

Address to International Adoption Conference
March 5, 2009 at New York Law School, N.Y.

I am delighted to be here and deeply honored that you asked me. It wasn't too long ago that I knew little about international adoption. My teachers and inspirers have been Professor Elizabeth Bartholet, Ann Reese and Diane Kunz. I am grateful to them.

I once remarked to Professor Bartholet that she taught me everything I know about International Adoption. "That may be, she said, "but I didn't teach you everything I know."

I asked Ann and Diane what I should talk about today. "Tell them everything you know about International Adoption in 20 minutes," they said. "How can I tell all I know in 20 minutes? I asked. "Speak slowly" they replied.

This conference brings to mind a story about a CNN reporter who is sent to a conference on IA. He singles out one of the conference gurus and says "I'd like to ask you about the status of IA, but you have to answer in one word." "Why one word" asked the guru. "We're CNN", said the reporter. "We have hundreds of interviews and only limited time. One word! What is the status of IA." "Good!" came the reply. The reporter paused and said: "Suppose I gave you two words, what would you say." "Not good" replied the guru.

I suppose if I had 3 words, I would say "Not good enough." Which brings me to what I want to talk about today.

* * *

I want to talk to you about human rights. I want to talk about human rights not just because human rights are my passion but because I believe that the work you do in International Adoption is a vital part of the pursuit of human rights.

And let me express my pride in the American Bar Association with its 420,000 members strong. The ABA fully and wholeheartedly supports ethical and legal international adoption. -- Sometimes lawyers do good things!

International adoption is largely a phenomenon that arose since World War II. And so did the concept of human rights. The fact is that prior to World War II the concept of individual human rights simply did not exist in international law. To be sure, individuals had rights in a relatively few democracies such as the U.S. and England. But in most of the world the sovereign state ruled and the individual had no rights that could be raised

against the state. As for children -- their human rights did not exist at all in law or in practice.

World War II brought about a great change in our perspective of human rights. As World War II wound down, the world learned of the horror of the Nazi years. The world learned of the Holocaust where the Nazi's murdered 6 million Jews, countless Catholics and other so-called non-Aryans. The world began to realize what could happen when the individual counted for nothing

Never Again

On April 25, 1949, a few months before the end of the war, 51 nations (all there were then) gathered in San Francisco to form the UN. The cry: "Never again, Never again" moved that conference. And that cry was translated into a determination, to protect the individual who had been brutalized in the war

beyond imagination. A determination to declare immutable principles that would protect individual worth and dignity.

I'll take a moment to tell you a personal story. I was at that San Francisco conference in 1949.

I was then a young naval officer on the aircraft carrier the USS Ticonderoga. We had been hit by two Kama-kazi planes in the North China Sea and nearly sunk. Hundreds were killed. We limped back to the States for repairs and I was sent to damage control school in San Francisco. My ship was to head back to the Pacific just a day after the San Francisco Conference.

I had read about the Conference and its creation of the UN.

I very much wanted to be at the Conference which as a young idealist I saw as the beginning of a brave new world. So on the morning of the Conference I put on my dress whites and went down to Navy headquarters trying to get a ticket to the

Conference. I claimed I wanted to write up the Conference for the Naval newspapers. They laughed at me.

Every ruse I tried failed. I was disheartened and gave up. I went over to the Veterans Building where some of the delegates were gathering to await the opening of the Conference which was to take place in the nearby Opera House and I found a seat next to an elderly gentleman. I had bought some first day envelopes with stamps marking the opening of the Conference. As I started to address the envelopes, the gentlemen asked me what they were. I explained and he said he had a son who was a stamp collector and could he buy some from me. I said, he couldn't buy them but I gladly gave him a few of my envelopes for his son.

Soon we were in deep conversation. I told him how right I felt to be engaged in the war. I told him of being hit by Kamikaze planes. I told him of my dreams for a brave new

world. And I told him how much it meant to me to be at the Conference. A young French speaking woman who was apparently his secretary was standing nearby and heard some of my story. Suddenly she said "Judge don't you need a Naval Attache?"

Well, "Yes, indeed," said the elderly gentlemen. He turned to me and said "Would you like to be my Naval Attache?" I quickly said, "Yes", all the time wondering who the hell he was. "OK", he said, "you're my Naval Attache." And who was he? No less than Manley Hudson, the senior U.S. delegate to the Conference, a Judge on the International World Court and a Professor at Harvard Law School. So as his Naval Attache, I got to attend that historic Conference. I'll never forget that day and the hopes it generated. It brought my new brave world a step closer in my dreams.

But getting back to the San Francisco conference, what emerged in 1945 was not only the start of the United Nations but also a ringing affirmation of the human rights of each person and the creation of a Commission on Human Rights, chaired by Eleanor Roosevelt (whose husband, FDR, had died 2 weeks earlier). The Commission was given the task of preparing a Universal Declaration of Human Rights -- a Declaration for all human beings regardless of social standing or individual merit.

Eleanor Roosevelt's Commission worked feverishly. Still, it took two long years of wrangling over words and meanings before the UN Declaration on Universal Human Rights was finally adopted.

When the Universal Declaration did get adopted -- around midnight December 10, 1948 -- Eleanor Roosevelt called it a Bill of Rights for all of humanity, a Magna Carta for mankind.

And, so it is. The Universal Declaration starts with the recognition that:

"... the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

It goes on to say that human rights should be protected by the rule of law.

The Universal Declaration then set forth basic human rights for civilization. Twenty articles of the Declaration deal with freedom of speech, religion and assembly and other rights much like those in our own Bill of Rights. Eight specific rights were new, but are critically important. They are social and economic rights such as the right to education, the right to health care, the right to an adequate standard of living -- rights which a human being should have in a just and civilized society.

After the Universal Declaration, the UN started to develop special covenants which would flesh out the rights in the Universal Declaration. A covenant or convention is another name for a treaty and when a nation ratifies a covenant or convention, it has the force of law. It is shameful that it took so many years to develop these instruments. Still over some 20 years covenants or conventions did get adopted on -- on civil rights, on economic rights, on discrimination, on torture and on the rights of woman. And there is one other covenant or convention that I want to emphasize. That is the Convention on the Rights of the Child.

Of course individual human rights in the Universal Declaration and the covenants that followed apply to all men, women and children.

But it's easy to forget about the children. They are helpless, unable to speak for themselves. So in the late 70s the UN

created a working group to draft a Convention on the Rights of the Child. The goal of this Convention was to emphasize universal coverage of children's rights and to make sure that every child -- within every jurisdiction -- is covered by the Convention.

Again I'll digress for a moment. I was actually on the UN working group for that Convention in 1980 and 1981. Now, the way a human rights covenant or convention gets to be adopted is long and arduous. A Working Group is set up to draft the document. But the Working Group has to reach a consensus before the convention or covenant can move on to be voted on by the Commission or Council on Human Rights and then finally voted on by the General Assembly. The ultimate vote by the General Assembly only needs a majority vote but to get there, a consensus has to take place in the Working Group. And that means a vote of 100 percent. The Working Group for the

Convention on the Rights of the Child was bogged down because various key provisions were objected to by several nations, clearly preventing a consensus. On one occasion, we knew that Cuba would vote no to a particular provision. And when that provision came up for a vote, Cuba did indeed vote no. The chairman of the Working Group, a devoted human rights advocate from Senegal, then declared that there was a consensus. Cuba jumped up and violently objected saying it had voted "No". "There could be no consensus." "Do you appeal my ruling", asked the Chairman? "Yes" shouted the Cubans. Well, said the Chairman, we'll take a vote on the ruling of the chair

Now, a ruling of the chair can be upheld by a 2/3 vote. And 2/3 of the Working Group voted to uphold the ruling of the chair. And so a consensus it was! That technique may not be altogether kosher, but it demonstrates our zeal and the

frustration we felt as we tried to insure the human rights of children in the International arena.

The Convention has now been ratified by every nation except Somalia and the U.S. The U.S. signed the Convention but in our country, a Convention needs ratification by the Senate to become law. Because a few Senators were opposed to international law or obsessed with opposing abortion, the Senate did not ratify the convention which is shameful. In any event the U.S. claims that it observes the Convention.

It has taken a long time to build the legal foundation for human rights, but there have been many successes. Archibald McLeish once said that the true revolutionary movement of the 20th century was not communism but human rights. And so it seemed to be as Dictators started to fall. Pinochet fell in Chile, and Franco in Spain, the Generals in Argentina, Stroessner in Paraguay, and Idi Amin in Africa. In 1989 the Berlin Wall fell

and Russia and most of Eastern Europe were liberated from Stalinism.

It is striking that the UN adopted the Convention on the Rights of the child at the very time the Berlin Wall fell, a pointed reminder that children are entitled to human rights.

Unfortunately, the road to implementation of universal human rights has continued to be blocked by potholes of abuse and fatal disregard for human rights. Sometimes the rejection of human rights is marked by ethnic cleansing, sometimes by tribal warfare, sometimes by high xenophobic assertion. Still, the march to achievement of human rights proceeds (no matter how slowly) -- with the confidence that comes from moral rightness and belief in human worth and dignity.

Now let me get back to international adoption. The basic human rights in the Universal Declaration and in the Convention on the Rights of the Child are advanced by international

adoption. The Covenant on the Rights of the Child repeatedly emphasizes that children are entitled to human rights. A few examples:

The Preamble to the Convention reaffirms faith in the inalienable rights of all members of the human family as the foundation for freedom, justice and peace in the world. It recognizes that childhood is entitled to special care and assistance. And it recognizes that to achieve the full and harmonious development of the child's personality, the child should grow up in a Family environment in an atmosphere of happiness, love and understanding. Where do you think that will happen? In orphanages? In most foster homes? On the streets.

Some opponents of international opposition look at the Convention on the Right of the child as only imposing duties on states and they argue that our efforts should be directed at

getting states to fulfill their obligations. Sure, let's do that.

States should fulfill their obligations. But that's only a narrow reading of the Convention. The Convention clearly affirms the human rights of the child.

In particular, Articles 4 and 24 through 29 specify economic and social rights that encompass good healthcare, appropriate education, social security and an adequate standard of living for children. That is precisely what international adoption is designed to accomplish by providing caring and nurturing adoptive parents.

But then opponents of international adoption come up with the argument that the Convention recognizes international adoption only as a sort of last resort -- after domestic adoption and foster care. Article 21 is used to bolster that argument because it says that inter-country adoption is an alternative -- if a child cannot be placed in a foster home or an adoptive family or

cared for in any suitable manner in the child's country of origin. That's all well and good. But let's not kid ourselves by that xenophobic genuflection. Of course, nurturing domestic adoption is preferable - if it can be done.

But the fact is that suitable adoptive homes are not available for thousands upon thousands of children.

The fact is that untold numbers of children languish in orphanages which are breeding places for human disaster.

The fact is that most foster care is not permanent and not consistently good. It's not even good in most cities, even in the U.S. -- let alone other nations.

If you realize that the objective of the Convention is to give children their human rights then, international adoption is not the last resort to achieve the Convention's objectives, but is head and shoulder, above any other realistic alternative.

Now let's talk about abuse. We all know that some nations have curtailed or even shutdown international adoption. Such moves has been often triggered by the sudden exposure of some horrendous scandal such as kidnapping, bribes, scams or other of the many ways in which corruption or illegal adoption operates. Of course abusers must be dealt with and shut down -- but not by shutting down international adoption! Our State Department in the past has largely shied away from criticizing such shut downs or restrictions. I've thought that odd. This nation has no problem in criticizing Russia or Belorussia, or Venezuela, or other almost any country that grossly violates human rights. And indeed Congress forbids giving aid to nations grossly abusing human rights. But over the years our State Department has said little or done nothing when an international adoption scandal is highlighted and used as the excuse for shutdown or restriction. We largely ignored the

chilling effect of those restrictions on children at risk; children who could be eligible for international adoptions, legally and ethically. I think that's wrong. Of course, we need to deal with abusers. Of course we need to bring the full weight of the law against such abusers and there are plenty of laws available to do so. But the fact that there are abusers and scandals does not mean a nation should shut down international legal and ethical adoption efforts and thereby deny potential adoptees their human rights. There are bad apples and unethical judges and lawyers. But we don't abolish the legal system. There are doctors who engage in malpractice. But we don't ban the practice of medicine. As Professor Bartholet has cogently put it, how do we gain by throwing out the baby with the bathwater.

Hopefully, the Hague Convention and the Hague Convention's Central Authority procedures will help eliminate the abusers and scandal creators. And hopefully they will

validate legal and ethnic agencies and facilitators whose international adoption efforts provide nurturing and caring parents and insure the human rights of the entrusted children. And hopefully, the State Department, will utilize the Hague Convention with a new vigor and an understanding of why international adoption is good and merits the support of President Obama and Secretary of State Hillary Clinton.

Let me say a final word about some of my friends, or ostensibly friends, who come up with all sorts of reason to undercut international adoption. Some say, put all money into improving the child welfare system of various nations and don't bother with international adoption. Some worry that intentionally adopted children will lose their cultural heritage. (I am tempted to say: do you mean the cultural heritage you get in an orphanage, or in botched up foster homes, or wandering in the streets.) These "friends" claim that they are for international

adoption, but then act to oppose it (I think of Unicef's double talk everytime I put my change in Unicef envelopes after an international flight). Of course, so many countries need to reform just about every aspect of their child welfare system and I support helping to bring about such reform. But that's not a reason to thwart international adoption. For now, in the real world there are thousands of children eligible for international adoption and the realization of securing their human rights.

So, as a realist and a committed advocate of human rights, my agenda is clear.

We need an unapologetic promotion of international adoption, an essential means of providing as many children as we can with their basic human rights.

We need to get the Obama-Clinton administration and Congress to understand and support our aspiration.

We need to help invigorate the State Department and use the Hague Convention to eliminate and sanction abusers -- to strive for beneficial time frames for adoption, and to provide adequate staff in Washington and in consular offices.

And we need to be forthright in opposing so-called friends, who on the subject of international adoption are not friends at all or at best, misguided ones.

So when all is said and done -- when you have finished reading all the bad press -- when you have been made to feel apologetic, or or worried or suspect. When you have experienced and witnessed the delay and frustration, -- remember that you are providing international adopted children with the opportunity to realize their fundamental human rights. It is what we wish for all men and women.

How wonderful if we can accomplish that for some children!