternative forms of care beyond institutionalization. For other recent research see the St. Petersburg-USA Orphanage Research Team, *Characteristics of Children, Caregivers, and Orphanages For Young Children in St. Petersburg, Russian Federation*, 26 J. OF APP. DEV. PSYCHOL. 477 (2005) (giving comprehensive, empirical description of orphanage environments, describing most salient deficiencies as in social-emotional environment, and describing harmful impact on children, all consistent with reports on other countries' orphanages); Bilge Yagmurlu et al., *The Role of Institutions and Home Contexts in Theory of Mind Development*, 26 J. APP. DEV. PSYCHOL. 521 (2005) (documenting harmful impact of institutionalization on "theory of mind" development of children in Turkey, relevant to social, cognitive and language development, and psychological adjustment, all related to deprivation of normal adult-child interaction, and all consistent with other research findings).

¹⁰ See Zeanah, *supra* note 8 (describing earlier research). A meta-analysis of research on international adoptees recently published in the Journal of the American Medical Association showed the adoptees generally well-adjusted with those living with their adoptive families for more than 12 years the best adjusted, and with preadoption adversity increasing the risk of problems. Femmie Juffer and Marinus H. van IJzendoorn, *Behavior Problems and Mental Health Referrals of International Adoptees*, 293 J.A.M.A. 2501 (2005). See also Bartholet, FAMILY BONDS; ADOPTION, INFERTILITY, AND THE NEW WORLD OF CHILD PRODUCTION (Beacon Press 1999) at 150-60; Elizabeth Bartholet & Joan Heifetz Hollinger, *International Adoption: Overview*, in ADOPTION LAW AND PRACTICE 10-1 (Joan Heifetz Hollinger, ed., 2006) at 10-15 - 10-21.

¹¹ Early results of the Bucharest Early Intervention Project, *supra* note 8, show that placement of the institutionalized Romanian children in specially designed, model foster care had ameliorating effects on their intellectual, emotional, psychiatric and brain development, with the length of time previously in the institution and the age at which removed to foster care significant factors in their functioning.

¹² See BARTHOLET, NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE 81-97 (1999).

¹³ USAID, UNICEF, and UNAIDS, CHILDREN ON THE BRINK 2002: A JOINT REPORT ON ORPHAN ESTIMATES AND PROGRAM STRATEGIES at 22-24 (2002), available at http://www.dec.org/pdf_docs/PNACP860.pdf (last visited 2/4/08).

¹⁴ See Presentation by Aldexandra Yuster, Senior Advisor, Child Protection, UNICEF, New York, NY, "Why Children are Homeless and Effective Responses – Socio-economic Factors," at conference, "Looking Forward: A Global Response for Homeless Children," Holt International Children's Services, Eugene, Oregon, Oct. 19-21, 2006.

¹⁵ See, e.g., <http://www.lovewithoutboundaries.com/>; <http://www.halfthesky.org/> (last visited 2/4/08); http://www.altrusa.ws/about_altrusa/about_altrusa_index.htm (last visited 2/4/08); <http://www.chinaorphans.org/> (last visited 2/4/08). See also Laura Christianson, *International Adoption: Giving Back to Your Child's Country of Origin*, http://adoptionblogs.typepad.com/adoption/2004/11/international_a.html (encouraging readers to give back to countries from which they adopt) (last visited 2/4/08). See generally McKinney, *International Adoption and the Hague Convention: Does Implementation of the Convention Protect the Best Interests of the Children?*, 6 Whittier J. Child & Fam Advocacy 361 (2007).

¹⁶ Margaret Liu, *International Adoptions: An Overview*, 8 TEMP. INT'L & COMP. L.J. 187, 202-03 (1994).

¹⁷ U.S. Dept. of State, Intercountry Adoption, China, http://travel.state.gov/family/adoption/country/country_365.html (last visited 2/4/08) (noting the required \$3,000-5,000 donation to the institution where the adopted child was raised); Curtis Kleem, *Airplane Trips and Organ Banks: Random Events and the Hague Convention on Intercountry Adoptions*, 28 GA. J. INT'L & COMP. L. 319, 324 (2000) (discussing international adoption from China and the required donation).

¹⁸ See, e.g., http://www.hfsadopt.org/china/index.php?option=com_content&task=view&id=30&Itemid=84 (last visited 2/4/08); <http://www.chinesechildren.org/Charity/> (last visited 2/4/08).

¹⁹ See, e.g., <http://www.fujiankids.org/> (last visited 2/4/08); <https://www.grace-hope.org/index.aspx> (last visited 2/4/08).

²⁰ So, for example, baby-buying not only violates the laws of all sending and receiving countries, but also a variety of international laws. The CRC prohibits “improper financial gain” and “the abduction of, the sale of or traffic in children...” CRC, arts. 21(d), 35. An Optional Protocol to the CRC, with 103 states parties, requires contracting nations to criminalize the improper inducement of consent and to enact laws and institute programs to deter the sale of children. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, Annex II, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/RES/54/263, arts. 3, 9-10 (May 25, 2000). One of the major goals of the Hague Convention is to establish safeguards to prevent the abduction, sale, or trafficking of children, and many of its provisions are designed to further these goals, with other provisions designed to ensure against other abuses.

²¹ Bartholet, FAMILY BONDS, *supra* note 9, at 153 (general discussion about mythical concerns of organ harvesting).

²² UNICEF, GUIDELINES ON THE PROTECTION OF CHILD VICTIMS OF TRAFFICKING, Provisional Version 2.1, Sept. 2006, p. 9; UNICEF, Combating Child Trafficking (2005), available at http://www.unicef.org/publications/index_33882.html (last visited 2/4/08)

²³ Bartholet, *International Adoption: The Human Rights Issues*, *supra* n.1 at 162-163.

²⁴ See David Kennedy, THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM 31-32 (Princeton University Press 2004).

²⁵ Presentation by Yuster, *supra* note 13.

²⁶ See Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PENN. L. REV. 1163, 1207-26 (1991); BARTHOLET, NOBODY’S CHILDREN, *supra* note 11, 126-28.

²⁷ See BARTHOLET, NOBODY’S CHILDREN, *supra* note 11, at 126; Bartholet, *Where Do Black Children Belong?*, *supra* note 23, at 1201-07.

²⁸ See Bartholet, *Cultural Stereotypes Can and Do Die, It’s Time to Move on With Transracial Adoption*, 34 J. Am. Acad. Psychiatry Law 315-320 (2006) (describing decisions by the agency with enforcement responsibility in MEPA which make it crystal clear that race is to play no part in agency decision-making); BARTHOLET, NOBODY’S CHILDREN, *supra* note 11, at 130-31.

²⁹ Mental Disability Rights International, Hidden Suffering: Romania’ Segregations and Abuse of Infants and Children with Disabilities (2006), <http://www.mdri.org/projects/romania/romania-May%2009%20final.pdf> (last visited at 2/4/08) at 21 (emphasis added).

³⁰ Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 § 102 (amending Title IV of the Social Security Act, 42 U.S.C. 601 *et seq.*).