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Intercountry Adoption Today and the Implications of the 1993 Hague Convention on Tomorrow

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Intercountry Adoption Today and the Implications of the 1993 Hague Convention on Tomorrow

I. Introduction

Of immediate international concern is the fate of thousands of innocent children in the wake of the Bosnian civil war. At least 1200 children have been killed and another 12,000 wounded. In addition to these atrocities, Serbian troops systematically raped hundreds of Muslim women resulting in an estimated 500 to 600 children of rape. These children of rape are painful reminders to the mothers of a heinous ordeal, and are likely to become orphans. However, the Bosnian government has prohibited intercountry adoption of these children, hoping that the mothers will decide to keep them or that they can be placed within Bosnian homes. The Bosnian government’s biggest fear is provoking an international baby trade similar to that in Romania in 1990. Regardless of Bosnia’s motives, it is not likely that the rape victims will ever wish to raise these children.

2. Id.
3. Id. One seventeen-year-old rape victim threatened to kill herself if the hospital kept records of her giving birth because she was so wrought with fear and shame.
4. Id.
5. Williams, supra note 1. Prohibition of intercountry adoption may be Bosnia’s nationalistic effort to maintain the population as 200,000 people have been killed in 15 months of civil war. Id.
6. See supra text accompanying supra note 3. Children of rape are currently being housed in institutions funded by foreign charities. Williams, supra note 1. Institution officials believe many of the raped mothers will not return to claim their children. Id.
In contrast, there are one to two million U.S. couples and individuals seeking to adopt a child.\(^7\) While there are approximately 400,000 U.S. children living in foster care or orphanages, only 36,000 qualify for adoption.\(^8\) The decrease of available U.S. children is partly due to medical advances in contraception and greater social acceptance of single-motherhood.\(^9\) This acute shortage of adoptable children often results in a seven-year wait for an American infant.\(^10\) Furthermore, many adoption agencies responded to the shortage by restricting their clientele to childless, married couples.\(^11\)

Consequently, for many U.S. couples and individuals seeking to adopt a child, international adoption is the only viable answer. In 1992, an estimated 6500 foreign-born children were adopted by Americans.\(^12\) Generally, these children are products of countries whose poor socio-economic standing lends to the availability of adoptable children.\(^13\) The

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8. Kate Bales, *Adoption: The World Baby Boom*, INT'L HERALD TRIB., Feb. 13, 1993. For example, the decrease in available children for adoption was severe in Connecticut. Twenty-five years ago, 900 babies a year were placed in adoptive families. Collins, supra note 7, at 1. In 1990, that number fell between 125 to 150 a year. Id. This decrease has been partly attributed to the increase of societal tolerance of unwed mothers. Id. In Connecticut, only 3% of the unwanted pregnancies result in adoption. Id.

In Great Britain, the number of adoptable British children has consistently declined from 5172 in 1974 to 950 in 1990. Liza Donaldson, *An End to 'Do-It-Yourself Adoptions Abroad*, THE INDEPENDENT, Jan. 26, 1993, at 15. Adoptions of older children, as well as handicapped and abused children have similarly dropped from 22,500 to 6040 over the same period. Id.


10. Collins, supra note 7, at 1. The National Council for Adoption found that all babies, even those with medical problems, are placed in adoptive homes very quickly. Id. The National Downs Syndrome Adoption Exchange has a waiting list of over 100 approved families seeking to adopt children with Downs Syndrome. See NCFA HOTLINE PACKET, supra note 7.

11. Collins, supra note 7, at 1. In response to the shortage of adoptable babies in Connecticut, some adoption agencies have restricted their clientele to childless couples. Id.

12. NCFA HOTLINE PACKET, supra note 7, at 12. The number of foreign adoptions has increased steadily from 5707 adoptions in 1982, to 8327 in 1984, and to 9946 in 1986. Id. There has been a decrease since 1987 because less children were adopted from South Korea. Id. In 1989, there were 7948 children adopted from South Korea and approximately 6500 in 1992. Id. The United States is the home of the majority of adopted foreign children. It is estimated that between 7000 and 10,000 Americans adopt a foreign child each year, more than all other nations combined. See Stacey Joyce, *Overseas Adoption, Often a Stressful Option*, STATES NEWS SERVICE, July 14, 1993, available in LEXIS, News Library, Wires File.

13. Bales, supra note 8. For example, in China, female babies were drowned or starved to death because of the societal perception that they are a burden to the family. Id. Ninety-seven percent of the countries which give up children for foreign adoption are from the following countries: Columbia, Brazil, Argentina, Peru, China, Sri Lanka, Philippines, India, and more recently from Romania, Albania, Vietnam and Cambodia. 20,000 Third World Children Adopted
high demand for adoptable children, coupled with the chaos resulting from varying adoption laws, creates a situation precariously vulnerable to corruption. As a result, the international adoption process is marred by baby-selling, kidnapping, and other underhanded practices.

Several international conferences have attempted to solve the problems of intercountry adoption to no avail.\(^4\) In May of 1993, the Hague Conference on Private International Law addressed the shortcomings of the current system of intercountry adoption with a proposal focused on the children and established the 1993 Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption [hereinafter Hague Convention].\(^5\) In particular, the Hague Convention proposes an international framework of minimum procedures to effectuate the best interests of the child and to protect the rights of all the parties involved.\(^6\)

This Comment will demonstrate the necessity of the 1993 Hague Convention by exposing the inherent faults in the present system of intercountry adoption in Part II and the inadequacies of prior international conventions to alleviate these faults in Part III. In Part IV, the goals of the 1993 Hague Convention will be explored and its likely impact purported. The logical conclusion to the following analysis suggests the importance of U.S. ratification of the 1993 Hague Convention.

II. The Current System of Intercountry Adoption

Before considering the recent Hague Convention, it is necessary to examine the existing practices and procedures of intercountry adoption. This analysis will expose the problems which prompted the formation of the Hague Convention on Intercountry Adoption in May of 1993 and speculate as to its success.

A. The Absence of Uniform Rules for Intercountry Adoptions

Drastically different intercountry adoption procedures and rules exist from one country to the next, causing unnecessary frustration and
confusion for adopting parents. The two primary legal processes used in intercountry adoption are agency adoptions and direct adoptions. The first, that preferred by Asian countries, requires all of the adoption proceedings to be handled through U.S.-based agencies. The agency does everything from identifying the child to be adopted to placing him or her with the adoptive family. There is no requirement that the American adoptive parents travel to the foreign country.

Conversely, in Central and South America, governments prefer direct adoptions. With direct adoptions, American adoptive parents must contact the orphanages or intermediaries in the foreign country. Once a child has been located, one or both of the adoptive parents must travel to the country to officially adopt the child according to that country's rules and procedures. Although direct adoptions eliminate the agency involvement, only about two-thirds of American states recognize foreign adoption decrees. Consequently, the parents must seek a reconfirmation of the adoption in the United States. The necessity of adopting the same child twice, once in each country, creates an exhausting, expensive, and aggravating procedure.

The absence of uniform procedure produces enormous bureaucratic red tape, as well as the opportunity for corruption. There are reports of Americans traveling to Guatemala, Peru, Romania, and China only to find their adoption waylaid by requests for more money, gifts, and compliance with other "requirements." For example, in Hong Kong, parents will not even be considered if they are more than twenty percent overweight when they arrive to adopt the child.

In addition to these rather arbitrary requirements, the foreign state's political situation often aggravates the adoption process. As the 1990 Romanian crisis revealed, regardless of the amount of orphaned children,

18. Id. The agency must identify and care for the children in their home countries while trying to legally free them for adoption. Id. Once the child is free, an adoptive family is found and the parties united in the United States. Id.
19. Id.
21. Id. at 31-32.
22. Id.
23. Id.
24. Irrespective of whether parents seek direct adoption or adoption through U.S.-based agencies, U.S. Immigration and Nationalization Officers must affirm a child's irrevocable adoptability by investigating the situation in the child's country of origin. Then, the adoptive parent's state of residence must certify that all preadoption requirements have been met. See infra part II.C.
the rise and fall of political regimes may dictate the availability of children for adoption.27 Romania, Columbia, Korea, and China have abruptly suspended foreign adoptions because of political conditions.28 Indeed, social workers aiding in international adoptions advise prospective parents, "what we tell you today may not be true next week."29 Because adoption procedures vary from country-to-country and more significantly from day-to-day, there is uncertainty and disappointment for couples seeking to give an unfortunate child a loving family.

B. The Resulting Problems of the Current System of Intercountry Adoption

1. "Black Market" Baby-selling of Children for Adoption.—The most horrific occurrence arising out of intercountry adoption today is the transnational trading of infants for adoption. Although highly immoral, this practice is very lucrative. Organized syndicates sell babies to prospective parents for a price between $5000 and $10,000, while adoptions through traditional means cost less than $2000.30

In addition to extorting exorbitant amounts of money from the adoptive parents, agents employ deceitful measures to wrest children from their birth mothers.31 There are reports of agents telling mothers that their children were just temporarily being taken until the mother could better afford the child.32 The agents then sold the children to adoptive parents, leaving the birth mother without her child or compensation.33 These mothers are often uneducated and desperately poor, and are therefore, more vulnerable to the exploitation of baby brokers.34
(a) The situation in Peru.—The situation in Peru in 1991 illustrated how the availability of adoptive children reflects world politics and shapes the nature of adoption procedures. In Peru, millions of people were forced into abject poverty that year by governmental measures to control the economy.35 Destitute and deprived of basic necessities, these people were vulnerable to corruption, most notably, baby trafficking.36 Indeed, “[a]gainst a background of rising prices, increasing malnutrition, epidemics of cholera, rabies and tuberculosis, and an escalating guerrilla war, babies were the one commodity guaranteed to sell and command high prices.”37

Prospective adopters, generally Western couples, arrived in Peru offering from $10,000 to $17,000 for a relatively simple adoption to be completed in six weeks.38 There are even reports of unscrupulous adoption representatives “renting” the womb of desperate women and selling the babies.39 In these cases, the mother was given token compensation, while the representative made an outrageous profit. In an effort to curtail this corruption, Peru is currently restructuring its adoption laws.40

(b) The nightmare in Romania.—The most tragic abuse of the intercountry adoption system erupted following the fall of former Romanian dictator Nicolae Ceausescu in 1990. Prior to his fall, Ceausescu illegalized birth control measures, including abortion, and pressured women to have at least five children.41 With women having five or more children and widespread poverty, up to 140,000 children

36. Id. An elderly peasant woman in Peru was seen clutching a photograph with tears streaming down her face as she left the hotel where she had just sold her grandchild for adoption. Id.
37. Id.
38. Id.
39. Crowley, supra note 35, at 1. Manuela Ramos, a lawyer for a women’s organization funded by Christian Aid, has discovered a home which took rural children and sold them for adoption. Id. This same home was being investigated for a child prostitution racket where young boys were rented or sold to paying customers. Id. A Peruvian senator, who also investigated the home, confirmed that nurses, lawyers, and foster parents were all involved in the trafficking and prostitution racket. Id.
40. Bales, supra note 8. Faced with the same corruption as Peru, Albania has prohibited all intercountry adoptions. Id. Russia and Honduras are also restructuring their adoption laws. Id.
41. Dunphy, supra note 27, at B1. Romanians now point to Ceausescu’s population policies for the high number of abandoned children. Id. His policies pressured married women to have at least five children, resulting in poor families abandoning tens of thousands of unwanted children. Id.
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were forced into conditions of malnutrition and neglect in unsanitary institutions. Following the fall of Ceausescu’s regime, media attention was drawn to the thousands of “big-eyed, lost Romanian babies trapped behind white crib bars.” Thereafter, a flood of empathetic Westerners poured into Romania seeking to adopt these poor children. In 1991, 2552 Romanian children were adopted by U.S. parents, amounting to the greatest number of children adopted from one country. The tide of hopeful adoptive parents created the opportunity for avaricious dealers to exploit the situation for an unimaginable profit.

Many of the children adopted from orphanages were not “true” orphans, but were abandoned. Consequently, baby sellers could bypass compliance with the Romanian law requiring that consent be obtained from both parents. Devious minds turned an otherwise humanitarian deed of adopting an underprivileged child into an illegal black market.

Soon, both orphaned children and those with families were auctioned in a perverted “baby bazaar.” Relatives of children, or those posing as relatives, sold children to the highest bidder. Even more startling, Romanian nuns coerced unwed mothers to relinquish all rights to their children and then sold them for up to $15,000.

Amidst the adoption scandals in Romania, the Romanian media circulated horrid rumors necessitating government action. It was believed that Romanian children adopted in America were exploited in sex rings or used as involuntary organ donors. Consequently, in 1991, the Romanian government responded with legislation clogging adoption channels. The channels have since been reopened, but are

42. Dunphy, supra note 27, at B1.
43. Id.
44. Id. In response to this influx of foreigners, the Romanian government panicked and froze all intercountry adoptions for several weeks. Id. When the ban was lifted, the corruption began. Id.
45. Madison, supra note 27. It was estimated that over 50 Romanian children were adopted each day. Elizabeth Wasserman, Guilty Plea in Adoption Case, NEWSDAY, Aug. 25, 1993, at 7.
47. Id.
48. Id. The publicity regarding the sale of children altered Westerner’s perception of adoption in Romania. Once applauded for rescuing Romanian children, adoptive parents are now viewed as villains. Id.
49. Mehren, supra note 28, at E1.
50. Bales, supra note 8.
51. Dunphy, supra note 27, at B1. See also Madison, supra note 27, at 1.
52. Dunphy, supra note 27, at B1.
filled with bureaucratic regulations to prevent reoccurrence of abuse.\textsuperscript{53} Although the scandalous baby trade has been curbed, the number of orphans and abandoned Romanian children have increased from 85,000 in 1989 to 98,000 in 1993.\textsuperscript{54} These innocent orphans deserve a loving family. With the amount of willing and qualified adoptive parents in the United States, intercountry adoption is one solution. However, international cooperation is necessary to safeguard the process.

\textbf{C. The Inefficiency of U.S. Intercountry Adoption Procedures}

The U.S. intercountry adoption procedure is multifaceted to protect both the children and the rights of the adopting and natural parents. Although this extra protection is well-intentioned, it creates unnecessary redundancy of procedures, resulting in inefficiency.

The first test toward a valid adoption in the United States requires compliance with the laws of the child's country of origin.\textsuperscript{55} Some foreign countries allow a simple adoption, where the adoptive parents are granted guardianship of the child to complete the adoption in the United States.\textsuperscript{56} However, most foreign countries require a full adoption of the child within their own courts.\textsuperscript{57} Since only two-thirds of U.S. states recognize full adoption decrees from foreign countries, a re-adoption of the child in the United States may be necessary.\textsuperscript{58}

The second step requires federal approval of the foreign adoption by the United States Immigration and Naturalization Service (INS). Irrespective of the procedure used by the foreign country, the child must obtain an orphan's visa from the INS prior to entering the United States.\textsuperscript{59} To grant an orphans visa, the INS conducts essentially the same test performed previously by the child's country of origin. First, the child must be deemed adoptable by one of the following two procedures:\textsuperscript{60} (1) a declaration that the child is an orphan;\textsuperscript{61} or

\begin{itemize}
  \item \textsuperscript{53} \textit{Id.}
  \item \textsuperscript{55} Cynthia J. Bell, \textit{Consent Issues in Inter-Country Adoption}, 6 CHILDREN'S LEGAL RTS. J., Summer 1985, at 4.
  \item \textsuperscript{56} Suzanne Beck Nichols, \textit{Private Adoption Overseas}, 15 FAM. ADVOC., Spring 1993, at 56.
  \item \textsuperscript{57} \textit{Id.}
  \item \textsuperscript{58} Bell, \textit{supra} note 55, at 4. Re-adoption of the child in the United States affords the foreign-born adopted child the same rights and protection as domestically adopted children. \textit{Id.}
  \item \textsuperscript{59} Hale, \textit{supra} note 17, at 32.
  \item \textsuperscript{60} Nichols, \textit{supra} note 56, at 56.
  \item \textsuperscript{61} \textit{Id.} If the birth parents are living, their rights must be legally and irrevocably terminated. \textit{Id.} The Aliens and Nationality Act classifies an orphan as a child under the age of sixteen, who *because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parents is incapable of providing the proper care for.\textit{Id.}
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(2) satisfaction of the two year residence requirement. Second, an adoptive home study must be conducted to verify that the child's best interest will be served and that there are sufficient financial resources to support the child. Finally, to obtain United States citizenship and all of the Constitutional rights and protection attached therewith, a petition for naturalization must be granted.

Once the adoption has passed federal scrutiny, the case is deferred to the state courts for the third and final step. State courts have jurisdiction over adoptions independent from the federal jurisdiction exercised through the INS. Just as there is no uniformity among the countries of the world, every state follows its own adoption laws and procedures. To ensure adherence to its own adoption laws, the state courts generally repeat the adoptability examination already conducted by the United States government and the foreign government. If the state court determines that the child is not adoptable, the petition for adoption will be denied despite contrary opinions by the foreign and federal governments.

In sum, in addition to surmounting differing adoption laws of foreign countries, American adoptive parents face additional frustration, expense, and wasted time in the United States. Congress' General Accounting Office found that forty percent of adopting parents in 1991 "encountered substantial difficulties" while proceeding through the Department of State and Immigration and Naturalization Service. Inefficient administration accounted for the trouble. To further compound matters, a visa will be granted by the United States only after the federal and state governments independently approve the same child's


62. The Aliens and Nationality Act, 8 U.S.C. § 1101 (1987). If the child does not qualify as a legal "orphan," the child will be deemed adoptable if the adoptive parents lived with and had legal custody of the child in the country of origin. Id.

63. Hale, supra note 17, at 32.

64. Jane Truesdell Ellis, The Law and Procedure of Intercountry Adoption, 7 SUFFOLK TRANSNAT'L L.J. 361, 376 (1983). To obtain a certificate of Naturalization, the child must be a lawful permanent resident of the United States and under the age of 16. Id.


66. Streamline Adoption, USA TODAY, June 2, 1993. There is the Uniform Arbitration Act. See Uniform Adoption Act, 9 U.L.A. 17 (1971). However, it has only been adopted by North Dakota, Montana, Ohio, and Oklahoma. Id.

67. Streamline Adoption, supra note 66.

68. Id.

69. Joyce, supra note 12.

70. Id.
adoption. Consequently, the requisite procedures of the foreign country, the INS, and the state court account for a redundant and exhaustively inefficient system of intercountry adoption.

III. The Inadequacy of International Conventions and Treaties on Intercountry Adoption

In light of the corruption which has occurred in Peru, Romania, and other countries, it is apparent that international measures must be taken to prevent a reoccurrence of these events. Although treaties and conventions have been formed in attempts to address intercountry adoption issues, the following section will reveal their inadequacies and thus, demonstrate the importance of the 1993 Hague Convention.

A. The Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption

In 1965, the member States of the Hague Convention met intending to establish common procedures for intercountry adoption. Many regarded this Convention as “one of the most important conventions bearing on adoption.” A testament to its shortcomings, only Austria and Switzerland ratified the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption [hereinafter Hague Convention], and only three ratifications were necessary to bring it into force. Furthermore, it is not likely that ratification of the 1965 Hague Convention will ever be complete.

The narrow applicability of the provisions is one of the factors preventing ratification of the 1965 Hague Convention. In order for the Convention to apply, the adoptive parent or parents must qualify as a national and habitual resident of one of the contracting states. The Convention grants concurrent jurisdiction over the adoption to the adopter’s national country and the adopter’s country of habitual

71. Nichols, supra note 56, at 56.
74. Id.
76. Delupis, supra note 73, at 22.
77. 1965 Hague Convention, supra note 72, art. 1. If the adoptive parents are married, the article applies to both, requiring both to be national and habitual residents of the same contracting state. Id.
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residence. Thus, jurisdiction over the adoption is completely divested from the child’s country of origin, even though that country may be better able to determine if the adoption is in the child’s best interest. The isolation of the child’s country of origin appears contrary to the premise that the child’s best interest is primary, not the adoptive parents desire to have a child.

The most unattractive feature of the 1965 Hague Convention is the clause permitting contracting states to disregard any provision which is against their own public policy. The purported goal of the Convention was to establish well-needed uniform rules on intercountry adoption. Yet, the effect of this escape clause negates any uniformity the Convention might have offered. In light of the limitations and unenforceability of the 1965 Convention, its effect if ratified would be minimal.

B. The European Convention on the Adoption of Children

The second international agreement addressing intercountry adoption had the same goal as the 1965 Hague Convention, and virtually the same effect. The European Convention on the Adoption of Children, recognized that “[t]he acceptance of common principles and practices with respect to the adoption of children would help to reduce the difficulties caused by those differences and at the same time promote the welfare of children who are adopted”.

The European Convention applies to unmarried children under the age of eighteen. The adopter must be between the age of twenty-one and thirty-five. Unfortunately, this age bracket has become outdated since many couples delay marriage and children much later than in

78. Id.
79. Delupis, supra note 73, at 24-25.
80. 1965 Hague Convention, supra note 72, art. 15.
81. Bogard, supra note 75, at 594.
82. Id. The Convention was said to contain “exceptions, reservations and restrictions to satisfy nationalistic viewpoints to such an extent that its usefulness is questionable.” Id. (quoting 52 DEP’T ST. BULL. 265, 267 (1965)).
84. Id.
85. Id. art. 3.
86. Id. art. 7. However, article 7 provides for the waiver of the minimum age requirement when the adopter is the child’s father or mother, or when exceptional circumstances exist. Id.
Also, this provision conflicts with national laws in France and Italy, where the minimum age of adopters is thirty-five.88

The inadequacy of the European Convention is most apparent in article 5, the consent provision. While this article protects the birth parents' rights by requiring consent of the child's mother and father, it also provides that "if there is neither father nor mother to consent, the consent of any person or body who may be entitled in their place [can] exercise their parental rights . . . ."89 This clause is deficient in two respects. First, although the clause sufficiently confronts the case of an orphaned child, it neglects to address the consent requirement for a voluntarily relinquished child.90 A definition of abandonment is imperative to determine when consent is necessary. In this manner, the birth parent's rights can be protected. Second, the clause does not specify who may give the consent if both parents are deceased. As such, this nebulous article inadequately protects the rights of the child and the birth parents and provides an opportunity for corruption.

C. The United Nations Convention on the Rights of the Child91

1. The provisions generally.—Prior to the 1993 Hague Convention, the most effective assemblage addressing intercountry adoption was the United Nations Convention on the Rights of the Child, held in 1989 [hereinafter U.N. Convention].92 However, the U.N. Convention's ability to control international baby-trafficking became suspect following the tragedy in Romania in the early 1990s.93 Although article 35 of the U.N. Convention provides that measures must be taken "to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form,"94 it lacks significant force because it relies on national laws to provide the specific legal measures.95 Thus, the U.N. Convention sets

87. Delupis, supra note 73 at 39, 40.
88. Id.
89. European Convention, supra note 83, art. 5. Article 5 requires consent of the mother of the child, the father, where the child is legitimate, and the spouse of the adopter. Id.
90. Bogard, supra note 75, at 592.
93. See supra part II.B.1.b.
94. U.N. Convention, supra note 91, art. 35.
forth no uniform measures to combat such problems. In essence, while the U.N. Convention recognizes the black-market selling of babies, it lacks the specificity necessary to be truly effective.

The primary focus of the U.N. Convention is the best interest of the child. With respect to this standard, article 20 stresses the desire to continue a child's upbringing, especially their ethnic, religious, or linguistic background. Hence, pursuant to article 20, intercountry adoption is to be used only when the child cannot be adopted or placed in foster care within the child's country of origin.

Whether inadvertent or otherwise, article 21 of the U.N. Convention provides some restriction on the sale of children for adoption. Article 21(b) recognizes intercountry adoption as an alternative method of child care, when appropriate. Although this phrase is of seemingly little value, recognition of intercountry adoption is likely to prompt governments to officially implement simple adoption procedures. The prevalence of baby-trafficking may in turn be decreased due to a positive correlation between the amount of black market baby sales and the obstacles to legal adoptions. With a simplified adoption process, there may be fewer desperate couples turning to the black market to adopt babies.

With the best interest of the child in mind, article 21 also requires the placement of children be made only by "competent authorities or organs." Although this requirement correctly attempts to restrict the placement of children to qualified adoption agencies, it is too

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96. See generally, U.N. Convention, supra note 91.
97. U.N. Convention, supra note 91, art. 20. Article 20 states that "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State." Id. Article 20 further states that "due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background." Id.
99. U.N. Convention, supra note 91, art. 21(b). Article 21(b) states that "inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin." Id.
100. Jonet, supra note 95, at 102.
101. Id.
102. U.N. Convention, supra note 91, art. 21(a). Article 21(a) requires that the adoption of a child is authorized only by "competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary."
103. Only adoption agencies are competent to place children in intercountry adoption. To the
ambiguous to be of any real value. Its vagueness stems from its failure to define "competent authorities" and "organs." Absent these definitions, varying interpretations of whom is authorized to place children in intercountry adoption may create susceptibility to corruption.

Another hindrance to achieving a unified system of intercountry adoption is that the U.N. Convention is suppletive in nature.\footnote{104} As such, adherence to the provisions is not mandatory, leaving countries the option to substitute their own laws where they feel the child's best interest would be better served.\footnote{105} Optional implementation of the U.N. Convention's provisions essentially nullifies any intended effectiveness. Without mandatory guidelines for all countries, the opportunities for confusion and corruption remain and the best interest of the child neglected.

2. Obstacles to United States Ratification of the U.N. Convention.—The United States is the only industrialized Western country that has not ratified the U.N. Convention. Yet, ironically, a 1992 Children's Defense Fund Report revealed shocking realities regarding U.S. treatment of children, which suggest that passage of child protection legislation is essential.\footnote{106} The report indicates that the United States is far below dozens of other countries in its commitment to the welfare of children.\footnote{107} For instance, among seven wealthy Western democratic countries, the United States had the highest child poverty rate, a rate two to three times greater than the other six countries.\footnote{108}
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Despite the apparent necessity of ratification, it is impeded by U.S. laws and practices conflicting with the U.N. Convention. Specifically, there are three controversial issues contained in article 37 which are inconsistent with U.S. laws and procedures. First, Article 37(a) prohibits subjecting children to “torture or other cruel, inhuman or degrading treatment or punishment.” Although this sentiment is advocated in the Eighth Amendment of the U.S. Constitution, the practical reality of our juvenile justice system may suggest otherwise. Many U.S. juvenile institutions fail to reach the minimum standard set forth by the U.N. Convention, as several U.S. courts have been faced with constitutional challenges against the physical and psychological abuse, deplorable conditions, and non-rehabilitative confinement existing in juvenile detention centers. In some cases, these conditions were found to be cruel and unusual punishment, in violation of the Eighth Amendment. Prior to ratification of the U.N. Convention, the United States may need to ensure the best interest of the child by improving the juvenile justice system to meet at least minimum standards.

Additionally, article 37(b) stipulates that “[n]o child shall be deprived of his or her liberty, unlawfully or arbitrarily. The arrest, detention or imprisonment of a child . . . shall be used only as a measure of last resort . . . .” This article is inconsistent with state laws which authorize institutional confinement prior to trial, called

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3. The United States is not among the 61 nations that ensure or provide basic medical care for all workers and their dependents.
4. According to the National Consumers League, the United States has the highest rate of working children among affluent, developed countries.
5. According to the U.S. Department of Health and Human Services, the United States has the highest teen drug use of any nation in the industrialized world.

Id.

109. See id. The Children’s Defense Fund Report postulates that, along with conflicting laws, other impediments to ratification include the high cost of implementation, the difficulty of compliance among all fifty states, and the apparently false concern that the Convention takes a stance on abortion. Skoler, supra note 106, at 40.
110. U.N. Convention, supra note 91, art. 37(a).
111. The Eighth Amendment provides that “[e]xcessive bail shall not be required, more excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST., amend. VIII.
113. See State v. Werner, 242 S.E. 2d 907 (W. Va. 1978) (finding that a center implemented punitive practices so horrid as to constitute cruel and unusual punishment). Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974) (holding that the brutality occurring in a detention center was so degrading to human dignity as to be psychologically damaging to juvenile inmates).
114. U.N. Convention, supra note 91, art. 37(b).
preventative detention.\textsuperscript{115} Preventative detention is used to ensure the juvenile’s presence at trial or to prevent the juvenile’s commission of an injurious act prior to trial.\textsuperscript{116} Although pre-trial detention was prescribed by the U.N. Convention as a last resort, the United States incarcerates 900,000 juveniles per year.\textsuperscript{117} Of these 900,000 detentions, less than thirty-five percent ultimately result in convictions.\textsuperscript{118} These unnecessary violations of a juvenile’s rights are precisely what the U.N. Convention sought to eliminate.

The most problematic provision of the U.N. Convention, particularly for the United States, is article 37(a). This provision prohibits the execution of offenders under the age of eighteen at the time of the offense.\textsuperscript{119} In the United States, both federal and state laws permit the juvenile death penalty. The U.S. Supreme Court, in Stanford v. Kentucky,\textsuperscript{120} held that imposing capital punishment on juveniles committing crimes at age sixteen or older does not constitute cruel and unusual punishment. Likewise, the laws of twenty-four states concur with Stanford and allow juvenile executions.\textsuperscript{121}

The U.S. implementation of the juvenile death penalty conflicts, not only with the U.N. Convention, but also with international standards. The United States joins only seven other countries which have imposed juvenile capital punishment within the past decade.\textsuperscript{122} More precisely, the United States has executed more juvenile offenders than any other nation, yielding only to Iran and Iraq.\textsuperscript{123}

Although the U.N. convention provides some necessary safeguards for children generally, especially foreign children subject to intercountry

\begin{itemize}
\item[115.] See Tinkler, supra note 112, at 497, n. 189. (citing to statutes in every state which allow pre-trial confinement).
\item[116.] Id.
\item[117.] Id. See also Schall v. Martin, 467 U.S. 253 (1984). In Schall, the constitutionality of pre-trial detentions was upheld under the Due Process Clause. Id. In his dissent, Justice Marshall recognized that pre-trial detentions are ordered frequently as a punitive measure, rather than a last resort. Id.
\item[118.] Tinkler, supra note 112, at 498.
\item[119.] U.N. Convention, supra note 91, art. 37(a).
\item[122.] Skoler, supra note 106, at 40. Over 145 nations have bans on such executions. Id.
\item[123.] Id.
\end{itemize}
adoption, United States ratification is unlikely. The Children's Defense Fund Report warns that "[o]ur children are being left behind the children of other nations..." It is apparent that U.S. commitment to our own children's fundamental rights must be strengthened prior to ratification of a convention to protect foreign children.

IV. The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption

Despite good intentions, prior international treaties have failed to create a uniform system of intercountry adoption. Consequently, the "best interest of the child" has suffered. In the aftermath of the Romanian baby auction as well as other crises, orphaned children worldwide need the assistance of a conclusive international treaty. The 1993 Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption could present the solution.

A. The Goals of the 1993 Hague Convention

In May of 1993, delegates from over sixty countries around the globe assembled in the Netherlands to discuss intercountry adoption. Upon ratification, the Hague Convention could become the world's first treaty on international adoption. As of September 2, 1994, fourteen countries, including the United States have signed the agreement. Although no country has completed ratification of the treaty, the United States is expected to do so by late 1995.

The preamble to the draft Convention recognizes the significance of a loving family, preferably the child's natural family. However, where the child cannot remain within his or her natural family, the Hague Convention acknowledges intercountry adoption as a viable alternative.

124. Id.
126. Participants in the 1993 Hague Convention label it the "first formal international and intergovernmental stamp of approval for the legal process of inter-country adoption." See Mehren, supra note 28, at E1.
127. Telephone interview with Peter H. Pfund, Head of the U.S. Delegation to the 1993 Hague Conference on Private International Law (Sept. 2, 1994) [hereinafter Pfund Interview]. At the conclusion of the Conference, Mexico, Romania, Costa Rico, and Brazil signed the agreement. Thereafter, Columbia, Uruguay, Sri Lanka, Equador, Canada, Finland, Burkina Faso, the Netherlands, the United Kingdom, and Israel became signatories. The U.S. signed on March 31, 1994. Id.
128. Id.
129. Hague Convention, supra note 15, pmbl. The Preamble recognizes that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding." Id.
Moreover, the preamble states that the principles announced in the U.N. Convention on the Rights of the Child, most notably the “best interest of the child” standard, were taken into consideration.

The Hague Convention does not purport to standardize adoption laws. Rather, it seeks to establish minimum requirements to be followed by the receiving and sending countries. In so doing, the Hague Convention endeavors to increase cooperation among countries, to facilitate intercountry adoptions, and to afford greater protection to all the parties involved. Ultimately, the Convention seeks to terminate the illegal baby trade and to diminish the accompanying frustration of intercountry adoptions.

Article 1 of the draft Convention enumerates the treaty’s three objectives. The first objective is to ensure that the child’s best interest is protected, in particular, his or her internationally recognized, fundamental rights. The second objective is to enhance cooperation among the receiving and sending states and thereby prevent the abduction and sale of children. The final objective is to guarantee recognition of the adoption in both states.

B. The Likely Impact of the 1993 Hague Convention on the Problems and Procedures of Intercountry Adoption

1. Scope of the Convention.—In contrast to the narrow applicability of the 1965 Hague Convention, the 1993 Convention applies to any child under the age of eighteen who is habitually a resident in one Contracting State, and who is to be adopted into another Contracting State.
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State. The generality of the Hague Convention's applicability provision allows for the inclusion of all variations of adoptive parents, without regard to their nationality or marital status. Article 2 of the Hague Convention allows the adoption to take place either in the State of origin or in the receiving State. Since some States have strict requirements that the adoption take place within their own system, the flexibility of this clause is appealing. However, it does not specify how to determine which Contracting State is to formally conduct the adoption to guarantee its recognition in both States.

2. Adoptability Standard.—One of the Convention's most essential elements is the framework for verifying a child's adoptability, set forth in article 4. The State of origin is responsible for determining whether the child is adoptable and if intercountry adoption will serve the child's best interest.

Consent is the primary element in concluding that a child is adoptable. Consent must be obtained from "the persons, institutions and authorities whose consent is necessary for adoption . . . ." Prior to consenting, the party must be counseled and informed whether adoption will terminate the legal relationship between the child and his or her natural family. However, the consent provision in the Hague

141. Hague Convention, supra note 15, art. 2(1). Article 2(1) states that:

The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

Id.

Article 3 of the 1993 Hague Convention states that "[t]he Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years." Id. art. 3.

142. Id. art. 2. The Convention applies to adoption "by spouses or a person habitually resident in the receiving State . . . ." Id.

143. Hague Convention, supra note 15, art. 2. See supra text accompanying note 141.

144. Hague Convention, supra note 15, art. 4.

145. Id. Prior to determining intercountry adoption as the best option, the State of origin must consider the possibility of placing the child within the State. Id.

146. Id. art. 4(c)(1). Article 4c(1) requires the State of Origin to ensure that:

the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin.

Id.

147. Hague Convention, supra note 15, art. 4. Article 4c(3) requires that "such persons, institutions and authorities have given their consent freely, in the required legal form and expressed or evidenced in writing". Id. art. 4(c)(3). In addition, article 4(d) requires the following with
Convention is weak because it fails to define the "persons, institutions and authorities" whose consent is required.

Presumably, it is left to the State of origin's government to designate the parties from whom consent is necessary. This logic ignores the fact that adoptable children primarily originate from countries facing political, social and economic strife. As such, many of these countries lack rules governing intercountry adoption. It is because of these inadequate adoption regulations that black market baby-selling has become prevalent. While it is the receiving State that frequently has the resources to promulgate sufficiently protective adoption laws, the usually deficient laws of the State of origin are applied. Uniform criteria for adoptability, specifically for consent, are necessary to avoid the black market sales of children.

Furthermore, the requisite consent must be obtained without inducement by payment or compensation. If this provision is accepted, the prohibition of baby-selling will be formally recognized by all Contracting States, creating greater awareness of the problem, which may ultimately lead to its alleviation.

3. Central Authorities.—The most beneficial, yet controversial, provision of the Convention mandates the establishment of a "Central Authority" in each Contracting State. With only one central bureau for intercountry adoption in each State, cooperatively, the contracting States will likely have greater success enforcing the treaty. By funneling all intercountry adoptions through one Central Authority per state, it is hoped that legitimate adoptions will be facilitated and illegal activity suppressed.

regard to the age and maturity of the child:

(1) he or she has been counselled and duly informed effects of the adoption and of his or her consent to the adoption, where such consent is required,

(2) consideration has been given to the child's wishes and opinions,

(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and

(4) such consent has not been induced by payment or compensation of any kind.

Id. art. 4(d).

148. Joyce, supra note 12. See also 20,000 Third World, supra note 13.

149. See Joyce, supra note 12.

150. Hague Convention, supra note 15, art. 4(c)(4).

151. Id. art. 6(1). Article 6(1) states that a "Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities." Id.

152. See id. art. 22. Public authorities and accredited bodies are capable of performing the function of the Central Authority. Id.
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Central Authorities will create a network of communication among Contracting States to protect the world’s children. The frustration faced by adoptive parents will be minimized by readily available information, forms, and statistics regarding the adoption procedures of each State. Decreased frustration may encourage adoptive parents to better prepare for the adoption and ensure its successful completion.

Once adoption proceedings are commenced, the Authorities of both states will exchange information regarding the child and the adoptive parents. All possible measures are to be taken to “facilitate, follow and expedite proceedings with a view to obtaining the adoption.” Explicitly denouncing baby-selling, the Convention requires Authorities to ensure that no financial or other gain is involved in adoption. By concentrating adoption granting power within one Central Authority and approved “accredited bodies,” unscrupulous baby brokers will not be able to effectuate illegitimate adoption. Furthermore, with awareness of an efficient, legal authority for intercountry adoption, desperate couples are less likely to purchase babies from the black market.

However, the Central Authorities concept has met with considerable controversy by critics. Some fear that having one all-powerful agency will impose a more concentrated bureaucracy than already exists. It has also been noted that formation of Central Authorities might be difficult because the countries with the largest number of orphans also have the greatest difficulty formulating and implementing adoption rules.

154. Id.
155. Id. art. 9. The Central Authority of the receiving State is to investigate the adoptive couple to determine their eligibility and transmit to the State of origin a report verifying the child’s adoptability to the receiving State. Id. art. 16.
156. Id. art. 9. In addition to exchanging information and promoting the adoption, article 9 requests the Central Authorities to do the following:
   1. promote the development of adoption counselling and post-adoption services in their States;
   2. provide each other with general evaluation reports about experience with intercountry adoption;
   3. reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.
Hague Convention, supra note 15, art. 9.
157. Id. art. 8.
158. Id. art. 11. The Central Authority may delegate its duties under the Convention to “accredited bodies”. Id. To become an accredited body, article 11 requires that the body shall be deemed a competent, non-profit organization with a qualified staff. Id. Article 12 restricts the accredited body’s activities to when it is authorized by the Central Authority of the other Contracting State. Id. art. 12.
159. Mehren, supra note 28, at E1.
Countries like Romania, for instance, have enough trouble maintaining a national government, without having to create a Central Authority for intercountry adoption.

4. Recognition and Effects of the Adoption.—In accordance with the goal of providing adoptive children the support of a permanent family life, the Hague Convention mandates recognition of all certified adoptions. Once the State of adoption has verified compliance with the Convention, by operation of law, the adoption is valid in all Contracting States. Time, money, and frustration may be spared if only one adoption proceeding takes place with the assurance of its validity elsewhere.

The extent of recognition of the adoption includes the legal construction of a parent-child relationship with all of the responsibilities attached to that thereto. In addition, the Convention severs the pre-existing parent-child relationship with the natural parents, where it is allowed by the law of either the State of origin or the receiving State. By legally terminating the parental rights of the biological parents, the adopted child is assured a stable placement with the adoptive family without the threat of the biological mother reclaiming the child.

C. Implications of the Hague Convention for the United States

Regardless of United States ratification, the success or failure of the Hague Convention will have a considerable impact on the United States. In 1993, almost 7350 foreign children were adopted into the United States alone, out of a world total of 15,000-20,000 intercountry adoptions. Although many of the concerns underlying the Hague Convention have already been codified through state and federal regulations, U.S. laws and procedures will have to be altered to coincide with the Convention.

160. Stern Little, supra note 25, at 13A.
162. Id. Recognition of the adoption may only be refused if the Contracting State finds the adoption clearly against their public policy, while considering the best interest of the child. Id.
164. Id. art. 26. If the State of adoption allows, the adoption will terminate the prior parent-child relationship. However, if the State of adoption does not provide for the termination of such rights, this end may be effectuated if the receiving State permits it and has satisfied the requisite consents. Id. art. 27.
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1. Application of the Convention to the Federated States of the United States.—At first glance, the Hague Convention appears incompatible with the system of law in the United States since each state exercises independent jurisdiction and legislative control over adoptions. To the contrary, the draft Convention intentionally affords flexibility in its provisions, recognizing the importance of ratification by the United States.

The Hague Convention anticipated countries with federated states and included specific provisions addressing its resolution. Article 6 allows the appointment of more than one Central Authority where a Contracting State has more than one autonomous region. Although more than one Central Authority remains an option, it is likely that one U.S. Central Authority will be created in Washington, D.C. However, it is first necessary for Congress to approve the draft Convention and, with presidential endorsement, pass federal legislation enforcing the treaty. Federal implementing legislation is imperative to ensure effective and uniform enforcement of the Convention throughout the U.S.

2. Private adoptions.—The greatest debate at the 1993 Hague Convention concerned the issue of independent or private adoption. The consensus among the delegates was that private adoption was virtually synonymous with the black market. However, since private adoptions are so prevalent in the United States, a compromise was necessary. Widespread skepticism of private adoptions presents concern over U.S. compatibility with the Hague Convention. In particular, it is feared that creating a Central Authority will extinguish independent and

167. Id.
168. Hague Convention, supra note 15, art. 6(2). Article 6(2) states that:

Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a state has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Id.
169. Pfund, supra note 165, at 68. The U.S. Central Authority is likely to be comprised of the Department of State, the Immigration and Naturalization Service, and possibly the Department of Health and Human Services. Id.
170. Pfund Interview, supra note 127.
171. Id.
small adoption agencies, creating a monopoly among the large agencies.\textsuperscript{173} Including private adoptions within the Hague Convention framework is essential to U.S. ratification, and ultimately to the success of the treaty.\textsuperscript{174}

The Convention requires the creation of a Central Authority as the principal agency of international adoptions, while granting secondary power to public authorities.\textsuperscript{175} Recognizing that private adoptions do not comply with this structure, the Convention agreed to a compromise. Article 11 permits non-profit, accredited bodies to perform the functions of the Central Authority.\textsuperscript{176} Furthermore, article 22 authorizes any qualified body or person to orchestrate intercountry adoptions provided they “meet the requirements of integrity, professional competence, experience and accountability of that State.”\textsuperscript{177} The procedure and requirements for accrediting bodies must be addressed in the federal implementing legislation.\textsuperscript{178}

Read together, articles 11 and 22 encompass all forms of independent and private adoptions, and ensure their competency to complete intercountry adoptions with regard to the best interests of all parties involved. Although the Convention includes private adoptions within its scheme, the practical significance of authorizing accredited bodies to coordinate an adoption is uncertain since Contracting States have the unqualified right to refuse to deal with agencies other than the State’s Central Authority.\textsuperscript{179}

3. \textit{Procedural requirements of the Hague Convention and their compatibility with the United States system}.—The intercountry adoption procedures pronounced by the Hague Convention have essentially the

\textsuperscript{173} Joyce, \textit{supra} note 12. Attorney Rena Steinzor, an adoptive mother, claims that large agencies are pushing for the Central Authority in order to control the “marketplace.” \textit{Id.} Steinzor says the needs of parents and children should come before business needs. \textit{Id.}

\textsuperscript{174} Since the United States is the primary adopter of foreign children, U.S. ratification is critical for the Hague Convention to have any practical effect.

\textsuperscript{175} Hague Convention, \textit{supra} note 15, art. 22.

\textsuperscript{176} \textit{Id.} art. 11. Accredited bodies must have sufficient ethical standards and experience or training in intercountry adoption. These bodies are subject to the supervision of the Central Authority and must have the approval of the foreign State to conduct the adoption. \textit{Id.} art. 12.

\textsuperscript{177} \textit{Id.} art. 22.


\textsuperscript{179} Hague Convention, \textit{supra} note 15, art. 12. Article 12 provides that “[a] body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.”. \textit{Id.}
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same fundamental steps and protection as the current U.S. system, though organized more efficiently. As discussed previously, the U.S. system has three levels of scrutiny resulting in unnecessary redundancy. The Hague Convention provides all of those safeguards, with less frustration. The Hague Convention would require the United States, as the receiving State, to perform the following three functions: (1) certify the adoptive parents eligibility and suitability to adopt, (2) ensure the child’s entrance and permanent residence within the State, and (3) approve the particular child’s adoption.

The first responsibility of the receiving State under the Hague Convention is to prepare a report attesting that the adoptive parents are both eligible and proper candidates for adoption. Article 15 lists the items to be investigated including, but not limited to, the adoptive parents’ family and medical history, social environment, and ability to undertake an intercountry adoption. Similarly, U.S. federal law requires an authorized agency to conduct a “homestudy.” The “homestudy” is an evaluation of the financial, physical, mental, and moral capacities of the adoptive parents. Both of these analyses seek to ensure that the best interests of the child are promoted by the prospective adoption.

The second step towards compliance with the Hague Convention is the receiving State’s duty to verify the child’s valid entry and permanent residence in that State. The authorized entry condition of the Hague corresponds with the responsibilities imposed by the INS in the United States. The requisite issuance of a visa by the INS is a confirmation that the child may lawfully enter the United States. The U.S. nationalization procedure assures the child’s permanent residence within the receiving State.

The only critical discrepancy between the Hague Convention and U.S. procedure is the maximum age of adoption. While the Convention

180. See supra part II.C.
181. Hague Convention, supra note 15, art. 15.
182. Id. art. 5.
183. Id. art. 17.
184. Id. art. 15. The receiving State must report on the “identity, eligibility, suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.” Id.
187. Hague Convention, supra note 15, art. 5.
188. See part II.C.
189. Id.
allows adoption of children under the age of eighteen,\textsuperscript{190} U.S. immigration laws only permits the adoption of children under the age of sixteen.\textsuperscript{191} Ratification of the Hague Convention will demand alteration of this law.

The final function of the receiving state is to approve the State of origin's decision that the child should be adopted by the adoptive parents.\textsuperscript{192} This safety provision is comparable to the necessary INS finding that the child be classified an "orphan" within the Aliens and Nationality Act prior to issuance of a visa.\textsuperscript{193} Regardless of the decision of the State of origin, a visa will not be issued until the adoption is approved by the INS. Federal implementing legislation may create a new category for children adopted pursuant to the Convention.\textsuperscript{194} Because of the safeguards in the Convention, these children would not be required to meet the definition of an "orphan," as previously required.\textsuperscript{195}

The Hague Convention incorporates all three requirements of the U.S. federal level of scrutiny, including visa issuance, a homestudy, and a certificate of naturalization. The inefficiency of the U.S. system exists because the state of permanent residence duplicates the process of the Federal government and the State of origin. Upon ratification of the Hague Convention, the current redundancy in adoption procedures in the U.S. will be eliminated.

The Convention mandates recognition of the adoption, by operation of law, in all Contracting States, provided the adoption complies with the Convention.\textsuperscript{196} Thus, a conforming adoption will be valid in the foreign Contracting State, and recognized by both the Federal government and the State of permanent residence, eliminating the redundancy of the current system. Federal implementing legislation is likely to include a provision guaranteeing full faith and credit throughout these states.

\begin{itemize}
\item \textsuperscript{190} Hague Convention, \textit{supra} note 15, art. 3.
\item \textsuperscript{192} Hague Convention, \textit{supra} note 15, art. 17.
\item \textsuperscript{193} \textit{See supra} notes 53, 54 and accompanying text.
\item \textsuperscript{194} Pfund Memorandum, \textit{supra} note 178, at 3.
\item \textsuperscript{195} \textit{Id.}
\item \textsuperscript{196} Hague Convention, \textit{supra} note 15, art. 23. Article 26 enumerates the extent of recognition as follows:
\begin{itemize}
\item a. the legal parent-child relationship between the child and his or her adoptive parents;
\item b. parental responsibility of the adoptive parents for the child;
\item c. the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
\end{itemize}
\textit{Id.}
\end{itemize}
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the United States of adoptions decreed pursuant to the Convention. Thus, removing the redundancy of re-adoption in the United States. Upon U.S. ratification of the Hague Convention, intercountry adoptions will be completed more efficiently while protecting the rights of the child and both sets of parents.

V. Conclusion

The existing variations of intercountry adoption laws and procedures have resulted in confusion, inefficiency, and corruption. Of greatest concern is the black-market sale of babies which are the result of the vulnerabilities in the existing system of intercountry adoption. Prior conventions have failed both to reform the current system and to diminish the international baby trade.

The 1993 Hague Convention could provide the long awaited guidelines to alleviate the flaws of the current system. The Convention focuses on three primary concerns: (1) the best interest of the child, (2) cooperation among countries; and (3) universal legal recognition of the adoption.

With U.S. couples being the primary adopters of foreign children, U.S. ratification of the Hague Convention could be beneficial not only to the adopting couples, but ultimately, children all over the world. Existing U.S. intercountry adoption procedures are burdened with three redundant levels of scrutiny. The Convention would incorporate all the safeguards of the U.S. system into one step. In addition, the Hague Convention intentionally included provisions which would coincide with the federated states and private adoption in the United States.

Although ratification of the 1993 Hague Convention by the United States may require alterations to the current U.S. intercountry adoption procedure, the Convention embodies the goals and ideals present in the current U.S. system. As today's children represent tomorrow's future, ratification of the 1993 Hague Convention is a substantial step towards protecting the best interests of the world's children.

Susann M. Bisignaro

197. Pfund Memorandum, supra note 178, at 2.
198. Id.