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Fall 9-1-2008

## Inferring a Right to Permanent Family Care from the United Nations Convention on the Rights of the Child, the Hague Convention on Intercountry Adoption, and Selected Scientific Literature

Laura Matney Shapiro

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### Recommended Citation

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# Inferring a Right to Permanent Family Care from the United Nations Convention on the Rights of the Child, the Hague Convention on Intercountry Adoption, and Selected Scientific Literature

Laura Matney Shapiro\*

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*The child, for the full and harmonious development of his or her personality, should grow up in a family environment[.]*<sup>1</sup>

### *I. Introduction*

In addition to the full scope of rights to which all humans are entitled, children are entitled to specific rights based on their status as children.<sup>2</sup> This Note argues that these rights include a right to permanent family care; that the right to permanent family care is violated by standards that prevent and restrict intercountry adoption; and that it is possible to protect children from impermanent family care while observing safeguards that ensure the child is, in fact, adoptable.

This Part identifies the number of children in need of care internationally, current options of care, and the availability of adoption. Part II argues that children have a right to permanent family care, and that this right can be inferred from other rights provided to children in the Convention on the Rights of the Child and the Hague Convention on Intercountry Adoption. Part III identifies the arguments against international adoption and shows how most of those arguments fail to

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1. Convention on the Rights of the Child, pmb., Nov. 20, 1989, 1577 U.N.T.S. 3.

2. *See id.* (stating that "as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'").

recognize children as the bearers of rights. Part IV recognizes the potential of the Hague Convention on Intercountry Adoption to address some of the current problems in the international adoption system and shows that children can be protected concurrently from corruption within the system and impermanent family care. Finally, Part V recommends that nonprofit and intergovernmental organizations increase their efforts to promote policy change within countries that resist intercountry adoption. This paper also supports the creation of a third optional protocol to the Convention on the Rights of the Child to address specifically the plight of orphans and abandoned children and the provision of permanent family care.

It is impossible to know exactly how many orphans and abandoned children there are worldwide, but a patchwork of approximations shows that this number is at least in the tens of millions.<sup>3</sup> There are approximately 100,000,000 street children.<sup>4</sup> UNICEF estimates that there are 16,200,000 orphans worldwide.<sup>5</sup> Additionally, there are millions of abandoned children living in institutions, private children's homes, and temporary foster care homes.<sup>6</sup> Estimates of abandoned children in China range from 1,000,000 to

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3. See Mary H. Hansel, *China's One-Child Policy's Effects on Women and the Paradox of Persecution and Trafficking*, 11 S. CAL. REV. L & WOMEN'S STUD. 369, 381 (2002) (stating that around one million girls may be abandoned in China each year); see also Sara Dillon, *Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption*, 21 B.U. INT'L L.J. 179, 183-84 (2003) (stating that there are about 600,000 children living in institutions in Russia, over a million children living in institutions in China, and approximately 100 million street children worldwide); UNAIDS, UNICEF & USAID, CHILDREN ON THE BRINK 2004: A JOINT REPORT OF NEW ORPHAN ESTIMATES AND A FRAMEWORK FOR ACTION 29 (2004), available at [http://www.unicef.org/publications/files/cob\\_layout6-013.pdf](http://www.unicef.org/publications/files/cob_layout6-013.pdf) (stating that there are 16.2 million double orphans worldwide). A double orphan is a child who has lost both parents. *Id.* at 8.

4. Dillon, *supra* note 3; see also CHILDSHOPE, WHO ARE THE WORLD'S STREET CHILDREN?, <http://childhopeusa.com/kids/index.html> (last visited Dec. 18, 2008) (stating that there are approximately 100 million street children, and 25 million of them live on the street full time) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

5. UNAIDS, UNICEF & USAID, *supra* note 3. UNICEF commonly defines an orphan as a child who has lost either or both parents. *Id.* According to this definition, there are over 143 million orphans worldwide. *Id.* For the purpose of this Note, however, the term orphan will refer only to children who have lost both parents.

6. See Dillon, *supra* note 3, at 183 n.11 (stating that there are between 50,000 and 4.5 million children in China's institutions); see also BELARUS REPUBLIC COUNTRY REPORT FROM SECOND INTERNATIONAL CONFERENCE ON CHILDREN AND RESIDENTIAL CARE IN STOCKHOLM 13 (2003), available at <http://children-strategies.org/English%20creports/Belarus%20Final.pdf> (stating that in 2002, there were 27,529 children in Belarusian institutions); BOLIVIA COUNTRY REPORT FROM SECOND INTERNATIONAL CONFERENCE ON

4,500,000.<sup>7</sup> Because of China's one-child policy, ninety-five percent of the children living in China's institutions are girls.<sup>8</sup>

Countries differ in their methods of care for orphans and abandoned children.<sup>9</sup> The most common possibilities for orphans and legally abandoned children are institutional care, temporary foster care, *kafalah*<sup>10</sup> care, in-country adoption, or international adoption.<sup>11</sup> As mentioned above, a significant amount of children elude care altogether and end up living on the street.<sup>12</sup>

Not all abandoned children are eligible for adoption.<sup>13</sup> Some parents choose to permanently relinquish their parental rights by leaving their children at institutions, in foster care settings, or on the street.<sup>14</sup> The

CHILDREN AND RESIDENTIAL CARE IN STOCKHOLM 18 (2003), available at <http://children-strategies.org/English%20creports/Bolivia%20Final.pdf> (stating that 16,291 children were in Bolivian institutions); BULGARIA COUNTRY REPORT FROM SECOND INTERNATIONAL CONFERENCE ON CHILDREN AND RESIDENTIAL CARE IN STOCKHOLM 33 (2003), available at <http://children-strategies.org/English%20creports/Bulgaria%20Final.pdf> (stating that there are over 30,000 children in Bulgarian institutions); UKRAINE COUNTRY REPORT FROM SECOND INTERNATIONAL CONFERENCE ON CHILDREN AND RESIDENTIAL CARE IN STOCKHOLM 205 (2003), available at <http://children-strategies.org/English%20creports/Ukraine%20Final.pdf> (stating that there are about 100,000 children in institutions in the Ukraine); RUSSIA COUNTRY REPORT FROM SECOND INTERNATIONAL CONFERENCE ON CHILDREN AND RESIDENTIAL CARE IN STOCKHOLM 142 (2003), available at <http://children-strategies.org/English%20creports/Russia%20Final.pdf> (stating that there are 110,900 children in *non-specialized* Russian institutions alone); see generally COUNTRY REPORTS FROM SECOND INTERNATIONAL CONFERENCE ON CHILDREN AND RESIDENTIAL CARE IN STOCKHOLM, [http://www.children-strategies.org/country\\_reports.htm](http://www.children-strategies.org/country_reports.htm) (last visited Dec. 18, 2008) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

7. Dillon, *supra* note 3, at 183 n.11.

8. Hansel, *supra* note 3, at 381.

9. See Convention on the Rights of the Child, *supra* note 1, art. 20 (recognizing that States Parties may provide for children that are deprived of their family environment through foster placement, *kafalah*, adoption, or institutional care).

10. See INTERNATIONAL REFERENCE CENTRE FOR THE RIGHTS OF CHILDREN DEPRIVED OF THEIR FAMILIES, FACT SHEET NO. 51 (2007), available at <http://www.crin.org/docs/Kafalah.BCN.doc> (stating that Islamic countries recognize *kafalah*, a system of care for abandoned children whereby a child's original family status and name are preserved). *Kafalah* care requires children to be placed with Islamic families, and international placement is rare. *Id.*

11. See *supra* note 9 and accompanying text.

12. See Dillon, *supra* note 3, at 184 (stating that there are approximately 100 million street children worldwide); see also CHILDSHOPE, *supra* note 4 (stating that there are approximately 100 million street children, 25 million of whom live on the street full time).

13. See UNAIDS, UNICEF & USAID, *supra* note 3, at 20 (stating that some impoverished families use orphanages as economic coping mechanisms).

14. See CHILDSHOPE, *supra* note 4 (estimating that 25 million of the world's children work, sleep, and live on the street full time).

parents may be too young, unable to afford the child, or they may not want the child. These children have been permanently, legally abandoned and are to be distinguished from children who are placed in institutions and foster care settings by parents who have not relinquished their parental rights.<sup>15</sup>

In some countries, struggling families view state institutions as a place where they can bring their children to be educated and fed.<sup>16</sup> In many cases, these children maintain relationships with their biological families.<sup>17</sup> Additionally, states may place children in institutions and foster care when the parents' rights have been temporarily suspended.<sup>18</sup> Children that have not been permanently, legally abandoned are not adoptable.<sup>19</sup>

Because of cultural attitudes, political realities, or poverty, in-country adoption is not always possible for legally abandoned children.<sup>20</sup> For example, in-country adoption is rare in South Korea because tradition favors blood-related parentage.<sup>21</sup> In China, the one-child policy limits the opportunities for families to adopt children.<sup>22</sup> And, in many of the

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15. See Claudia Fonseca, *Patterns of Shared Parenthood among the Brazilian Poor*, in CULTURES OF TRANSNATIONAL ADOPTION 142, 145 (Toby Alice Volkman ed., 2005) (exploring one Brazilian family's understanding that institutions provided a beneficial, temporary absence of the child from the family home).

16. See *id.* at 145 (stating that the orphanage's advantages included regular food and guaranteed schooling).

17. See *id.* at 145 (stating that a boy who lived at the orphanage came home almost every weekend).

18. See generally Note, *On Prisoners and Parenting: Preserving the Tie that Binds*, 87 YALE L.J. 1408 (1978).

19. See Convention on the Rights of the Child, *supra* note 1, art. 21 (stating that, in adoption, States Parties "shall . . . ensure that the adoption is permissible in view of the child's status concerning parents, relative and legal guardians, and that if required, the persons concerned have given their consent").

20. See Elizabeth Bartholet, *International Adoption*, in CHILDREN AND YOUTH IN ADOPTION, ORPHANAGES, AND FOSTER CARE 107, 109–10 (Lori Askeland ed., 2005), available at <http://www.law.harvard.edu/faculty/bartholet/pdfs/IAChapter5FINAL.pdf> (noting that Muslim countries do not permit adoption, and Asian countries tend to favor adults in biological parenthood over adoptive parenthood). Additionally, widespread poverty keeps developing countries from having the resources to add children to their families. *Id.* at 110.

21. See *id.* at 110 (stating that South Korea tends to favor biological parenthood over adoptive parenthood).

22. See China Center of Adoption Affairs, Measures for Registration for the Adoption of Children by Chinese Citizens, art. 5 (Dec. 7, 2005), [http://www.china-ccaa.org/site/infocontent/GNSY\\_20051018011109187\\_en.htm](http://www.china-ccaa.org/site/infocontent/GNSY_20051018011109187_en.htm) (last visited Dec. 18, 2008) (stating that certain conditions of the adopted children will require the adopting parents to provide "Childless Proof" issued by the family committee where the adopters regularly reside) (on

countries with the highest percentages of orphans and legally abandoned children, widespread poverty prohibits in-country families from taking in any more children.<sup>23</sup>

International adoption is not a perfect option. It requires that children be separated from their birth cultures,<sup>24</sup> and there is corruption within the international adoption system. However, in some cases, international adoption provides a legally abandoned child's only option for placement in permanent family care.<sup>25</sup>

Ideally, a legally abandoned child would have the opportunity to be placed within his own country or another country in order to maximize the possibility of permanent family care.<sup>26</sup> Despite the difficulties that many countries have garnering interest in in-country adoption, some countries restrict or prohibit international adoption.<sup>27</sup> Other countries exhibit strong prejudice against international adoption by making children wait for prescribed periods of time before being released to international adoption possibilities.<sup>28</sup> Laws and general prejudice against international placement restrict the likelihood that a legally abandoned child will be placed with a permanent family.<sup>29</sup>

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file with the Washington and Lee Journal of Civil Rights and Social Justice).

23. See Barcholet, *supra* note 20, at 109–10 (stating that economic dislocation and AIDS has resulted in countries sending their children "abroad for adoption").

24. See Elizabeth Barcholet, *International Adoption: Thoughts on the Human Rights Issues*, 13 BUFF. HUM. RTS. L. REV. 151, 152 (2007) (stating that international adoption involves differences in "biology . . . socio-economic class, race, ethnic and cultural heritage, and nationality").

25. See Barcholet, *supra* note 20, at 110 (stating that South Korea "was eager to place its children abroad . . . because the government knew that there was little opportunity for the children in its orphanages to find adoptive homes within the country").

26. See UNICEF, POSITION ON INTER-COUNTRY ADOPTION, [http://www.unicef.org/media/media\\_41918.html](http://www.unicef.org/media/media_41918.html) (last visited Dec. 18, 2008) (stating that in-country adoption and inter-country adoption should be sought before placement of child into institutional care) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

27. See Barcholet, *supra* note 20, at 110 (noting that in recent years, South Korea has restricted access to international adoption because of political forces opposed to international adoption despite the fact that an emphasis on blood-related parenthood makes it difficult for orphans and abandoned children to be placed internally).

28. See Barcholet, *supra* note 20, at 161 (stating that Russia has a six-month waiting period before which children cannot be internationally adopted).

29. See generally Barcholet, *supra* note 20.

## II. The Right to Permanent Family Health Care

### A. Identifying the Best Option of Care

Both institutional care and temporary family care are detrimental to a child's normal physical, mental, and emotional development.<sup>30</sup> Because children living in countries that are States Parties to the Convention on the Rights of the Child have the right to state protection of development "to the maximum extent possible," legally abandoned children should have the opportunity to be placed permanently with a family.<sup>31</sup> Permanent family care provides legally abandoned children with the greatest hope for normal, on-target development and for a healthy life.<sup>32</sup>

#### 1. Institutional Care

Orphanages vary drastically in quality, but many institutions suffer from overcrowded conditions, lack of suitable healthcare in the region, and inadequate food and staff.<sup>33</sup> Additionally, there are serious allegations of widespread abuse.<sup>34</sup> These conditions can cause serious health problems for the children living in these institutions.<sup>35</sup>

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30. See Megan R. Gunnar et al., *Behavior Problems in Postinstitutionalized, Internationally Adopted Children*, 19 DEV. & PSYCHOPATHOLOGY 129, 140 (2007) (showing a correlation between increased long-term behavioral problems and age at adoption); D. A. Kertes et al., *Early Deprivation and Home Basal Cortisol Levels: A Study of Internationally Adopted Children*, 20 DEV. & PSYCHOPATHOLOGY 473, 485 (examining the effects of deprivation of care on neuroendocrine activity).

31. Convention on the Rights of the Child, *supra* note 1, art. 6.

32. See Gunnar, *supra* note 30, at 140 (showing a correlation between increased behavioral problems and time spent in impermanent and institutional care); see also Kertes, *supra* note 30, at 485 (noting the detrimental effects of institutional care on growth patterns).

33. See Laurie C. Miller, *Caring for Internationally Adopted Children*, 341 NEW ENG. J. MED. 1539, 1539–40 (1999) (describing health problems that have arisen in internationally adopted children who come from orphanages).

34. See JO BECKER & MICHAEL BOCHENEK, EASY TARGETS: VIOLENCE AGAINST CHILDREN WORLDWIDE 25–28 (Lois Whitman et al. eds., 2001) available at <http://www.hrw.org/reports/2001/children/children.pdf> (describing instances of abusive treatment of children in Chinese and Russian orphanages).

35. See Miller, *supra* note 33, at 1539–40 (identifying the increased risk of disease among institutionalized children).



a. *Increased Risk of Infectious Disease*

According to the American Academy of Pediatrics, "[i]nfants and young children who are brought together in groups for care have a higher rate of infection, greater severity of illness, and increased risk for acquisition of resistant organisms."<sup>36</sup> The high incidence of some diseases found in orphanages may be attributable to the orphanages' placement in countries where these diseases are highly endemic to the region.<sup>37</sup> However, a child's chance of becoming infected is increased further in orphanages because of over-crowded conditions and lack of available healthcare.<sup>38</sup> In one study of 552 children that had been internationally adopted within the past six months, the incidence of infection was nearly twenty percent.<sup>39</sup> Tuberculosis, Hepatitis B, Scabies, and intestinal parasites are all commonly found in orphans.<sup>40</sup>

b. *Malnutrition*

Malnutrition is another frequent problem found in children living in orphanages.<sup>41</sup> Malnutrition can lead to decreased weight, height, and head circumference.<sup>42</sup> When researchers compared the height, weight, and head circumference of children that were recently internationally adopted to the World Health Organizations' age-based figures, they found that the children's gross and fine motor delays increased as their height, weight, and head circumference decreased below the mean.<sup>43</sup> In this study, fifty percent of the children were developmentally delayed.<sup>44</sup> The rampant malnutrition

36. Deborah A. Frank et al., *Infants and Young Children in Orphanages: One View from Pediatrics and Child Psychiatry*, 97 PEDIATRICS 569, 570 (1996) (quoting AM. ACAD. OF PEDIATRICS, COMM. ON INFECTIOUS DISEASE, 1994 REDBOOK (1994)).

37. See Miller, *supra* note 33, at 1539–40 (stating that many of these children come from institutions in countries with many endemic diseases).

38. See *id.* (describing conditions that increase infections in orphanages).

39. Catherine Hervouet-Zeiber et al., *Infectious Disease in Internationally Adopted Children: Epidemiology and Risk Factors*, 1 J. PEDIATRIC INFECTIOUS DISEASES 149, 150–51 (2006).

40. Miller, *supra* note 33, at 1539–40.

41. See Miller, *supra* note 33, at 43 (stating that poor nutrition is a problem found increasingly in children that have recently been internationally adopted).

42. See *id.* at 41–42 (identifying height, weight, and head circumference as an indicator for extent of malnourishment).

43. *Id.* at 42.

44. *Id.* at 41.

in institutions contributes to developmental delay in children who may already be predisposed to delays due to prenatal drug and alcohol exposure.<sup>45</sup>

*c. Emotional Neglect*

The emotional neglect that children suffer from understaffed institutions also plays a part in the extensive growth and developmental delays found in children living in institutions.<sup>46</sup> Some institutionalized children experience a one-month delay in physical growth development for every two to three months that they live in institutions.<sup>47</sup> According to one study, children who have been subjected to more deprived care experience greater physical growth delays.<sup>48</sup> This study determined the extent of a child's "deprived care" by looking at the child's age at adoption, duration of institutional care, and adoptive parent reports on pre-adoption neglect.<sup>49</sup>

Children who experience decreased height as a result of emotional neglect are said to have psychosocial short stature.<sup>50</sup> The stunted growth of institutionalized children has been attributed to changes in the child's neuroendocrine system as a result of deprived care.<sup>51</sup> Physiologically, a child with psychosocial short stature has disturbed growth hormone production and responds irregularly to the growth hormone that he produces.<sup>52</sup>

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45. See Julian K. Davies & Julia M. Bledsoe, *Prenatal Alcohol and Drug Exposures in Adoption*, 52 PEDIATRIC CLINICS N. AM. 1369, 1388 (noting that prenatal alcohol and drug exposure can contribute to developmental delays and is a concern in national and international adoptions).

46. See Kertes, *supra* note 30, at 475–77, 488 (reviewing literature on the negative effects of the neglect of children in institutional settings and explaining results of their study of internationally adopted children supporting that conclusion).

47. See *id.* at 486 (noting that study results were consistent with prior evidence that children lose approximately one month of growth for every two to three months spent in institutional care).

48. See *id.* at 488 (summarizing how study results support the conclusion that negligent care is correlated with greater physical growth delays).

49. See *id.* at 478 (describing how the authors took these three measures to create an index value of deprived care prior to adoption).

50. *Id.* at 476.

51. See Frank, *supra* note 36, at 571 (1996) (explaining that the two neuropsychiatric phenomena of poor appetite reflecting depression and of subtle neuroendocrine changes related to a lack of tactile stimulation may contribute to impaired growth in institutionalized children).

52. See Kertes, *supra* note 30, at 476 (describing the link between psychosocial short

Once children with psychosocial short stature are adopted, their growth increases at one and a half to two times the normal rate.<sup>53</sup> According to one study, "without a change in nutrition, improving the child's psychosocial environment increases growth hormone production and tissue sensitive to growth factors."<sup>54</sup> This affirms the role that deprivation of care plays in a child's stunted growth.

Some of the delays and disabilities witnessed in institutionalized children could be attributed to poor prenatal care and prenatal drug or alcohol exposure.<sup>55</sup> However, children that experience difficulties because of drug and alcohol exposure can be distinguished from children who are delayed because of poor nutrition or postnatal deprivation, because children exposed prenatally to drugs or alcohol are unlikely to experience increases in growth and developmental capabilities beyond the normal rate post-adoption.<sup>56</sup>

There are limited studies on the effects of deprivation of care on children.<sup>57</sup> However, there are many studies on the effects of deprivation of care on animals.<sup>58</sup> In one study, baby rats were deprived of maternal care.<sup>59</sup> Researchers noted that this early deprivation of care resulted in long-term changes to the baby rats' neuroendocrine systems so that even as adults, stressful situations caused deprived care rats to experience longer and more profound hormonal responses to stress than non-deprived care rats.<sup>60</sup> In

stature and growth hormones).

53. *Id.*

54. *Id.*

55. See Davies & Bledsoe, *supra* note 45, at 1388 (noting that prenatal alcohol and drug exposure can contribute to developmental delays and is a concern in national and international adoptions).

56. See Kertes, *supra* note 30, at 487 (stating that "children who are growth-delayed do not typically exhibit rapid catchup [sic] growth").

57. See *id.* at 476 (noting that prior to the study cited in this footnote, only one other study had considered the effects on children of deprived care in institutions).

58. See generally S. Aveishai-Eliner et al., *Altered Regulation of Gene and Protein Expression of Hypothalamic-Pituitary-Adrenal Axis Components in an Immature Rat Model of Chronic Stress*, 13 J. NEUROENDOCRINOLOGY 799 (2001); Ian C.G. Weaver et al., *Early Environmental Regulation of Hippocampal Glucocorticoid Receptor Gene Expression: Characterization of Intracellular Mediators and Potential Genomic Target Sites*, 185 MOLECULAR AND CELLULAR ENDOCRINOLOGY 205 (2001).

59. See Aveishai-Eliner, *supra* note 58, at 800 (noting that the researchers deprived the mother rats of the ability to provide a normal nesting environment for their offspring); see also Weaver, *supra* note 58, at 207 (noting that the researchers separated baby rats from their mothers for a set period of time).

60. See Aveishai-Eliner, *supra* note 58, at 799 (finding that the effects of deprivation of normal maternal care on baby rats may provide "a novel model for studying the long-term

another study, the deprived care animals also showed symptoms of being more fearful of new surroundings and were more easily startled than the non-deprived care rats.<sup>61</sup> Rats that have experienced deprivation of care have also exhibited stunted growth.<sup>62</sup>

There have also been studies of deprivation of parental care in monkeys.<sup>63</sup> Although complete deprivation of care did not lead to long-term effects on the monkeys' neuroendocrine systems, repeated separation and unpredictable care did have long-term effects on the monkeys' neuroendocrine systems.<sup>64</sup>

While it is difficult to infer the effects of deprivation of care on children from studies on rats and monkeys,<sup>65</sup> these studies show that being deprived of care is traumatic to all species.<sup>66</sup> That trauma can be so profound that it permanently alters the physiology of the traumatized.<sup>67</sup> It is possible that the full physical effects that deprivation of care has on children have yet to be uncovered.

#### *d. Abuse*

For some institutionalized children, increased risk of disease, malnutrition, and emotional neglect are benign problems compared to the abuse that they endure.<sup>68</sup> In the late 1990s, Human Rights Watch

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effects of chronic, early life stress on neuroendocrine functions throughout life"); *see also* Weaver, *supra* note 58, at 207 (finding that those baby rats deprived of maternal contact experienced an increased stress response as adults).

61. *See* Weaver, *supra* note 58, at 207 (reporting that deprived-care rats explored and fed less in novel environments and exhibited an increased startle responsivity to sound).

62. *See* Aveishai-Eliner, *supra* note 58, at 800 (finding that the baby rats in the deprived-care group failed to gain weight to the extent of those baby rats in the study's control group).

63. *See* Kertes, *supra* note 30, at 474 (citing several studies analyzing the impact of care deprivation on monkeys).

64. *See id.* (citing several studies analyzing the impact of care deprivation on monkeys).

65. *See id.* at 474–75 (explaining several reasons why studies of animals like rodents and primates may not explain the effect of care deprivation on humans, such as the fact that the rat and primate models exhibit different responses to care deprivation).

66. *See id.* at 474, 488 (noting that animal studies of rats and primates have linked deprivation of care to long-term negative physiological effects and finding deprived care to be associated with growth delay in children).

67. *Id.*

68. *See* BECKER & BOCHENEK, *supra* note 34, at 25–28 (detailing instances of abuse in Chinese and Russian orphanages).

conducted a study on orphanages in Russia and China.<sup>69</sup> They found widespread abuse and neglect.<sup>70</sup> In Russia, Human Rights Watch found abuse that included "beatings, shoving a child's head in the toilet, squeezing a hand in a vise, squeezing testicles during interrogation, locking children in a freezing, unheated room for days, and engaging children in sexual relations."<sup>71</sup> In China, Human Rights Watch found that the majority of children admitted to the orphanages died.<sup>72</sup> Orphanage staff intentionally deprived unwanted children of food and water until they died.<sup>73</sup> One form of discipline was a technique known as *qiang shui*.<sup>74</sup> It involved "hanging children upside down with their heads submerged in water, until nosebleeds and near-suffocation ensued."<sup>75</sup>

*e. Summary on Institutions*

Institutional care varies from institution to institution. However, it appears to be predominantly and negligently substandard.<sup>76</sup> Given the best-case scenario where the ratio of staff to children is low, adequate attention is given to children, and facilities are not over-crowded or unclean, orphanages still do not allow children to grow up in families. Orphanages cannot ensure continuity of staff, and workers will never be a proxy for parents. This lack of stability is physically and psychologically damaging to children.<sup>77</sup>

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69. *Id.*

70. *See id.* (describing instances of abuse).

71. *Id.* at 26.

72. *Id.* at 27.

73. *Id.* at 28.

74. *Id.*

75. *Id.*

76. *See* Laura McKinney, *International Adoption and the Hague Convention: Does Implementation of the Convention Protect the Best Interests of Children?*, 6 WHITTIER J. CHILD & FAM. ADVOC. 361, 386–87 (2007) (stating that even the chairman of the United Nations Committee on the Rights of the Child has acknowledged that institutional care is unsuitable for young children).

77. *See* Gunnar, *supra* note 30, at 130 (asserting that there is a correlation between increased long-term behavioral problems and time spent in impermanent and institutional care).

## 2. *Temporary Family Care*

Temporary family care placement may be the best option for children who have not been legally abandoned, because adoption and permanent family care are not available to them.<sup>78</sup> Temporary family care placements are likely to be better for the child than institutional placements.<sup>79</sup> A child in temporary family care is less likely to be exposed to high amounts of infectious diseases.<sup>80</sup> Additionally, the ratio of adults to children in families is likely to be much lower than that in institutions. Accordingly, children are more likely to have greater access to adults, and they are less likely to be neglected. Although there may be substantial differences in the physical health of children in institutions and children in temporary family care settings, children raised in temporary family care settings are still deprived of the stability that a permanent family offers. This has negative effects on the child's long-term emotional, behavioral, and psychological development.<sup>81</sup>

### a. *Attachment Problems*

Continuity of Relationships to parent figures is especially important in the first few years of life . . . children most at risk are those who experience multiple changes of parent figures or who are reared in institutions with many attendants who have no special responsibility for individual children. Thus, there are dangers in delaying the adoption of children abandoned by parents, in taking children in and out of institutional or foster care, and in an impersonal institutional upbringing.<sup>82</sup>

Children living in temporary foster care move from one home to another and are unable to form permanent relationships with any one

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78. See UNAIDS, UNICEF & USAID, *supra* note 3, at 20 (stating that "arrangements preferable to traditional institutional care include foster placements [and] local adoption").

79. See Gunnar, *supra* note 30, at 129 (noting that it is difficult, even in the best institutions, to provide infants and young children with individualized attention and adequate social and physical stimulation).

80. See Frank, *supra* note 36, at 570 (explaining that children who live together in groups have a higher rate of infection).

81. See Gunnar, *supra* note 30, at 140 (demonstrating a correlation between increased long-term behavioral problems and time spent in impermanent and institutional care).

82. Frank, *supra* note 36, at 572 (quoting the 1977 World Health Organization Expert Committee).

caregiver.<sup>83</sup> Children in foster care settings exhibit alternating patterns of lack of attachment to caregivers and indiscriminate friendliness.<sup>84</sup> This difficulty with attachment can result in life-long problems with interpersonal relationships based on an inability to experience affection.<sup>85</sup>

### *b. Behavioral Disorders*

Rather than whether the child lived in an institution or foster care setting prior to permanent placement, a more telling indicator of a child's long-term emotional and psychological health is the child's age when she was placed with a permanent family.<sup>86</sup> In one study, children who lived in institutions for most of their lives prior to adoption were compared to children who lived in foster homes for most of their lives prior to adoption.<sup>87</sup> The children were evaluated for anxiety and depression, attention difficulties, thought problems, social problems, delinquent behavior, and aggressive behavior.<sup>88</sup> On average, ten to nineteen percent of children who had been adopted before the age of two suffered from these behavioral problems, regardless of whether they had lived in institutions or temporary family care settings.<sup>89</sup> However, the incidence of these problems doubled in both groups for children who were over the age of two at the time of their adoption.<sup>90</sup> This implies that a child's risk for anxiety and depression, attention difficulties, thought problems, social problems, delinquent behavior, and aggressive behavior increases as the amount of

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83. See Ann E. Brand & Paul M. Brinich, *Behavior Problems and Mental Health Contacts in Adopted, Foster, and Nonadopted Children*, 40 J. CHILD PSYCHOL. & PSYCHIAT. 1221, 1227 (1999) (stating that a child's ability to function corresponds with the age at which the child was placed in adoptive care).

84. See Frank, *supra* note 36, at 572 (examining the behavior of children when placed in foster care).

85. See *id.* (demonstrating that varied environments at a young age can cause social problems later in life).

86. See Gunnar, *supra* note 30, at 140 (stating "[t]he risks associated with institutional privation seemed to pale in comparison to those associated with being older at adoption").

87. See *id.* (detailing a number of studies comparing children from institutions with those from foster homes).

88. *Id.*

89. See *id.* at 137 (showing the results of the study in table form).

90. See *id.* at 146 (stating that "[c]hildren adopted at or above 24 months of age did exhibit elevated rates of problems in the externalizing domain, but then so did children adopted from foster or other types of preadoption care arrangements").

time that she spends without a family increases, regardless of whether the child spends that time in institutions or foster homes.

### 3. *Permanent Family Care*

Both the deprivation of care found in institutions as well as the unpredictable, unstable care found in temporary family settings can have profound, negative effects on the development of children.<sup>91</sup> Whether the child is experiencing growth delays because of the psychological stress of institutional life or developing behavioral and emotional disorders because of the lack of stability in his temporary family care placements, these options do not adequately protect the child's development. Conversely, when the child is permanently placed with a family, many of these delays and disabilities begin to decrease.<sup>92</sup> But, the child's likelihood of escaping permanent harm from institutional and temporary family care decreases as he spends more time in these settings.<sup>93</sup> Restricting a legally abandoned child's ability to be adopted negatively affects her well-being and development.<sup>94</sup> Prolonging the amount of time that a legally abandoned child must wait prior to permanent family placement also negatively affects the child's well-being and development.<sup>95</sup>

### B. *Children's Rights*

Children are entitled to special human rights based on their status as children.<sup>96</sup> The United Nations Convention on the Rights of the Child enunciates these rights and the obligations that States Parties have in recognizing these rights.<sup>97</sup> This treaty is widely ratified.<sup>98</sup> The only United

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91. Gunnar, *supra* note 30, at 129.

92. See Barthelet, *supra* note 20, at 124 (stating "[i]nternational adoption has been shown to overcome even very significant deficits caused by early deprivation").

93. See Gunnar, *supra* note 30, at 140 (showing that the longer a child is institutionalized, the lower that child's chances become of escaping permanent harm).

94. *Id.*

95. *Id.*

96. See Convention on the Rights of the Child, *supra* note 1, pmb1. (stating "childhood is entitled to special care and assistance . . .").

97. See generally Convention on the Rights of the Child, *supra* note 1.

98. See United Nations Committee on the Rights of the Child, *Reservations, Declarations, and Objections relating to the Convention on the Rights of the Child*, July 11, 1994, <http://www.unhcr.org/refworld/docid/3aef6aed4.html> (last visited Dec. 18, 2008)



Nations member states that have not ratified this treaty are Somalia and the United States.<sup>99</sup> The Convention on the Rights of the Child recognizes fundamentally that "childhood is entitled to special care and assistance."<sup>100</sup>

### 1. *Inferring a Right to Permanent Family Care*

International law does not overtly recognize a legally abandoned child's right to permanent family care. However, this Note argues that the right to permanent family care can be inferred from other express rights outlined in the Convention on the Rights of the Child. Additionally, there are provisions in the Hague Convention on Intercountry Adoption that provide support for a child's right to permanent family care.<sup>101</sup>

Under Article Twenty of the Convention on the Rights of the Child, a child who is unable to live with his or her biological family "shall be entitled to special protection and assistance provided by the state."<sup>102</sup> According to the Convention on the Rights of the Child, the state may fulfill this obligation by providing "foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children."<sup>103</sup> However, States Parties to the Convention on the Rights of the Child are also required to ensure the child's development to the "maximum extent possible,"<sup>104</sup> and institutional and temporary family care options hinder the development of children.<sup>105</sup> It follows that when the only available internal placements are in institutions and temporary family care settings, the state is obligated to consider whether there are any other possibilities that might better protect the development of that country's children. This obligation precludes restrictions on the ability to be

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(listing the parties to the Convention on the Rights of the Child) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

99. *Id.*

100. Convention on the Rights of the Child, *supra* note 1, pmbl.

101. See Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, pmbl., May 29, 1993, 32 I.L.M. 1134, 1139 (recognizing the correlation between a child's fundamental rights and permanent family care) [hereinafter Hague Convention].

102. Convention on the Rights of the Child, *supra* note 1, art. 20.

103. *Id.*

104. *Id.* art. 6.

105. See Gunnar, *supra* note 30, at 129 (showing a correlation between increased long-term behavioral problems and time spent in impermanent and institutional care); see also Kertes, *supra* note 30, at 488 (noting the detrimental effects of institutional care on growth patterns).

internationally adopted. To ensure a legally abandoned child's development to the maximum extent possible would require allowing the opportunity for placement in permanent family care.

*a. The Right to Development*

The Convention on the Rights of the Child expressly recognizes a child's right to development and to state protection of that development.<sup>106</sup> Under Article Twenty-Seven of the Convention on the Rights of the Child, "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development."<sup>107</sup> States Parties to the Convention on the Rights of the Child do not recognize the right of every child to mere survival but to development that is "adequate."<sup>108</sup> Presumably, the standard of living that is "adequate" for the child's development is the standard of living that sufficiently allows the child to meet the average development markers for his or her age.<sup>109</sup> Because of the adverse effects of institutional and temporary family care on the child's physical growth and emotional and mental development, these care options cannot be seen as "adequate" for the child's development.<sup>110</sup>

Although all countries may not have the economic means to provide all abandoned and orphaned children with adequate care and protection, recognition of a child's right to adequate care, at minimum, means that actions hindering that right should not be undertaken. Under Article Three of the Convention on the Rights of the Child, States Parties must ensure "such protection and care as is necessary for [the child's] well-being."<sup>111</sup> When this requirement is paired with Article Twenty-Seven's assertion that

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106. See Convention on the Rights of the Child, *supra* note 1, at pmb1. (stating that State Parties have an obligation to ensure a child's right to life and development).

107. *Id.* art. 27.

108. *Id.*

109. World Health Organization, *Development of a WHO Growth Reference for School-Aged Children and Adolescents*, <http://www.who.int/growthref/en/> (last visited Dec. 18, 2008) (charting average development for children according to their age) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

110. See Gunnar, *supra* note 30, at 129 (showing a correlation between increased long-term behavioral problems and time spent in impermanent and institutional care); Kertes, *supra* note 30, at 488 (noting the detrimental effects of institutional care on growth patterns).

111. Convention on the Rights of the Child, *supra* note 1, art. 23.

children have a right to a "standard of living adequate for development,"<sup>112</sup> it indicates that by agreeing to recognize the child's right to development, States Parties agree that the child has a right to a standard of living and a level of care that will protect the child's normal development.<sup>113</sup>

*b. The Right to State Protection of Development*

When a child is unable to live with his or her biological family, protection of the child's normal development falls entirely on the state.<sup>114</sup> As mentioned above, Article Three of the Convention on the Rights of the Child indicates that States Parties "undertake to ensure the child such protection and care as is necessary for his or her well-being."<sup>115</sup> Article Six of the Convention on the Rights of the Child further supports the States Parties' affirmative obligation to protect the child's development.<sup>116</sup>

Under Article Six of the Convention on the Rights of the Child, "States Parties shall ensure to the maximum extent possible the survival and development of the child."<sup>117</sup> The term "shall" indicates that protection of the child's survival and development is a mandate, and the phrase "to the maximum extent possible" does not mean "just do what you can do." For example, a State Party that has low rates of in-country adoption but that views status as a "sending country" in international adoption as a political embarrassment cannot subordinate the child's right to survival and development to the state's political needs and then say that it did the best it could do given the other considerations at stake. Article Six preserves the importance of the child's right to development and affirms that States Parties are required to protect the child's survival and development unless there is true incapability.<sup>118</sup> A better reading of the phrase "to the maximum extent possible" is "do whatever must and can be done." This is the reading that comports with the strong wording "States Parties shall ensure."<sup>119</sup> Additionally, allowing the child's right to development to be

112. *Id.* art. 27.

113. *Id.*

114. *See id.* art. 23 (stating "States Parties shall . . . ensure alternative care for such a child").

115. *Id.*

116. *See id.* art. 6 (establishing States Parties' obligation to ensure the survival and development of the child).

117. *Id.*

118. *Id.*

119. *Id.*

arbitrarily subordinated would contravene the purpose of children's special rights.

The *raison d'être* of special children's rights is the child's need to be cared for as an undeveloped and developing human. There are two main characteristics that make children different from the rest of the human population. First, they are physically, mentally, socially, and emotionally immature. Second, they are in the process of rapid development and of moving out of their physical, mental, social, and emotional immaturity. Children are entitled to "special care and assistance" because they are different from other humans.<sup>120</sup> If special rights were created because of the child's undeveloped, developing status, then the right to development must be viewed as one of the most important and fundamental rights in the Convention on the Rights of the Child.

Because a child's physical, mental, and social development is endangered when a child is denied permanent family care, the child's right to permanent family care can be seen as a necessary part of the right to development. The child's right to permanent family care is then entitled to state protection under the child's right to state protection of his or her development. A State Party to the Convention on the Rights of the Child is required to protect a child's survival and development "to the maximum extent possible."<sup>121</sup> For children that have not been legally abandoned, they are entitled to the best care option available.<sup>122</sup> For them, this is most likely care in a temporary family setting. However, to protect a legally abandoned child's development "to the maximum extent possible," the child must be allowed permanent family care.<sup>123</sup> A State Party to the Convention on the Rights of the Child cannot both restrict a child's access to permanent family care and remain consistent with its other rights obligations to children.

Again, the only United Nations member states that are not parties to the Convention on the Rights of the Child are the United States and Somalia.<sup>124</sup> However, of the states that are parties to the Convention, many have issued numerous reservations to the treaty.<sup>125</sup> The Articles relating to

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120. See *id.* pmbi. (stating "[t]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth").

121. *Id.* art. 6.

122. *Id.*

123. *Id.*

124. See United Nations Committee on the Rights of the Child, *supra* note 98 (listing the parties to the Convention on the Rights of the Child).

125. See *id.* (listing each country's reservations to the Convention on the Rights of the

the child's right to development are Articles Three, Six, and Twenty-Seven. To review, Article Three identifies that the child's best interests should be the primary consideration in all actions concerning children and that States Parties "undertake to ensure the child such protection and care as is necessary for his or her well-being."<sup>126</sup> Article Six asserts that States Parties "shall ensure to the maximum extent possible the survival and development of the child."<sup>127</sup> And, Article Twenty-Seven recognizes the child's right to "a standard of living adequate for the child's physical, mental, spiritual, moral and social development."<sup>128</sup>

No state has issued a reservation to Article Three or Article Twenty-Seven, and only China and Luxembourg have issued reservations to Article Six.<sup>129</sup> In its reservation, China stated that it would fulfill its Article Six obligations to the extent that they were consistent with China's family planning policy.<sup>130</sup> Similarly, Luxembourg's reservation clarified that it would not read Article Six as presenting an obstacle to the regulation of pregnancy termination.<sup>131</sup> Because no States Parties have denied an obligation to recognize or protect a child's right to development, one can infer an obligation to recognize a child's right to permanent family care.<sup>132</sup>

## 2. *Conflict Between the Right to Development and the Right to Cultural Identity*

Opponents of international adoption frequently rely on provisions of the Convention on the Rights of the Child that take note of a child's cultural identity.<sup>133</sup> There are three provisions that pertain to the child's cultural

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Child).

126. Convention on the Rights of the Child, *supra* note 1, art. 3.

127. *Id.* art. 6.

128. *Id.* art. 27.

129. United Nations Committee on the Rights of the Child, *supra* note 98.

130. *Id.*

131. *See id.* at 23 (stating "[A]rticle 6 of the present Convention presents no obstacle to implementation of the provisions of Luxembourg legislation concerning sex information, the prevention of back-street abortion and the regulation of pregnancy termination").

132. *Cf. id.* at 38 (showing that none of the four States Parties that made declarations and reservations about Article 6 outright objected to it).

133. *See* David M. Smolin, *The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals*, 35 SETON HALL L. REV. 403, 411 (2005) (arguing that Article 8 of the Convention on the Rights of the child "underscores that intercountry adoption is, in certain respects, inherently destructive of the rights of the child").

identity.<sup>134</sup> In the preamble, the Convention on the Rights of the Child asserts that States Parties must take due account of "the importance of the traditions and cultural values of each people for the protection and harmonious development of the child."<sup>135</sup> Under Article Eight, "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."<sup>136</sup> Finally, Article Twenty-One states that when considering alternative care for a child, "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."<sup>137</sup>

Proponents of international adoption do not discount the importance of a child's cultural identity.<sup>138</sup> Where a legally abandoned child has the option of placement with an in-country family or placement internationally, most proponents of international adoption would agree that placement in-country is probably in the best interests of the child.<sup>139</sup> However, this is not common in practice.<sup>140</sup> In many countries where there are numerous children in need of families, in-country adoption is not a popular phenomenon.<sup>141</sup> Opponents of international adoption would allow these children to stay in institutions or temporary care settings rather than place

134. See Convention on the Rights of the Child, *supra* note 1 (protecting the rights of children in the international community).

135. *Id.* pmb1.

136. *Id.* art. 8.

137. *Id.* art. 21.

138. *Cf. id.* pmb1. (stating that the preservation of a child's cultural identity is one of the purposes of the Conventions on the Right of the Child); *id.* art. 20 (preferring in-country adoption to intercountry adoption is one of four solutions to promote the development of children whose needs are not being fulfilled in their homes).

139. See Hague Convention, *supra* note 101, pmb1. (indicating that adoption in-country is preferred over adoption abroad).

140. See Bartholet, *supra* note 20, at 107 (explaining the typical adoption scenario). Bartholet states that:

Typically the adoptive parents are relatively privileged white people from one of the richer countries of the world, and typically they will be adopting a child born to a desperately poor birth mother belonging to one of the less privileged racial and ethnic groups in one of the poorer countries of the world.

*Id.* Bartholet argues that as international adoption gains the world's attention as a result of its increasing frequency and popularity, international policymakers need to directly address (1) the circumstances causing the high numbers of abandoned children in sending countries and (2) reforms that would promote intercountry adoption over in-country adoption when the latter is insufficient to keep children out of institutional care. *Id.* at 124.

141. *Id.* at 107.

them with permanent families in other countries.<sup>142</sup> But protecting the child's cultural identity does not deserve primacy over protecting the child's status as a developing human. The language of the Convention on the Rights of the Child makes this clear.<sup>143</sup>

The Convention on the Rights of the Child requires States Parties to take due account of the child's tradition,<sup>144</sup> "undertake to respect" the child's national identity,<sup>145</sup> and pay "due regard" to maintaining cultural continuity in the child's upbringing.<sup>146</sup> These provisions show that the child's culture is an important aspect of the child's upbringing.<sup>147</sup> However, the Convention on the Rights of the Child places even more importance on protecting the child's right to development.<sup>148</sup> The Convention on the Rights of the Child mandates that States Parties recognize and "ensure to the maximum extent possible" the child's development and survival.<sup>149</sup> According to the language of the Convention on the Rights of the Child, States Parties may have a more affirmative obligation to protect a child's development than to protect the child's cultural identity.<sup>150</sup> At a minimum, the provisions concerning a child's

142. See *id.* at 108 (describing the perception of the opponents of international adoption). Bartholet explains that:

[M]any see international adoption as one of the ultimate forms of human exploitation, with the rich, powerful and white taking from poor, powerless members of racial and other minority groups, their children, thus imposing on those who have little what many of us might think of as the ultimate loss.

*Id.*

143. See Convention on the Rights of the Children, *supra* note 1, art. 21 ("States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration.").

144. *Id.* pmb1.

145. *Id.* art. 8.

146. *Id.* art. 20.

147. See *supra* note 144 and accompanying text.

148. See Convention on the Rights of the Children, *supra* note 1, art. 6 ("States Parties shall ensure to the maximum extent possible the survival and development of the child."); *Id.* art. 27 ("States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.").

149. *Id.* art. 6.

150. See Convention on the Rights of the Children, *supra* note 1, pmb1. ("Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding."); *Id.* art. 8 ("States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.").

cultural identity in no way imply that the child's right to cultural continuity supersedes his right to development.<sup>151</sup>

### 3. *Inconsistencies Within the Convention on the Rights of the Child*

A child's likelihood of achieving normal development is severely decreased in the absence of permanent family care.<sup>152</sup> Therefore, to fulfill a child's rights to development, States Parties to the Convention on the Rights of the Child should allow children to have access to permanent family care.<sup>153</sup> However, the Convention on the Rights of the Child does not require that States Parties permit adoption.<sup>154</sup> Article Twenty notes that a child who is deprived of his or her family is entitled to "special protection and assistance provided by the State"<sup>155</sup> which could include "foster care, *kafalah* of Islamic law, adoption, or if necessary placement in suitable institutions."<sup>156</sup> The Convention on the Rights of the Child notes that in considering these solutions, the child's cultural identity should be kept in mind.<sup>157</sup> Finally, Article Twenty-One of the Convention on the Rights of the Child states that international adoption can be an option "if the child

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151. Some states would not be happy to find that their duty to protect a child's development extended to a responsibility to allow children to have access to permanent family care. This could lead States Parties to sign off of the Convention on the Rights of the Child altogether. My intention is to shift the way in which the right to development is perceived and explain that current temporary care options are not meeting this right. By explaining how deprivation of permanent family care affects a child physiologically and psychologically, I hope to increase acceptance for the adoption of the right to permanent family care as part of the right to development. Because of the high numbers of abandoned and orphaned children, and the disputes over how best to provide for them, the eventual creation of a third optional protocol related to intercountry adoption and abandoned children could clarify the specific nature of the States Parties responsibilities related to children that are abandoned and orphaned.

152. See Gunnar, *supra* note 30, at 140 (finding a high correlation between long-term behavioral problems and time spent in impermanent and institutional care); see also Kertes, *supra* note 30, at 478 (finding that exposure to the detrimental effects of institutional care correlated to negative growth patterns).

153. See Convention on the Rights of the Child, *supra* note 1.

154. Cf. *id.* art. 20 (requiring that States Parties provide alternative care, but not adoption, for 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").

155. *Id.*

156. *Id.*

157. See *id.* ("When considering solutions, 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.").



cannot be placed in a foster or adoptive family or cannot in any suitable manner be cared for in the child's country of origin."<sup>158</sup>

The intent of these provisions is not necessarily to circumvent fulfillment of the child's right to development. Instead, the provisions allowing temporary family care and institutional care appear to assume that rights, such as the child's right to development and well-being, can be fulfilled in institutional and temporary family care settings. As current research shows, a child's right to development is hindered profoundly by institutional and temporary family care.<sup>159</sup> Rather than subordinate the child's right to development and adhere to the care options discussed in Articles Twenty and Twenty-One, one must read these Articles in light of all available research, which includes studies that show the physical, developmental, mental, emotional, social, and behavioral disorders that can result from deprivation of permanent family care.<sup>160</sup> Additionally, Article Three of the Convention on the Rights of the Child states: "In all actions concerning children . . . the best interests of the child shall be a primary consideration."<sup>161</sup> According to current research, the best interests of the child are inconsistent with Article Twenty-One's de-prioritization of permanent family care.<sup>162</sup>

#### 4. *The Right to Permanent Family Care and the Hague Convention*

The Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Convention)<sup>163</sup> is a multilateral treaty that sets out norms and procedures for the regulation of international adoption.<sup>164</sup> As of 2008, there are seventy-six contracting states to the Hague Convention.<sup>165</sup>

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158. *Id.*

159. *See supra* note 30 and accompanying text.

160. *Id.*

161. Convention on the Rights of the Child, *supra* note 1, art. 3.

162. *Id.* art. 21.

163. Hague Convention, *supra* note 101.

164. *Id.*

165. The Hague Conference on Private International Law, Chart of Countries to Ratify the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (2008), [http://hcch.e-vision.nl/index\\_en.php?act=conventions.status&cid=69](http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69) (last visited Dec. 18, 2008) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

a. *Conflict Between the Hague Convention and the Convention on the Rights of the Child*

Although the Hague Convention's primary purpose is to provide regulatory standards to safeguard international adoption from corruption, it directly addresses the issues concerning children's rights in several provisions.<sup>166</sup> Specifically, the Hague Convention states that States Parties recognize that "intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin."<sup>167</sup> This statement appears to conflict with the hierarchy established by Article Twenty-One of the United Nations Convention on the Rights of the Child. Article Twenty-One places intercountry adoption as the fourth option after in-country adoption, in-country foster care and other suitable care.<sup>168</sup> Under the Vienna Convention on the Law of the Treaties,<sup>169</sup> when successive treaties pertain to the same subject matter, "the earlier treaty applies only to the extent that its provisions are compatible with those of the latter treaty."<sup>170</sup> Additionally, under the general interpretive principle of *lex specialis*, a more specific rule will take precedence over a more general one.<sup>171</sup> Therefore, for States Parties to both the Hague Convention and the Convention on the Rights of the Child, the Hague Convention seems to buoy intercountry adoption's placement up on the list to a preferred option of care, second only to in-country adoption.<sup>172</sup> The Hague Convention lends force to the argument that permanent family care is the goal, and that temporary care and institutional care are no longer sufficient.<sup>173</sup>

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166. Hague Convention, *supra* note 101, pmb1.

167. *Id.*

168. Convention on the Rights of the Child, *supra* note 1, art. 21.

169. See Vienna Convention on the Law of Treaties art. 30, May 23, 1969, 8 I.L.M. 679 [hereinafter Vienna Convention] (stating that any treaty that conflicts with a peremptory norm is void).

170. *Id.* art. 30.

171. See Christopher J. Borgen, *Resolving Treaty Conflicts*, 37 GEO. WASH. INT'L L. REV. 573, 589 (2005) (noting that "[w]hen applied to treaties as a whole, the *lex specialis* rule is usually read to mean that the specific treaty supersedes the general treaty").

172. *Cf. id.* (applying *lex specialis* here means that the Hague Convention, the specific treaty, supercedes the UNCRC, the general treaty); Vienna Convention, *supra* note 169, art. 30 (underlining the argument that intercountry adoption is fully supported by the Hague Convention, which as the later treaty, trumps the UNCRC's lack of support for intercountry adoption).

173. This concurs with Professor Richard Carlson's argument, outlined in Professor Dillon's article, though Professor Dillon herself believes this is an overly broad view of the

### III. *The International Adoption Debate*

There are four arguments that opponents of intercountry adoption frequently raise: (1) international adoption exploits the resources of impoverished countries; (2) international adoption diverts money away from the problems that cause people to abandon children; (3) children should remain in their birth culture; and (4) the prevalence of corruption in international adoption makes it an unworkable system.<sup>174</sup>

#### A. *The Exploitation Argument*

The argument that international adoption exploits impoverished countries' "most precious resources" assumes that the practice of international adoption creates a market for children without families.<sup>175</sup> This confuses ethical and unethical adoption. According to Professor Sara Dillon, ethical international adoption involves advocating for children that would have been abandoned and in need of alternate care even if there were no system of international adoption in place.<sup>176</sup> Unethical, illegal adoption treats children as a resource to be exploited and finds children to provide to parents.<sup>177</sup> Ethical international adoption provides parents to children who otherwise would languish in institutional and temporary family care.<sup>178</sup>

Even if opponents of international adoption recognize that the international adoption system provides a valuable service to children in need of care and without families, they may argue that the very practice of

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Convention. Sara Dillon, *Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption*, 21 B.U. INT'L L.J. 179, 214 (2003).

174. See Barholet, *supra* note 20, at 114 (discussing the arguments of opponents to international adoption).

175. See *cf. id.* at 111 (discussing how political rivals of South Korea have accused the country of selling its children, when it appears merely that there were a large amount of children without suitable homes and not enough South Koreans who wanted to adopt the children in-country).

176. See Dillon, *supra* note 3, at 189 (2003) (stating that "[o]bjective determination of whether a particular child would have been abandoned, neglected, or abused, and thus entitled to alternative care, even without the presence of the intercountry adoption mechanism, is the key and necessary precondition to ethical adoption advocacy").

177. See *id.* at 188–89 (describing how child trafficking threatens the legitimacy of international adoption).

178. See *id.* at 188 (exploring the "adoptability conundrum"—the determination of which children would have been introduced into the system if the demand for adoptable children did not exist).

taking children out of their community is still an act of exploitation of the countries' "most precious resources."<sup>179</sup> This line of reasoning engages in the fantasy that most children who spend the majority of their lives in institutions will simply grow up and become productive members of their communities.<sup>180</sup> Arguably, it is by giving children the opportunity to grow up with families that their lives can be treated truly as "precious resources."

Finally, opponents of international adoption could more easily characterize it as a system of Western exploitation if only impoverished countries were sending children and only wealthy countries were receiving them. However, Western nations are "sending" as well as "receiving" countries in international adoption.<sup>181</sup> Some children that may be difficult to place in the United States are given the opportunity to have permanent family care through international adoption.<sup>182</sup> Adoption agencies in the United States have placed children in Austria, Belgium, Canada, England, France, Germany, Italy, the Netherlands, Peru, Sweden, and Switzerland.<sup>183</sup> The United States is frequently one of the largest providers of adopted children to Canada.<sup>184</sup>

### B. *The Diversion Argument*

Opponents also argue that international adoption fails to address the root of the crisis and diverts energy and resources away from the problems that are leading to large amounts of orphans and abandoned children.<sup>185</sup> However, adoption fees paid to sending countries are often used to improve

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179. See Barthelet, *supra* note 20, at 120 (recognizing the argument that "international adoption constitutes a particularly vicious form of exploitation of the impoverished sending countries of the world by the richer countries of the world, and the loss of the poor countries' 'most precious resources'").

180. See *id.* (displaying the "extreme romanticism" of this argument).

181. See Galit Avitan, Note, *Protecting Our Children or Our Pride? Regulating the Intercountry Adoptions of American Children*, 40 CORNELL INT'L L.J. 489, 492 (2007) (characterizing the United States as both sending children to and receiving children from other countries).

182. See *id.* at 497–98 (2007) (referencing how international families often adopt American children who could not find a home in United States, either because of age or because of racial mixing concerns).

183. *Id.* at 499 (listing foreign countries that have received American-born children).

184. *Id.* (stating that the United States has sent more than 250 children to Canada since 2003).

185. See *supra* notes 20, 76 and accompanying text.

conditions in the sending countries' orphanages.<sup>186</sup> In this way, the international adoption system funds orphanages, thereby providing a positive impact on the children left behind.<sup>187</sup>

### C. *The Cultural Identity Argument*

Proponents of international adoption state that they have the child's best interests in mind, but some opponents of international adoption argue that international adoption is not in the child's best interests.<sup>188</sup> Opponents of international adoption argue that the best interests of the child are met by remaining in the child's birth culture.<sup>189</sup>

Some opponents of international adoption argue that it is in the best interests of the child to grant primacy to the right to cultural identity.<sup>190</sup> In Part II, this Note addressed the conflict between provisions in the Convention on the Rights of the Child asserting a right to psychological and physical development and provisions recognizing a right to cultural identity. However, there are also opponents of international adoption that argue that separation from a child's birth culture is not just an issue of right to culture but an issue pertaining to psychological development.<sup>191</sup>

If society must choose between a child being culturally identified but physically and psychologically damaged, or separated from his or her birth culture but physically and psychologically healthy, the choice seems obvious. However, the analysis is not so straightforward. The argument that separation from birth culture affects a child's psychological state

186. See Bartholet, *supra* note 20, at 122 (stating as an example that adoptive parents have donated over \$10,000 to Chinese orphanages, and that such funds often go to improve "home" orphanages).

187. *Id.*

188. See generally *id.*

189. See Bartholet, *supra* note 20, at 120 (referencing the argument that "children are best served by remaining in their community of origin, where they can enjoy their racial, ethnic, and national heritage, and that they are put at risk when placed with dissimilar adoptive parents in foreign countries").

190. See Jena Martin, *The Good, The Bad & The Ugly? A New Way of Looking at the Intercountry Adoption Debate*, 13 U.C. DAVIS J. INT'L L. & POL'Y 173, 203 (2007) (stating that "[i]n some instances, the threat of loss of cultural heritage can be enough to proscribe intercountry adoption altogether").

191. See Bartholet, *supra* note 20, at 120 (referencing the argument that "children are best served by remaining in their community of origin, where they can enjoy their racial, ethnic, and national heritage, and that they are put at risk when placed with dissimilar adoptive parents in foreign countries").

necessitates a more nuanced approach, because it involves weighing varying degrees of mental disturbance. Opponents of international adoption argue that children are psychologically damaged by separation from their birth cultures.<sup>192</sup> As internationally adopted children become adolescents, they may have an increased sense of being different from their parents and the community that they live in, which can lead to depression and low self esteem.<sup>193</sup> Though these problems should not be overlooked in the internationally adopted child, they do not warrant completely shutting down the international adoption system. In fact, parenting practices that promote cultural socialization have been found to assuage this problem, increasing the internationally adopted adolescent's sense of well-being.<sup>194</sup>

The psychological disturbances that children endure when they are forced to remain in institutions and temporary care settings are of an entirely different magnitude.<sup>195</sup> Children who live in institutions and temporary family care settings may become so upset that they become physically stunted in height, weight, and head circumference.<sup>196</sup> Further, the damage from deprivation of permanent family care can only be mitigated by placement with a permanent family.

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192. *Id.* at 120 (arguing that international adoption damages children's psyches).

193. See Richard M. Lee et al., *Cultural Socialization in Families with Internationally Adopted Children*, 20 JOURNAL OF FAMILY PSYCHOLOGY 571, 571 (2006) (noting the ages at which internationally adopted children become aware of racial differences and this awareness' impact on their development); see Gunnar, *supra* note 30, at 143 (noting the increased behavioral difficulties suffered by internationally adopted children during adolescence).

194. See Lee, *supra* note 193, at 572–73 (describing such parenting practices). Lee states that beneficial cultural socialization parenting practices may include celebrating cultural holidays, teaching the child words from his or her birth language, introducing the child to other children from his or her birth culture, and showing that the parent is aware of the child's ethnic minority-specific experiences by talking with the child about discrimination and, if necessary, racism. *Id.*

195. See Gunnar, *supra* note 30, at 146 (showing a correlation between increased long-term behavioral problems and time spent in impermanent and institutional care); see also Kertes, *supra* note 30, at 482 (noting the detrimental effects of institutional care on growth patterns); Lee, *supra* note 193, at 571 (discussing long-term effects of a child's being raised by parents of another race).

196. See also Kertes, *supra* note 30, at 486 (examining the physical effects of preadoption deprivation of care on neuroendocrine activity).

#### D. The Corruption Argument

One of the most difficult aspects of international adoption is protection against corruption. Opponents of international adoption argue that many of the children in the international adoption system are not actually abandoned children but children that have been bought or kidnapped.<sup>197</sup> They argue that because of these illegal practices, the entire international adoption system should stop.<sup>198</sup> Proponents of international adoption recognize that these illegal practices occur but believe that they are not as frequent as the opponents suggest.<sup>199</sup>

Although this contradicts the pro-international adoption party line, it seems difficult to quantify whether or not abuses in the system are exaggerated. Prospective parents pay large fees to institutions, adoption agencies, and attorneys involved in international adoption.<sup>200</sup> When private actors recognize that they can receive funds for setting up international adoptions, corruption is bound to ensue.

The corruption argument carries weight. All other arguments either fail to recognize children's rights altogether or fail to recognize the importance of a child's right to development in light of his best interests. Because the corruption argument posits that more human rights abuses occur in the presence of international adoption than in its absence, this argument neither fails to recognize children as the holders of rights nor fails to regard the child's best interests. However, meaningful steps are being taken to curb abuses in the system.<sup>201</sup> Although it is hard to determine the extent of past abuses in the international adoption system, it is becoming more difficult to abuse the international adoption system with the increasing adherence to the Hague Convention on Intercountry Adoption.<sup>202</sup>

197. See McKinney, *supra* note 76, at 362 (referring to opponents' argument that "many international adoptees are not 'true orphans'" and describing instances of forced relinquishment of parental rights) (citations omitted).

198. See Barholet, *supra* note 20, at 126 (stating that "[i]nternational adoption's opponents have grossly exaggerated the scope of [baby-buying and kidnapping] problems, using them deliberately to promote restrictive adoption rules to suit their larger anti-adoption agenda").

199. See generally *id.*

200. See generally International Adoption Costs, <http://international.adoption.com/foreign/international-adoption-costs.html> (last visited Dec. 18, 2008) (on file with the Washington and Lee Journal of Civil Rights and Social Justice).

201. See generally Hague Convention, *supra* note 101.

202. One important reason why it is becoming more difficult to abuse the system is because of the recent U.S. ratification of the Hague Convention. See Jane Gross, *U.S Joins Overseas Adoption Overhaul Plan*, N.Y. TIMES, Dec. 11, 2007, at A29 (discussing the

The recent Zoe's Ark scandal can be used to illustrate how the Hague Convention could improve the integrity of the international adoption system and prevent abuse. The Zoe's Ark scandal involved a French non-profit organization that sought to remove orphans from the Sudan to place them with families in Europe.<sup>203</sup> Local guides helped the organization find over one hundred "Sudanese orphans."<sup>204</sup> However, as the plane with these "orphans" prepared to take off, officials stopped them.<sup>205</sup> Shortly thereafter, it became apparent that the "Sudanese orphans" were really abducted Chadian children with families.<sup>206</sup> The French non-profit organization, Zoe's Ark, had already received funds from the prospective families for these children.<sup>207</sup> There are allegations by aid workers in Abeche that Zoe's Ark arrived in Chad and provided locals with a "shopping list" of children based on the specifications of children promised to European families.<sup>208</sup> There is also evidence provided by United Nations aid workers that after the French non-profit organization arrived in Chad and asked locals to help them find Sudanese orphans, they were unknowingly provided with the children from Chad.<sup>209</sup>

Whether the attempted profiteers were the locals finding the "orphans," the members of Zoe's Ark, or both, increased ratification of the Hague Convention on Intercountry Adoption will help curb corruption like this. Under the Hague Convention on Intercountry Adoption, all international adoptions occurring between two member states to the convention must be compliant with the Convention.<sup>210</sup> France is a State

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possible pros and cons of the United States' ratification of the Hague Convention on Intercountry Adoption).

203. See Lydia Polgreen, *The Orphans Who Didn't Need Saving*, N.Y. TIMES, Nov. 4, 2007, at 41 (describing the Zoe's Ark scandal and both the complicated status of orphans in Africa and the strained relationship between former colonies and European colonizers in Africa).

204. *Id.* at 41.

205. *Id.*

206. *Id.*

207. *Id.*

208. See Alex Duval Smith et al., *Did They Plot to Steal Africa's Orphans of War?*, THE GUARDIAN, Nov. 4, 2007, available at <http://www.guardian.co.uk/world/2007/nov/04/france.sudan> (describing the different parties involved in the Zoe's Ark scandal, including how much Zoe's Ark knew about the status of the children being neither Sudanese nor orphaned, as well describing the poverty stricken status and political climate in Chad).

209. See Polgreen, *supra* note 203, at 41 (describing such evidence).

210. See Hague Convention, *supra* note 101, art. 4 (listing the guidelines to ensure adoptability of the children, any necessary consent and any lack of compensation or inducement relating to such consent).



Party to the Hague Convention, but Chad and the Sudan are not.<sup>211</sup> If the Zoe's Ark "adoptions" had occurred between two Hague compliant States, the prospective parents would have applied for permission to adopt either through France's Central Authority or through a body accredited by France's Central Authority.<sup>212</sup> Firstly, the French Central Authority or other accredited body would determine whether the prospective parents were eligible to adopt.<sup>213</sup> Secondly, if they were eligible, the French Central Authority or accredited body would forward the parents' information to the Sudanese or Chadian Central Authority or accredited body who would make a separate determination as to whether the parental report was satisfactory.<sup>214</sup> Finally, the Sudanese or Chadian Central Authority or accredited body would then make sure that the children to be adopted were adoptable.<sup>215</sup> At this point, the children's identities would have been discovered, partly because many of them were old enough to say that they were from Chad not the Sudan and that they had living families.<sup>216</sup>

### E. Political Embarrassment and Myth

Apart from the main arguments against international adoption, there are several additional reasons why countries may choose to restrict intercountry placement.<sup>217</sup> In some countries, the availability of children for intercountry adoption is viewed as a political embarrassment.<sup>218</sup> For example, South Korea recently restricted international adoption out of fear that the country would be seen as selling babies.<sup>219</sup> Additionally, in some

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211. The Hague Conference on Private International Law, Chart of Countries to Ratify the Convention, *supra* note 165.

212. See Hague Convention, *supra* note 101, art. 6 (discussing the designation of at least one Central Authority per state to address intercountry adoptions and regulations).

213. See *generally id.*

214. *Id.* art. 17 (providing that only when the receiving state has also approved the adoption may it go forward, and only according to the prescribed guidelines).

215. *Id.*

216. See Duval Smith, *supra* note 208 (discussing the late stage at which the children's identity was discovered).

217. See Martin, *supra* note 190, at 186 (discussing the various arguments against intercountry adoption).

218. See Dillon, *supra* note 3, at 226 (describing the shame some countries feel if they are perceived to be unable to care for their children).

219. See Barholet, *supra* note 20, at 110–11 (detailing the decrease in adoptions in South Korea due to political pressure).

countries, myth surrounds the practice of intercountry adoption.<sup>220</sup> This became apparent in the wake of the Zoe's Ark adoption scandal when a Chadian official stated that children who enter the intercountry adoption system are used as organ donors.<sup>221</sup>

### F. Conclusion

Each of the arguments against international adoption fails to recognize the rights of the children currently living in impermanent family care settings. Believers in the exploitation argument appear content to keep children in the country at all costs without considering the conditions in which the children live.<sup>222</sup> Under the diversion argument, the needs of children who are currently suffering human rights abuses are pushed to the side with the hope that future children will not need to suffer.<sup>223</sup> But to deny access to international adoption for political reasons is to treat a child as a mere possession of the state, rather than as an individual holder of human rights.

The cultural argument accurately attempts to focus on the child's best interests, but internationally adopted children who are separated from their birth cultures fare better than children who grow up in impermanent care in their countries of birth.<sup>224</sup> Finally, the corruption argument illuminates a need for safeguards in the system.<sup>225</sup> However, it is not necessary to shut down the international adoption system because crime takes place. It is possible to protect a child's right to permanent family care while curbing abuse within the international adoption system.<sup>226</sup>

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220. See Polgreen, *supra* note 203, at 41 (describing the long distrust in Central Africa regarding attempts by European colonizers to adopt African children, stemming in part from King Leopold's actions in the Congo).

221. Duval Smith, *supra* note 208.

222. See Bartholet, *supra* note 20, at 111–12 (detailing the dire conditions in which some orphans live, including a discussion of a baby-buying scandal in Romania).

223. See *supra* Part III.B.

224. See Lee, *supra* note 193, at 571 (testing data against the hypothesis that children adopted by families with lower color-blind racial attitudes would be more likely to engage in cultural socialization, regardless of their country of origin).

225. See *supra* Part III.D.

226. See generally Hague Convention, *supra* note 101 (setting out protections and rights guaranteed to children in the intercountry adoption process).

#### IV. Regulating Abuse in International Adoption

The Hague Convention on Intercountry Adoption details how to protect children's rights while regulating against abuse.<sup>227</sup> This multilateral treaty undertakes to regulate the international adoption system and prevent corruption within the system.<sup>228</sup> The treaty requires States Parties to establish a Central Authority and accredited bodies through which all adoption requests must pass.<sup>229</sup> Additionally, the Hague Convention requires all institutions and adoption agencies that arrange international adoptions to become accredited.<sup>230</sup> Institutions and adoption agencies that are non-accredited will not be able to arrange international adoptions.<sup>231</sup> Importantly, this eliminates rogue private actors from profiting off of international adoptions.<sup>232</sup>

The United States is one of the most recent countries to ratify the Convention, and as the largest receiving country of internationally adopted children, this ratification drastically increases the amount of adoptions that now must be Hague compliant.<sup>233</sup> Although the full effects of the treaty remain to be seen, the increasing ratification of the Hague Convention is likely to improve the integrity of the international adoption system.<sup>234</sup>

#### V. Conclusion

Children have a right to protection of their development "to the maximum extent possible."<sup>235</sup> Because of the effects of impermanent care

227. See generally *id.* (setting forth strict guidelines about which accredited bodies might handle adoption, and under what circumstances they may do so).

228. See generally *id.* (reducing possibilities for misuse of adoption procedures by setting forth strict universal guidelines).

229. See *id.* art. 6 (setting forth the establishment of Central Authorities to deal with intercountry adoption).

230. See *id.* Arts. 10–12 (requiring that only accredited agencies in one state may deal with corresponding accredited agencies in the other state when arranging for intercountry adoption).

231. See *id.* art. 10 (mandating that adoptions may only be handled by accredited agencies that have established their competence to deal with the task of intercountry adoption).

232. See generally *id.* arts. 10–12.

233. See Gross, *supra* note 202, at A29 (discussing the possible pros and cons of the United States' ratification of the Hague Convention on Intercountry Adoption).

234. See *supra* Part III.D–IV.

235. Convention on the Rights of the Child, *supra* note 1.

on a child's development, protecting a child's development includes protecting his right to a permanent family.<sup>236</sup> Because many countries do not have robust in-country adoption practices, countries that restrict intercountry adoption decrease a child's chances of being placed permanently with a family.<sup>237</sup> None of the arguments against intercountry adoption justify violation of this right.<sup>238</sup> The corruption argument raises the question of whether there are greater human rights abuses occurring because of the presence of the international adoption system.<sup>239</sup> However, the regulations outlined in the Hague Convention have been designed specifically to curb corruption, and increasing ratification will lead to improved integrity in the system.<sup>240</sup>

This Note argues that children have a right to permanent family care and that countries should not restrict international adoption. This Note also attempts to persuade opponents of international adoption to change the way they think about children's rights and specifically the way they think about the right to development. Countries restricting international adoption must come to that change themselves, therefore acceptance of the child's right to permanent family care may occur gradually. This Note recommends that nonprofit and intergovernmental organizations attempt to influence the policies in countries that restrict intercountry adoption by providing information on the effect that impermanent care has on children and by expressing support for inclusion of the child's right to permanent family care in the understanding of the child's right to development. This Note also supports the eventual creation of a third optional protocol to the Convention on the Rights of the Child, to address specifically intercountry adoption and the provision of families to orphaned and abandoned children.

Children have a right to permanent family care; restrictions on their ability to be placed permanently with families violate that right; and it is possible to protect children from both impermanent care and abuses within the system while allowing greater opportunities for international adoption.

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236. See *supra* Part II.

237. See Bartholet, *supra* note 20, at 109–10 (stating that Muslim countries do not permit adoption, that Asian countries tend to favor biological parenthood over adoptive parenthood, and that this reluctance extends to a disinclination to allow out-of-country adoption).

238. See *supra* Part III.

239. See *supra* Part III.D–IV.

240. See *supra* Part III.D–IV.

