

REGULATING THE GLOBAL ADOPTION OF CHILDREN

Steven L. Varnis

Adopting a foreign child has become an increasingly attractive option for many prospective parents in the United States. Higher rates of infertility among couples and the childlessness of single adults create the initial motivation to adopt. An overseas focus is prompted by the perception of insurmountable obstacles and delays in the domestic adoption process, and the humanitarian impulse to rescue a foreign child. Less stringent eligibility requirements in the international context provide additional encouragement. Agencies and individuals have arranged a family environment for hundreds of thousands of orphaned or abandoned children since World War II. These successes are partly the result of loose governmental regulation. While the seeds of the current system can be traced to the responses to South Korea's war orphans after the Korean conflict, it has evolved into a transnational bureaucracy but retains elements of flexibility.

The United States is the principal receiver of children for international adoption, becoming home for nearly fifty percent of all children adopted internationally. In fiscal year 1998, some 15,774 orphans came to the United States; Russia and China together sent over half of the total. At an average cost of \$20,000 per adoption, the expenditure of more than \$300 million annually for successful adoptions by Americans is involved. Substantial portions of the expenses often go directly to an agency of the sending state, or to private intermediaries. In China, for example, a \$3,000-\$4,000 "donation" to the child's orphanage is required.

Like most transnational activities, international adoption has been strongly criticized, for a multi-

tude of faults. Among the most vehemently asserted are that baby-selling and child-trafficking, bribery and corruption, and exploitation of the human capital of poor countries are involved. While abuse occurs, several factors inflate the perceived magnitude of abuse and retard efforts to prevent it. Rumors circulate rapidly, even after having been proven false. The sources of alleged abuse are rarely identified clearly, and allegations are often clothed in politically motivated terms. National regulatory officials in sending states are frequently involved in scandals, yet a broad moratorium on foreign adoption rather than reform is often the only response. Nearly taken for granted in the clamor over abuse are the large orphan populations in most sending countries, and the harmful bureaucratic bars and obstacles to adoption, often believed to be inherent in the process.

Efforts to "reform" intercountry adoption have shifted to the international level. The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption ("Hague Convention") was adopted in 1993 by 36 member-states of the Hague Conference and by 30 invitee states, and signed by the United States in 1994. The Convention sets out minimum norms and procedures purported to protect children involved in intercountry adoption as well as the interests of birth and adoptive parents. An objective of the system of cooperation it would establish is to "prevent the abduction, the sale of, or traffic in children." The Convention would arguably promote these objectives, but is likely to have adverse effects on the *relative* efficacy of the current system, and is un-

likely to reduce the number of children without families. Indeed, with its new bureaucratic requirements and costs, the number of adoptions may well decrease. To be binding on the United States, the Convention's ratification instrument must be deposited. To that end, the intercountry Adoption Act of 2000 was signed by President Clinton, and the Senate approved a resolution of advice and consent to ratification. Unfortunately, it does not target the critical questions for either orphan children or prospective adoptive parents in the United States. Nor does it contain concrete mechanisms to facilitate the process of international adoption. In fact, the Implementation Act is almost certain to drive up the costs of intercountry adoption and heighten the bureaucratic hurdles.

Assessing the potential of the Convention and implementing legislation in the United States for reform requires some background on the process of intercountry adoption and the current "regulatory" environment. Currently, to achieve an intercountry adoption, two governmental determinations must be obtained from sending and receiving states. First, the child must be determined to be "adoptable," which typically depends on evidence that the child is in fact without parents. The release of orphaned or abandoned children via an agency-assisted adoption is usually the culmination of a multi-stage process. Sending states have a variety of approaches, ranging from centralized (e.g., China) to decentralized (e.g., Russia). Physical separation of the child from his/her parents—either becoming an orphan through parental death or being abandoned—initiates the process. In some countries, abandonment is a crime and is therefore done surreptitiously. In others, parents are able to execute a release in favor of an orphanage or other institution. Some form of relinquishment then occurs, through which the birth parents' rights are terminated, either formally by judicial or administrative action, or by default. The child then becomes "available" for adoption. Citizens are frequently given exclusive options to adopt during this stage, and many countries have "waiting" periods, during which citizens have priority over foreign adoptive parents. The child may then become "adoptable" for international purposes, although some countries foreclose release by prohibiting foreign adoptions, either *de jure* or *de facto*. Other countries simply make it difficult for foreigners to adopt. The release of the child for adoption may then occur, culminating in either an adoption decree, or guardianship in favor of the adoptive parents or adoption agency

which allows the child to leave the sending country for final adoption abroad. For the United States, the Immigration and Naturalization Service (INS) makes this final determination of "adoptability" by approving issuance of a visa to the adoptive child.

The process is complicated by the fact that children lack the mental, physical, or legal capacity to act on their own behalf. Most are at the mercy of state agencies for release through adoption, while dependent on government institutions for daily survival. Private agencies typically have limited influence, and often are not provided access to orphanages. Because of frequent state opposition to foreign adoption, these children are literal hostages and require assistance to be released in care of foreign families. Unfortunately, it is usually the interests of the sending state, rather than the needs of children, which trigger their release. Many governments and officials use the leverage of being able to satisfy the foreign demand for children to garner resources from abroad. The exercise of state power functions to place a bounty on the orphan often coupled with a necessary bribe to the state or its officials for release. This can be for corrupt, personal enrichment purposes by officials, or for "legitimate" budgetary purposes. On the one hand, most allegations of baby-selling are directed toward persons in sending countries improperly utilizing their official positions to facilitate adoptions. Romania, on the other hand, has used its leverage to obtain professional resources from international adoption agencies to develop a child welfare system, and China purportedly uses the fees collected from adoptive parents to fund its orphanages (although the actual use of these fees is discretionary with the orphanage's director).

The reasons for refusing to release children for foreign adoption are varied. Even when national law and policy permit adoption by foreigners, children may not be released promptly, if at all. Law is frequently little more than a set of discretionary hoops to be exploited by officials for institutional or personal gain. Even as a set of rules, the law of adoption often focuses on the risks and disregards the benefits of international adoption, and serves to discourage rather than facilitate adoption. It may be used to reinforce official and institutional agendas, personal authority, and irrational procedures. Budgets for institutions in sending countries are often based on the size of the inmate population, discouraging the release of children. Similarly, directors of orphanages may have dictatorial authority, exploited in permitting or withholding the re-

lease of children. Also, the organizational structure of orphanages is often distorted by budgetary and accountability problems, breeding rules and operations contrary to the interests of child inmates.

Another bar to obtaining orphans' release in many countries is the "nationality" factor, posing insurmountable barriers to prospective adoptive parents unable to claim an ethnic or linguistic connection to the child. Enshrined in the Convention on the Rights of the Child, state parties are required to provide "care" to children deprived of their families. Preferred options include foster placement, domestic adoption, or institutionalization, paying due regard "to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background." Foreign adoption is not an option the state must provide, and is permitted only if the child "cannot in any suitable manner be cared for in the child's country of origin." Children may be deprived of a family in the interests of nationality, and it is deemed legitimate for states to hold orphans hostage as a "national resource." Some premises for treating children as such are that large-scale intercountry adoption is an "act of aggression" against the sending country, and injures its national pride because it is shameful to release such children abroad, and is an admission of national failure. Viewed as genetic material, foreign adoption may threaten a nation's "gene pool." Viewed as potential labor, children released for adoption abroad constitute a loss of national assets, the next generation of laborers. Finally, lost cultural and ethnic heritage is seen as an injury to the nation; the children are also injured by their presumed subjugation to racial and ethnic discrimination in their new country. The Hague Convention's "subsidiarity" principle preserves much of this restriction, requiring sending states to determine whether an intercountry adoption is in the child's best interests only "after possibilities for placement within the State of origin have been given due consideration."

The second official determination required to finalize a foreign adoption concerns the "suitability" of the prospective adoptive parents. Adoption by foreign parents is often a final option rather than an equal option for orphans. Domestic adoption opportunities are very limited in most sending countries, especially *vis-à-vis* the large numbers of orphan children. For example, China has the capacity to release 4,000–5,000 orphans for international adoption per year, while estimates of the number of children in institutions range wildly from 80,000–630,000. In Russia, it has been estimated that one-

third of the more than 600,000 children without parental care reside in institutions. Sending states typically require the satisfaction of the receiving state's requirements, but impose their own as well. A "home study" is a required part of the pre-adoption requirements in the United States, in which intimate details of the prospective parents' lives are scrutinized to determine suitability. Requirements of sending states may be formally imposed by administrative or judicial authorities. Informal requirements, such as establishing residence in the sending country, withstanding long delays in processing, and making multiple trips to the country, may be interpreted as a part of the "official" process for determining suitability. In cases where parents must travel to the sending country to obtain a child, the procedural morass is clearly evident in testimonials. Often, parents are required to take up lengthy residence and contribute to the local tourist economy. While spending time in the culture of the adoptive child may be worthwhile, doing so in the process of negotiating a child's release is often counterproductive. The pinball effect in sending countries' adoption systems may route parents or their representatives to multiple ministries or departments, as well as various levels of government to obtain the approval required. The final legal order for adoption or guardianship may be either a major ordeal to obtain or little more than a formality. On the U.S. side, the INS determines the ultimate suitability of the prospective adoptive parents through the requirements of the Immigration and Nationality Act for approving petitions for issuance of a visa to the child.

While the difficulties in making these official determinations may reflect the very nature of intercountry adoption, problems are likely to be exacerbated by the Hague Convention. In most sending countries, it is the process of obtaining final approval for release that creates the uncertainty. Despite the Convention's allocation of responsibility for these determinations to sending and receiving states, it will add another layer to the bureaucratic structure for making them, adding to the costs and delays of international adoption. In efficient centralized adoption systems such as China's, the uncertainty is already reduced (and the Hague Convention would offer no improvement). Although the Convention encourages "cooperation" among signatories, there are no mechanisms prescribed by which it is to be achieved.

Effective international regulation of international adoption—even such "cooperation" as the Conven-

tion envisions—is unlikely, given the absence of a consensus on the values that should govern the process. The need of all children for a family life rather than institutional existence, regardless of gender, physical deformity, mental deficiency, purity of blood, or legitimacy, has not attained international recognition. Contrary values embedded in sending countries—which contribute to the need for international adoption and to barriers to release—are not likely to be changed by the Hague Convention. The highly politicized global environment of the Hague Conference proceedings reflects the discrepancy in values among sending and receiving states. Only such a value conflict seems to explain the fact that the central problem for the Hague Convention—the abuse of children through abduction, baby-selling, and trafficking—could have been perceived as the major problem in the process. No meaningful estimates of the frequency of abduction or child-trafficking stemming from fraudulent international adoption efforts are available. But they are relatively rare in proportion to the number of intercountry adoptions actually finalized. The protection that orphan children need in the context of intercountry adoption is from barriers to release (imposed primarily by sending states); they also need greater opportunities for release. The impotence of current international law in regulating conditions in orphanages, and in obtaining the release of children held hostage, is apparent in a Human Rights Watch report on the conditions in Russian orphanages. It concluded “the very state that is charged with the care and nurture of these vulnerable children condemns them to a life of deprivation and cruelty.” Yet the report took “no position on the Russian debate over the advisability of foreign adoption, but urges that in seeking alternatives to institutional life, the best interests of the child always be paramount, and that foreign adoption should not be ruled out as an alternative preferable to institutionalization.” The Hague Convention does not address the problem of release, but it does chip away at the international law support of intercountry adoption as an option of last resort. The clear implication of the Convention on the Rights of the Child is that in-country institutionalization may acceptably trump international adoption. In the Hague Convention’s vision, only adoption by a family in the child’s country of origin is more appropriate than intercountry adoption. Intercountry adoption “may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.” However, the Hague Convention pro-

vides no mechanism to ensure that family placement takes priority over institutionalization.

The actual goals of the Hague Convention appear to be to provide reassurance to sending states that the children they release for foreign adoption will be protected, and to consolidate the role of the state and larger established adoption agencies in the international adoption process. These goals were achieved in part by making unprecedented efforts to secure the participation of representatives of and experts from non-Member sending states in the proceedings. As a result, the call for additional assurances has displaced the need for basic adoption options for millions of orphan children. The U.S. government and intercountry adoption organizations have been intimidated into supporting implementation of the Convention, despite its lack of meaningful benefits for children. In a sense, this is a simple case of international politics, where poorer countries with a scarce resource (adoptable babies) are establishing a “cartel” to be regulated by international convention which imposes requirements (with clear financial implications) on parents from wealthier countries in order to adopt children. The Convention itself does not directly regulate international adoption or facilitate, improve, or simplify the intercountry adoption process. It directs the “Central Authority” of contracting states to take “all appropriate measures . . . to (a) facilitate, follow and expedite proceedings with a view to obtaining the adoption.” The “appropriate measures” are not specified and no mechanisms are provided for taking or enforcing such measures. In addition, through the creation of non-delegable Central Authority functions, the Convention requires national-level government oversight and monitoring of intercountry adoption. The Central Authority in each contracting State is also tasked with facilitating cooperation among States, although again mechanisms are not specified. The Convention establishes an accreditation regime (providing roles for accrediting agencies and standards of practice for service agencies). To be accredited, an agency is required to pursue only non-profit objectives, have qualified staff, and be supervised by competent authorities.

There are recognized trade-offs between cost, government control, and fraudulent adoption practices. The National Adoption Information Clearinghouse has suggested “the fewest international adoption scandals have occurred in countries when the government has centralized authority over adoption processing. Adoption fees tend to skyrocket in countries where there is little government oversight and

many non-governmental intermediaries throughout the adoption process." Of course, the lowest incidence of fraud would be found in countries where adoption is *effectively* prohibited. That government should have some role in foreign adoptions is indisputable, but the optimal *extent* of involvement is. In most countries the international adoption industry consists of a variety of public, private and "parastatal" agencies, as well as individual practitioners. Rather than simplify or streamline this process in sending countries, the Convention would add other national government agencies to the system, imposing more fees and more bureaucratic procedures to the process, potentially squeezing out smaller, important niche intermediaries. The irony of this is mirrored in one widely cited review which supports greater *public* control of the process despite the fact that it identified the following public sector problems in sending countries: corruption, and delays due to judicial strikes in Peru; weak enforcement and abuse in Brazil; involvement of senior government officials in baby-selling in Honduras; and inadequate government supervision in Sri Lanka. These are problems of national regulation the Hague Convention will not resolve.

The increased costs for receiving states is a common criticism of the Hague Convention. In the United States, the costs of an intensive federal role would be passed on to adopting parents, at a time when the federal visa fees for orphans have recently skyrocketed. According to one systematic assessment, this "may well price foreign adoption out of the reach of many prospective U.S. families," and create many detriments and burdens. These include extra time and delay, additional effort, increased loss of privacy, increased duplication, and fewer protections. In addition, a 60-point proposal for accreditation has been negotiated among groups of service providers, establishing criteria ranging from non-profit status to governance, finance and fees, administration and management, qualifications of staff, and service delivery standards, all likely to increase agency costs. Higher costs and further obstacles could reduce the number of people initiating and finalizing foreign adoptions; and, additional centralization could reduce the number of agencies and avenues by which the complex process of international adoption can be negotiated. The head of the U.S. Delegation to the Special Commission that drafted the Convention identified these risks. Initially, there was concern that "implementation could impose substantial new bureaucratic burdens and costs on prospective adoptive parents

and adoption agencies, and that only large, well-established U.S. adoption agencies might qualify for Convention accreditation."

Less frequently considered are the costs that would be incurred by sending states, and the consequences of these costs. The Convention places "onerous" responsibilities on sending states. They must determine the eligibility of a child for adoption and that international adoption is in the child's best interests; ensure that consents have been given freely and after counseling; and determine whether to veto the receiving country's determination regarding the eligibility of the adoptive parents. Providing effective counseling is viewed as being unreasonable even in the United States, much less in sending countries with limited professional and financial endowments. Added sending country costs would also likely be passed on to U.S. agencies and ultimately to adoptive parents. China's donation requirement is intended to cover the "bearing costs" or costs incurred by the orphanage in caring for the child. As these costs escalate, so too would the charges to adoptive parents. Moreover, higher official costs create greater incentives to avoid them, particularly in many sending countries, by circumventing the official process and utilizing gray and even black market approaches. Higher costs in sending countries may also lay the groundwork for demands for further foreign aid. Internationally mandated processes such as those required by the Hague Convention would be good prospects for foreign aid requests. In turn, foreign aid such as the \$2 million fiscal year 1999 appropriation for support to orphans in the New Independent States would, according to the Congressman largely responsible for the earmark, "engender goodwill...in the area of intercountry adoptions."

Assessing the prospective benefits of the Hague Convention's regulatory regime is more difficult. Representatives at the Hague Conference's proceedings on intercountry adoption and commentators on the Convention have been overwhelmingly generous and optimistic. Neutral assessments, such as that of the director of a major southwestern agency, that "no one knows whether ratifying the Hague Convention will help or hinder U.S. citizens adopting abroad," are rare. Optimism is particularly suspect because of the tradition of impotence of international Conventions for promoting the welfare of children. The Russian Federation, for example, was one of the first nations to sign and ratify the Convention on the Rights of the Child, but its policies for dealing with abandoned children may violate 20

of its first 41 articles, according to Human Rights Watch. An initial shortcoming in implementing the Hague Convention is that the two countries contributing nearly 25% of the total foreign adoptions in the world—China and Russia—are not on board: China, as a member of the Hague Conference which participated in the Session laying down the Convention, has neither signed nor ratified it; the Russian Federation, an invitee to the Session which adopted it, recently signed but has not acceded to it. But more importantly, failure to address the critical problems of release and the costly accreditation regime discredit the Hague Convention's approach to reform.

Despite the uncertain benefits and definite burdens of the Hague Convention, it does represent a step in the right direction regarding the "recognition" or "endorsement" of intercountry adoption. This endorsement is limited to cases in which the procedural requirements it prescribes are met. These requirements are fairly straightforward and not substantially different from the current "ideal" model of adoption procedure in the United States, yet beyond the capacity of many sending states. One widely touted benefit of the Hague Convention is that it would require the United States to modify its definition of "orphan," which has precluded the direct adoption of a child with a surviving parent by prospective adoptive parents without an intervening official determination of abandonment. Otherwise, the Convention would do little to change the internal operations of current adoption systems in sending countries other than require final approval at a high level of government, with all the costs and conditions involved.

Four fundamental flaws are apparent in the Hague Convention's approach to reform, which would further entrench an inefficient structure rather than reinforce efficient processes. First, the Convention would maximize the role of governments across the board, while the evidence is that government is a major problem in many sending countries. Only in countries like South Korea and China, which are (currently) committed to international adoption for their own reasons, does such a government role make sense. The power of government to control and raise fees, and to limit competition, reduces the number of routes to adoption, and the search for cheaper and more effective approaches. Also, such systems could be abolished with a change in national leadership, leaving no recourse to other (official) avenues for seeking the release of orphans.

Second, the Convention would inevitably

heighten the role of money in the process and add to the costs of international adoptions, which are already excessive. Part of the problem has to do with what costs are deemed to be legitimate. The fees of adoption agencies, social workers, lawyers, and government agencies are recognized as legitimate. Even gifts to officials have been recognized as useful. But payments to facilitators are deemed illegitimate, as evidence of baby-selling, despite the fact that these people are often indispensable in finalizing an adoption. Similarly, the non-profit status required for Hague accreditation is not a valid indicator of virtue any more than for-profit status is an indicator of vice. The Hague Convention at least acknowledges that non-profit status does not guarantee appropriate costs by prohibiting agency staff from receiving "remuneration which is unreasonably high in relation to services rendered." In the world of social services, this is largely a bookkeeping and tax status, and bears no necessary relation to motivation, quality of service, or costs charged. Adoption agencies' fees for particular services may exceed the fair market value or actual cost of services provided because of overcompensation of staff, fiscal mismanagement on the part of the agency, or because the agency uses the extra earnings from adoption services to subsidize other services. As more adoption agencies engage in providing services within orphanages overseas, transnational subsidization may be expected to increase. Moreover, the Hague Convention and the Convention Implementation Act authorize current fees, as well as new fees to be imposed by governments which can be recouped from payments by adoptive parents.

Third, the Convention seeks to rely exclusively on bureaucratic professionals, while diminishing the role of other facilitators and intermediaries. These important agents are often critical to completing procedures in sending countries and assisting adoptive parents who travel abroad to adopt. From the viewpoint of established organizations, the Convention's criteria for accreditation have desirable effects, including the "strong peer review content [which] ... should operate to ensure that accredited agencies will not embarrass other accredited agencies or reflect negatively on the validity of the Hague Convention accreditation process in the United States." But the substantive goal of uniting orphans and adoptive parents is unlikely to be advanced thereby.

Fourth, the Hague Convention displays a problematic antipathy toward the private adoptions, and

discourages innovative solutions to the problems of orphans. The U.S. delegation struggled to retain independent or private adoptions (which are finalized without the intervention of an agency) as an option under the Convention, because it is so important to the American adoption tradition. It is also an innovative segment of the industry. In the United States, the number of independent domestic adoptions increased dramatically because of the inability of public/private agencies to respond to changes in demography, law, funding and available services to finalize adoptions. This approach is also an important aspect of intercountry adoption as a humanitarian response: independent adoptions can assist in keeping children out of institutions in the first place. The infant mortality rate in orphanages is often especially high during the first few months of institutionalization.

Having signed and approved the Hague Convention, for ratification, it is too late for the United States to turn back now. Apart from the “recognition” of intercountry adoptions, there is little of substance to be gained from and little urgency in implementing the Convention. Efforts to implement it should focus on redressing some of the Convention’s flaws. The critical inquiry should revolve around reducing the costs, delays and uncertainties of adopting an orphan. U.S. interests are largely reducible to the goals of prospective parents to adopt orphan children expeditiously, with the direct benefits to adopted children. (There are some “public” costs associated with intercountry adoptions, including the federal income tax adoption credit [capped at \$5,000], some state subsidy or reimbursement programs, the federally mandated coverage of pre-existing conditions by group health insurance policies, and Family and Medical Leave Act coverage. However, these issues may be reasonably settled by U.S. policy.) Minimizing inefficient bureaucratic procedures would reduce the obstacles and delays in adoption, and the vast supply of orphans in sending countries would lower the costs considerably. Lower costs and reduced delays would increase the number of Americans adopting internationally, and reduce the number of children languishing in orphanages.

Critical in this regard was the designation of the federal agency to serve as Central Authority in the U.S. The Clinton Plan designated the Department of State as the Central Authority, but proposed lead responsibility for the Department of Health and Human Services (DHHS) in the accreditation and approval of service providers, and establishing cri-

teria for home studies. One rationale for a DHHS role, despite having no apparent current expertise in international adoption, was that it would require Congressional oversight by committees with jurisdiction over child welfare. One commentator characterizes this proposal as requiring the federal government “to approve the placement of a particular foreign child in a particular family in the U.S.” Another proposal was to vest responsibility in the Department of State—sensible in terms of current expertise with intercountry adoption, as well as in coordinating Convention responsibilities with other States—and no role for DHHS. Accreditation responsibilities would be committed to the State Department, which in turn could “delegate” responsibilities to private sector organizations. A lead State Department role was criticized for subjecting the adoption of children to the “ebb and flow of political relations with other countries”; it was suggested that INS act as Central Authority because it currently fulfills many duties in the process. The Implementation Act’s designation of the Department of State as the Central Authority and lead agency is reasonable.

The Convention’s risks to finalizing intercountry adoptions were largely passed over rather than assessed in the process of developing implementing legislation. In part, this is due to an “attitudinal shift in the United States towards the Convention’s acceptance,” even a “sense of urgency.” The “mandate” to ratify has largely displaced U.S. interests in international adoption. The explanation for the “shift” to urgency in accepting the Hague Convention appears to be the pressure of sending countries to compel ratification, and unreasonable expectations about the impact of the Convention. Hearings in the Senate and House have largely failed to address feasible alternatives in implementing the Convention, lessening the potential negative impact, or maximizing the positive features of the Convention. In fact, both Senate and House bills appeared on track for passage without any substantive criticism by witnesses at Committee hearings (other than privacy and open records issues). In the late spring, a flurry of criticism of the proposed implementing legislation surfaced, including maneuvers in Congress to put activity on hold. The prospects of increased costs in finalizing international adoptions and negative impact on smaller adoption agencies and “facilitators” were the most prominent last minute criticisms, creatively resolved in the final hour.

In implementing the Hague Convention, the United States should reclaim the moral high ground

in international adoption. The fundamental problem underlying the current system is the abundance of children without families. Foreign adoptions have traditionally served humanitarian purposes, while also providing children to the childless. The dialectic between providing homes for children and providing children for parents must be recognized. Neither is possible without the other, and meeting the interests of adoptive parents in no way diminishes the value of adoption for children. The demand for foreign adoption exists: sending countries must change their policies regarding release in order for agencies to establish and expand programs.

There are options for promoting this objective within the confines of the Convention. First, implementation should be coupled with the negotiation of bilateral agreements with sending states. These agreements should provide for the sending State to reduce bureaucratic obstacles and facilitate inter-country adoptions; a separate process or track for foreign adoption, modeled on China's system, may be an effective approach (although it raises other concerns). The case of the U.S.-Uzbekistan joint statement on Consular Relations is instructive. The United States asserted its intention to bring the Hague Convention into force and provide information regarding adoption procedures and agency legitimacy. While greater precision would be desirable, Uzbekistan reiterated its intent to develop terms and conditions for foreign adoption.

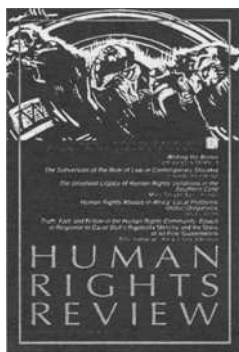
Second, implementing regulations in the U.S. should take advantage of all the options made available under the Convention. The U.S. Central Author-

ity should be authorized to negotiate detailed agreements with Central Authorities of sending states to secure the expeditious release of children. A special issue is the case of independent or private adoptions. The Hague Convention allows each contracting State to permit (or not permit) independent adoptions. Independent adoptions could be facilitated by bodies or persons not accredited under the Convention but meeting "the requirements of integrity, professional competence, experience and accountability of the state...." It is essential that implementing regulations in the United States provide for independent adoptions by such persons. The State Department has also urged that a declaration to this effect be filed with the U.S. ratification instrument. Then, the United States must also negotiate with sending states to permit independent adoptions, and to recognize persons not accredited but meeting licensure requirements of U.S. states.

Without added bite, such as buttressing arrangements through bilateral agreements and shoring up the weakest points of its terms, the Convention is likely to join the heap of other impotent international agreements, a hollow structure doing much more harm than good.

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