

## **The European Union and International Adoption**

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Adoption – legally taking an individual born to others as one’s own child – dates back to ancient times, though the practice has changed significantly over time and is not common to all cultures. In recent times adoption has become an international phenomenon that tests both precepts about universal human rights and the interface of different legal customs and systems. In Europe, where traditions also vary from country to country, intercountry adoption has become entangled in the complicated process by which countries accede to the European Union, the supranational organization of states forming the world’s largest single market. While Europe explicitly proclaims the rights of children among its extensive list of human rights, the welfare of abandoned children remains caught between the imperatives of, on the one hand, helping as many children as possible, and, on the other, ensuring that best practices are followed, protecting the child and respecting the laws of all states involved – making the process lengthy, cumbersome and expensive. In 2004, under pressure from the European Union to which it hopes to accede in 2007, Romania banned adoption by foreigners of Romanian children. The law, which took effect in 2005, aimed to crack down on the corruption that existed in a highly flawed system, but in doing so it consigned thousands of children to years of institutional life. For families hoping to adopt one or more of these children, the situation reveals a

terrible void between European human rights declarations and enforceable national laws that actually ensure the welfare of children.

Since the Second World War, international adoption has been a small but significant aspect of international relations. Modern communications and transportation have brought the plight of abandoned or orphaned children to a global audience and facilitated the formation of families with diverse and far-flung origins. Initially, mostly American families adopted orphans from war-torn Europe, but since the 1940s it has become a global phenomenon in which families from developed countries adopt children from impoverished or developing countries, especially in Asia and Latin America.<sup>1</sup> Since the end of the Cold War, Eastern European countries, including the former Soviet Republics, also have become major countries of origin. China and Russia have become the leading countries of origin for U.S., Canadian and European adoptive families. Shaped by the social, cultural, legal and political environments of every country involved, international adoption is a highly complex process involving many participants with a variety of interests, including a powerful emotional element. For reasons both good and bad, the process of adopting internationally is challenging for individual families and for governments responsible for protecting and promoting the welfare and interests of all their citizens, including children. The laws are complex, the procedures are long and cumbersome and the costs (including travel and legal fees) are prohibitive for many families who might otherwise be in a position to provide a good home. But

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<sup>1</sup> Richard H. Weil "International Adoptions: The Quiet Migration," *International Migration Review* 18:2 (Summer 1984), 276-293. One exception is South Korea, which as a poor and devastated country in the 1950s became a leading country of origin for children adopted by American families, but remains a leading

without laws aimed at ensuring the welfare of children, and a respect by all parties for those laws, the process has been subject to exploitation and corruption, including what amounts to the sale of children.

Initially the primary continent of origin for children adopted internationally, Europe today is made up of states ranging generally from highly affluent in the north and west to poorer in the south and east. The European Union (EU), formed in the 1950s to integrate the economies of Western Europe, has become a dominant force in European life. Though foreign and defense policies have proven to be exceptionally challenging to integrate, the EU has been highly successful economically, and it holds out the prize of membership and, presumably, prosperity to the relatively poor former East bloc countries that can meet its stringent social, political and economic standards. Among the ten states that joined in 2004, eight states were either countries or parts of countries that lay behind the “iron curtain” during the Cold War. They remain poor by western European standards. One of them, Poland has been, since 1996, among the twenty leading countries of origin for children receiving immigrant visas to enter the United States.

Two countries that have been even more prominent as countries of origin, Bulgaria and Romania, expect to join the European Union in 2007. Of these two, Romania has been among the top countries of origin for U.S. and European adoptions since 1990, along with China, Russia, South Korea and Guatemala.<sup>2</sup> During the Communist era in Romania, dictator Nicolae Ceausescu outlawed abortion and birth control; after his ouster and execution, one of the most wrenching results of his policies became apparent. First in 1990, then repeatedly through the decade for a total of nine

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country of origin even as per capita GDP approaches \$20,000. For adoption numbers, see U.S. Department of State, [http://www.travel.state.gov/family/adoption\\_resources\\_02.html](http://www.travel.state.gov/family/adoption_resources_02.html).

reports, the ABC-TV newsmagazine *20/20*, presented to North American audiences the plight of tens of thousands of abandoned children living in large, dirty and soulless institutions.<sup>3</sup> U.S., Canadian and European families responded by making Romania one of the leading countries of origin for intercountry adoptions in the 1990s. From 1989 to 2003, the United States issued immigrant visas to over 8,300 Romanian orphans -- with 2,594 in the peak year of 1991, when Romania surpassed South Korea to top the list of countries from which American families adopted.<sup>4</sup> Unfavorable reports about health issues, including HIV infection and developmental delays, contributed to a decline in numbers, but Romanian adoptions continued through the decade; though numbers fluctuated, in 2000 U.S. families adopted 1,122 Romanian children.<sup>5</sup> Canadian families adopted Romanian children in similar proportions to U.S. families – 600 between 1995 and 2001 -- and, among the Europeans, French and Italian families were among the leading adopters.<sup>6</sup>

However, poor regulation in Romania led to widespread reports of corruption. The European Union charged that Romania was selling children to foreign families. In fact the laws were highly problematic, leaving as many as 200,000 children in legal limbo, unadoptable as long as their biological parents had not surrendered their legal rights. Orphanage directors resisted the attempts of the government to regulate their affairs, and, because of widespread prejudice, Gypsy children in particular faced little

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<sup>2</sup>U.S. Department of State, [http://www.travel.state.gov/family/adoption\\_resources\\_02.html](http://www.travel.state.gov/family/adoption_resources_02.html).

<sup>3</sup> Upon his retirement in 2002, journalist Tom Jarriel cited these reports as highlights of his career. See October 9, 2002, USA Today news story at <http://www.cubanet.org/CNews/y02/oct02/09e1.htm> (accessed December 22, 2004).

<sup>4</sup> U.S. Department of State, [http://www.travel.state.gov/family/adoption\\_resources\\_02.html](http://www.travel.state.gov/family/adoption_resources_02.html).

<sup>5</sup> Figures are for the fiscal year. Adoption Institute, International Adoption Facts, at <http://www.adoptioninstitute.org/FactOverview/international.html>, accessed March 5, 2005.

<sup>6</sup> BC Families of Adoptive Children, at <http://www.bcadoption.com/articles/intercountry/romania.htm> accessed December 22, 2004.

hope of escaping the sadness of institutional life.<sup>7</sup> Would-be adoptive parents found a bizarre and chaotic situation without any real process in place for ensuring order, let alone the welfare of the children.<sup>8</sup> For the country as a whole, the world-famous orphanages were a source of shame. Though the country had its own motives for doing so, Romania, with pressure from the European Union, issued and extended a series of moratoria. The United States and EU members Italy, Spain and France individually pressured Romania to lift the temporary bans.<sup>9</sup> However, after a parliamentary vote and signature by President Ion Iliescu in June 2004, a new law banned permanently the international adoption of Romanian children, except by a child's grandparents. The ban has had the effect of abandoning again tens of thousands of children who remain institutionalized.<sup>10</sup> In response the United States Government took the position that the new law “imposes serious obstacles to all adoptions and creates a system in which children remain for years in state care without parents.” In July 2004, senior U.S. Government officials met with Romanian officials in Washington to express their disappointment and to urge “an expeditious solution to the remaining adoptions in progress so that children can be placed in a permanent family environment.”<sup>11</sup> France and Romania established an international committee to handle “pipeline” cases before the law was to take effect in 2005, but estimates suggested that 37,000 children still lived in large-scale orphanages, and a similar number lived in homes run either by the state or by

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<sup>7</sup> Howard Altstein, “Rescuing Romania’s Orphans,” *New York Times*, November 28, 1992, 19.

<sup>8</sup> Elizabeth Bartholet, *Family Bonds and the Politics of Parenting* (Boston: Houghton Mifflin, 1993), 155-156.

<sup>9</sup> BBC News, January 23, 2004 at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/3423067.stm>, accessed December 22, 2004.

<sup>10</sup> Joshua Partlow, “Lives Caught in Limbo on Two Sides of the Globe: Romanian Ban Leaves Status of Adoptions Uncertain,” *Washington Post*, March 9, 2005, B3.

<sup>11</sup> U.S. Department of State, [http://travel.state.gov/family/adoption\\_romania\\_update.html](http://travel.state.gov/family/adoption_romania_update.html).

non-governmental organizations (NGOs).<sup>12</sup> With 200 U.S. families still engaged but stuck in the adoption process, intercountry adoption was a major issue in U.S.-Romanian relations as a new Romanian president, Traian Basescu, took office.

In Europe, however, the new law removed from the table an issue that might complicate Romania's accession to the European Union in 2007. EU enlargement commissioner Guenther Verheugen, focusing on the law's intent to stop corruption, congratulated the Romanian government.<sup>13</sup> Lady Emma Nicholson, a Member of the European Parliament from the United Kingdom, herself an adoptive parent, had campaigned vigorously against the adoption of children from Romania: as she wrote in *The Guardian* on July 1, 2004: "Supporters of this trade claim it provides loving couples with a child whose life would otherwise be miserable. While this can be true in some cases, the reality for many Romanian children is far less positive."<sup>14</sup> In Britain, where international adoption is far less common than either the United States or continental Europe, the term is associated with tabloid-friendly stories of children purchased on the Internet.<sup>15</sup>

Other affluent European countries families do adopt children internationally, some of them in greater proportion than the United States. Compared to the United States, which in FY 2003 issued 21,616 immigrant visas to orphans entering the country, France's Mission de l'Adoption Internationale recorded a number of 3,995 for that country, a figure that, proportional to the overall population, is only slightly smaller than

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<sup>12</sup> Sarah Richards, Dispatches from Romania, Nov. 30-Dec. 3, 2004, <http://slate.msn.com/id/2109971> (accessed December 11, 2004)

<sup>13</sup> <http://www.eubusiness.com/afp/040622162450.mhq7p3s0> (accessed December 11, 2004)

<sup>14</sup> *The Guardian*, July 1, 2004. <http://www.guardian.co.uk/child/story/0,,1250908,00.html>, accessed November 15, 2004.

<sup>15</sup> See, for example, the article in *The Guardian*, "Babies-for-sale trade faces a global crackdown," at <http://society.guardian.co.uk/print/0,3858,5068001-108022,00.html>.

the American figure; both countries recorded substantial increases over the previous year.<sup>16</sup> German and Italian families adopt in smaller proportions, with German international adoptions numbering in the range of 1,700-1,900 children annually between 1999 and 2002, while Italian families adopted between 1500 and 2300 children annually from 2001-2003. Adoption in general is much less common in the United Kingdom, where only 329 home studies for international adoptions were conducted in 2002, suggesting that the adoption rate is about one-tenth that of France.<sup>17</sup> Sweden lays claim to the highest international adoption rate in the world, with about 1,000 adoptions per year.<sup>18</sup> It is worth noting, in light of the Romanian case, that the affluent countries of Europe for the most part do allow adoption by foreign families from their own countries, though cases are rare today.<sup>19</sup>

Looking at the numbers in a different way suggests that in some parts of Europe intercountry adoption is more common even than in the United States. Measured in numbers of adoptions per 1,000 live births, the U.S. intercountry adoption rate (4.2) in 1997-1998 was actually lower than that of six European countries and Canada, according to one source: Norway (11.2), Sweden (10.8), Denmark (9.9) and Switzerland (9.2), France (5.3) Canada (5.2) and the Netherlands (4.6). Italy's rate of 3.9 intercountry

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<sup>16</sup> For U.S. statistics, see [http://www.travel.state.gov/family/adoption\\_resources\\_02.html](http://www.travel.state.gov/family/adoption_resources_02.html); French figures are from the Mission de L'Adoption Internationale, within the Foreign Ministry, at [http://www.diplomatie.gouv.fr/mai/pdf/stat\\_adoption\\_2003.pdf](http://www.diplomatie.gouv.fr/mai/pdf/stat_adoption_2003.pdf). For Italian statistical information, see the report of the Commission on International Adoption, reporting to the Presidency of the Council of Ministers, at <http://www.commissioneadozioni.it/site/files/rapporto.pdf>. For German information, [www.adoption.de/info\\_adostatistik.htm](http://www.adoption.de/info_adostatistik.htm).

<sup>17</sup> Based on the number of home study assessments registered by the Home Office; see <http://www.dfes.gov.uk/adoption/adoptionreforms/statistics.shtml#intstats>.

<sup>18</sup> From the Website of the Embassy of Sweden at Seoul, at <http://www.swedenabroad.com/pages/general.asp?id=19083&expand=18452> (accessed December 22, 2004)

<sup>19</sup> For information on individual countries see U.S. Department of State Website information on international adoption at [http://www.travel.state.gov/family/adoption\\_resources\\_02.html](http://www.travel.state.gov/family/adoption_resources_02.html). Finland is one EU member that does forbid international adoption of its children.

adoptions per 1,000 live births was close to that of the United States, and Germany followed with 2.4 adoptions. These measures again put the United Kingdom in a strangely anomalous position, with only 0.4 adoptions.<sup>20</sup>

While the reasons for Britain's particular disposition toward adoption are difficult to assess, historical and cultural attitudes toward adoption vary significantly across cultures and across time. In ancient Rome, adoption was practiced as a means of securing an heir, with a focus on the interests of the adults; the emperor Trajan, for example, adopted Hadrian, who succeeded him as emperor in 117.<sup>21</sup> Only in more recent times has the process come to focus on the interests of children.<sup>22</sup> The belief that adoption disappeared from Europe in the sixteenth century, based on historians' reading of early modern legal commentaries that pronounced it illegitimate and unnatural, has been proven wrong by social historians who have found that, while the commentaries referred to adoption in the more traditional, Roman, sense, the modern form of child adoption was emerging.<sup>23</sup> While other countries on the European continent had preserved adoption law from earlier times, England did not have an adoption act until 1926.<sup>24</sup> Today adoption usually involves infants and young children, though as Howard Altstein and Rita Simon point out, motivations vary greatly and, while the interests of

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<sup>20</sup> Peter Selman, "Inter-country Adoption in the New Millennium: The Quiet Migration Revisited," conference paper presented at the European Population Conference, Helsinki, June 2001, <http://www.vaestoliitto.fi/toimintayksikot/vaestontutkimuslaitos/eapskonferenssi/Papers/Theme%20N/selman.pdf>, accessed March 7, 2005.

<sup>21</sup> Howard Altstein and Rita J. Simon, Introduction to Altstein and Simon, eds., *Inter-country Adoption: A Multinational Perspective* (New York: Praeger, 1991), 2.

<sup>22</sup> Jack Goody, "Adoption in Cross-Cultural Perspective," *Comparative Studies in Society and History* 11:1 (January, 1969), 59-61.

<sup>23</sup> Margaret Darrow, book review of Kristin Elizabeth Gager, *Blood Ties and Fictive Ties: Adoption and Family Life in Early Modern France* (Princeton: Princeton University Press, 1996), in *Journal of Modern History* 69:4 (December, 1997), 845-846.

<sup>24</sup> Max Rheinstein, book review of Margaret Kornitzer, *Child Adoption in the Modern World* (New York: Philosophical Library, 1952), in *The Journal of Religion* 35:1 (January 1955), 61-2.

parents and children can and should be mutually beneficial, it is not always so.<sup>25</sup> Though the individual intercountry adoptions are intimate family matters, on a larger scale they represent migrations from poorer to wealthier countries and as such become subject to political interpretation.

Given the economic, social, political and cultural diversity of Europe, can the EU develop policies and law on international adoption consistent with its generous pronouncements on human rights, particularly the rights of children? While the law banning Romanian adoptions might be a means to end chaos and corruption, which do threaten the interests of children, it arguably does more harm by denying Romanian children the right to a family – a right that other European children enjoy – and perpetuates the unresolved crisis that brought Romania to the world’s attention fifteen years ago. As yet, however, this particular law cannot be challenged in any court. The Romanian government itself would have to decide to repeal it, doing so only of its own volition or if persuaded to do so by other governments, or, notably, the European Union.

The European Union has been much more expansive in its definition of individual rights than has the United States. The extensive social welfare programs developed in most European countries after the Second World War, far from being abandoned in the post-Cold War world as a hindrance to global economic competitiveness, have become enshrined in constitutional law. Prior to the formation of the EU, the Council of Europe, founded in 1949 “to defend the principles of democracy, human rights and the rule of law,” passed the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), proclaiming fundamental rights that state parties had to

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<sup>25</sup> *Intercountry Adoption*, 2-3.

respect, protect and guarantee. Accession to the ECHR has become a requirement for EU membership. Rights proclaimed that are relevant to international adoption include the right to respect for family life (Article 8) and the right to education (Article 2 of Protocol 1). Individuals, groups of individuals, organizations or states may bring complaints of rights violations to the European Court of Human Rights in Strasbourg.<sup>26</sup>

In 1967, the European Convention on the Adoption of Children aimed to harmonize the adoption laws of ratifying states, though it did not establish a hierarchy of solutions for unparented children. The main principles of the convention were that adoption must be granted by a judicial or administrative authority, that the biological parents must freely accept the decision to authorize and adoption, and that the adoption must be in the best interest of the child. It set forth minimum requirements member states had to incorporate into their laws as well as a supplementary set of principles they were free to include. However, it is not in effect in all EU member states (though it is in Romania), and it established no individual or interstate complaint mechanism. A state that has acceded to the Convention cannot be brought either before the European Court of Human Rights or any EU court on a complaint about failure to comply. The Convention is not part of the *acquis communautaire*, the body of legislation to which all EU members submit as they join.<sup>27</sup>

In 1996 the European Social Charter expanded upon the ECHR and the 1961 European Social Charter, proclaiming economic and social rights that all members had to respect, guarantee and protect. Though again no language specific to international

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<sup>26</sup> Currently forty-five European states belong to the Council of Europe. See [http://www.coe.int/T/E/Human\\_Rights/Esc/1\\_General\\_Presentation/default.asp#TopOfPage](http://www.coe.int/T/E/Human_Rights/Esc/1_General_Presentation/default.asp#TopOfPage).

<sup>27</sup> Council of Europe, European Treaty Series No. 58, European Convention on the Adoption of Children, at <http://conventions.coe.int/Treaty/en/Treaties/Word/058.doc>, accessed March 9, 2005.

adoption appears in the document, it expanded the definition of children's rights in a number of areas, including: a general right to the protection of health (Article 11); the right to social and medical assistance (Article 13); the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15); the right of the family to social, legal and economic protection (article 16); and the right of children and young persons to social, legal and economic protection (Article 17). In an Information Document the Secretariat of the European Committee of Social Rights interprets Article 16 to mean that states are required to ensure an adequate standard of living, and Article 17 to require that states set up procedures to establish parentage and adequately regulate adoptions. With respect to children not being raised by their biological parents, the documents states that the "care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. Institutional care should be organized in small units and should be as close to a family setting as possible."<sup>28</sup> All EU members and aspirants have ratified the European Social Charter, and there is a reporting system for violations and a protocol for handling complaints, though not complaints by individuals. The European Committee on Social Rights reviews these reports and found Romania, for example, to be in violation of several provisions.

Also in 1996 the Council of Europe's European Convention on the Exercise of Children's Rights, without proclaiming any new rights, aimed to harmonize the laws of state parties with respect to procedures allowing children to express their views in family

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<sup>28</sup>Council of Europe, European Treaty Series No. 163, European Social Charter (Revised, May 1996) at <http://conventions.coe.int/treaty/en/treaties/html/163.htm>. See also the Council of Europe website at [http://www.coe.int/T/E/Human\\_Rights/Esc/](http://www.coe.int/T/E/Human_Rights/Esc/).

proceedings of concern to them. Though ratified by seven EU members, it has no complaint mechanism and accession is not required for EU members.<sup>29</sup>

The Charter of Fundamental Rights of the European Union, proclaimed in Nice in December 2000, is set to become legally binding with the ratification by member states of the European Constitution. It defines a set of rights that is both broad and specific, including labor rights, the rights of individuals to reconcile work and family life, the right to health care, social security and social assistance, the right to a safe environment, the right to good administration. It promotes equality between the sexes and bans human cloning and eugenics practices.<sup>30</sup> It addresses the rights of children in Article 24, stating that the best interest of the child must be the primary consideration in all actions relating to children.<sup>31</sup> It reaffirms rights stated earlier, such as the right to care and protection necessary for the child's well being, the right for the child to express his or her views and the right to maintain contact and relationships with both parents. EU law does not, however, include provisions specifically addressed to the protection of children's rights. Those, along with specific regulations on adoptions domestic and international, remain the province of the member states. No EU institution, including the European Court of Justice, would handle specific cases related to international adoption.

In the broader international environment, the United Nations' Convention on the Rights of the Child (CRC), which took effect in 1990, states in its preamble that for "full

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<sup>29</sup> Council of Europe, European Treaty Series No. 135, European Convention on the Exercise of Children's Rights (1996), at <http://www.unicri.it/nigeria/1996%20European%20Convention%20Children%20Rights.pdf>, accessed March 9, 2005

<sup>30</sup> Pascale Fontaine, European Commission Directorate-General for Press and Communication, "Europe in 12 Lessons" (2003), 28 at [http://europa.eu.int/comm/publications/booklets/eu\\_glance/22/index\\_en.htm](http://europa.eu.int/comm/publications/booklets/eu_glance/22/index_en.htm), accessed 5 March 2005.

<sup>31</sup> Official Journal of the European Communities, Charter of Fundamental Rights of the European Union (2000), at [http://www.europarl.eu.int/charter/pdf/text\\_en.pdf](http://www.europarl.eu.int/charter/pdf/text_en.pdf).

and harmonious development, a child “should grow up in a family environment in an atmosphere of happiness, love and understanding.” Article 20(30) states that alternative care for a child deprived of family “shall include inter alia, foster placement, kafalah of Islamic law, adoption, or if necessary, placement in suitable institutions for the care of children,” with due regard to “the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.” Article 21 addresses the matter of inter-country adoption specifically: states party to the convention are to ensure that the best interest of the child shall be the paramount consideration and “they shall [...] recognize that inter-country adoptions may be considered as an alternative means of the child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin.”<sup>32</sup> The CRC does not have a mechanism for handling complaints by individuals or states, but it does have a reporting system for which the Committee on the Rights of the Child is responsible.

In 1993 the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoptions became the most significant attempt to date to harmonize the laws of states with specific regard to international adoption. It introduced a core of essential provisions governing adoptions that must be incorporated into the law of each signatory state. They must, for example, identify the duties and obligations of central authorities and accredited bodies, procedural requirements and requirements for the recognition and effects of intercountry adoptions. It also has established, for the first time, a clear hierarchy of solutions for the care of children, from best to worst: family of origin; suitable permanent family in the country of origin; inter-country adoption; foster

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<sup>32</sup> For the full text of the UN Convention, see <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

care (non-permanent family) in the country of origin; and, finally, institutional care.<sup>33</sup>

The Convention does not have any complaint mechanism, nor does it provide for a reporting system, but it does allow for problems to be reported to the central authority of the state concerned. Though not part of the *acquis communautaire*, it has been ratified by most EU members and by Bulgaria and Romania.

The establishment of a hierarchy of solutions provoked some debate as to whether the Hague Convention contradicted the CRC by placing inter-country adoption above domestic foster care and domestic institutionalization. The January 2004 UNICEF position on inter-country adoption clarified the meaning of CRC Articles 20 and 21 as follows: “[A]n appropriate family environment should be sought in preference to institutional care, which should be used only as a last resort and as a temporary measure.” It also states: “Intercountry adoption is one of a range of care options which may be open to children and for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution.” While the document does not mention the desirability of keeping the child in the country of origin, it does stress the desirability of a permanent family setting. However, it uses the words “*may* be the best solution” (my italics) and asserts that “the best interests of the individual child must be the guiding principle in making a decision regarding adoption.”<sup>34</sup>

Though these conventions in the abstract support the right of a child to a family, in reality they do not provide much legal support for individuals or groups hoping to clear obstacles in the way of international adoption. The conventions fall into one of two

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<sup>33</sup> For the full text of the Hague Convention, see <http://www.webcom.com/~kmc/adoption/law/un/un-ica.html> (accessed December 21, 2004).

<sup>34</sup> Full text available at the UNICEF website at [http://www.unicef.org/media/media\\_15011.html](http://www.unicef.org/media/media_15011.html) (accessed December 21, 2004).

categories: those that identify inviolable human rights and those that aim to harmonize the laws of states that have signed on to them. The human rights conventions, with their established complaint mechanisms and reporting systems, are too vague in reference to international adoption to be of much help. But the harmonization conventions, while clearly identifying the norms of international adoption to be enshrined in the laws of member states, have no complaint mechanisms or reporting systems. Thus, while Romania's law banning international adoption outright would appear to violate a number of conventions to which it has acceded, there is no clear way to challenge it legally.

However, while Romania's ban on international adoption may have received applause from prominent individuals within the EU, it may be the case that the law, while attempting to crack down on profiteering and other forms of corruption, may violate the rights of children by criminalizing adoption itself rather than the corruption that has accompanied it. Respect for human rights is a prerequisite for EU membership. Title I, Article 6(1), of the consolidated Treaty of European Union states: "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States."<sup>35</sup> Throughout the process the European Commission monitors the state's progress towards full political, legal and economic compliance. The Copenhagen Criteria expand on the importance of human rights considerations in all of these areas. The applicant country must have achieved stability of its institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities. Economically, it must have a functioning market economy and the capacity to cope with the competitive pressures and market forces within the EU. And it must harmonize its

own laws with the body of European Union law, the *acquis communautaire*, which includes the human rights conventions.

The process of acceding to the European Union is lengthy and thorough. After a state applies to join, the European Commission (made up of leading EU civil servants) recommends to the European Council (the EU executive branch) whether or not to proceed. If yes, the applicant state must submit its position on each of the thirty-one chapters of the *acquis communautaire*. In response, the Council prepares a common EU position (drafted by the Commission) on each chapter and opens negotiations with the relevant cabinet ministers of the applicant state. The Commission is active in this process as well, and the European Parliament is kept abreast of the negotiations until the Council and Commission are satisfied that the *acquis communautaire* has been fully integrated into the laws of the applicant state. The Council then drafts the accession treaty, to be submitted to the European Parliament. With majority approval, the Accession Treaty is to be approved unanimously by the Council, then signed and ratified by all the current EU states and the acceding states.

While the European Parliament's role in the accession process appears small, it can affect the process in a number of ways. During the process it can adopt numerous resolutions addressing aspects of the negotiations, of which it is being kept informed. Though these resolutions do not compel anyone to do anything legally, they are a means of subjecting the negotiations to public scrutiny and exposing problems. The Parliament's Committee on Foreign Affairs, Human Rights, Common Security and Defense Policy is also closely involved in the accession process, appointing a rapporteur

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<sup>35</sup> Treaty of European Union, at [http://europa.eu.int/eur-lex/en/treaties/dat/C\\_2002325EN.000501.html](http://europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.000501.html).

to monitor events in each applicant country. This committee can meet with the European Commission and the chief negotiator of the applicant country to raise issues of concern.

Thus while the *acquis communautaire* contains no law specifically related to adoption, which remains largely a national issue, international adoption has become an issue in the accession negotiations for several of the ten states that joined in 2004 – the Czech Republic, Slovakia and Lithuania -- and the two slated to join in 2007, Romania and Bulgaria. Children’s rights are among those to be guaranteed under the CRC, and to that end the European Commission raised concerns about abandoned children institutionalized in these countries. The Commission also raised concerns about child trafficking in almost all of the ten states that joined in 2004.

For Bulgaria and Romania, the European Commission and European Parliament have been monitoring progress toward improvement in child welfare. For example, the Commission, in its 2000 Regular Report on Progress Towards Accession, applauded the new provision in [Bulgaria’s?] Child Protection Act that children could be placed in institutions only after all possibility of remaining in a family environment had been exhausted. In 2002 the Regular Report noted that the HCIA had come into force in the country and urged Bulgaria to reduce the number of children institutions and to ensure that they were used only as a last resort. The 2003 Report supported an amendment to the Child Protection Act affirming the last-resort status of institutions. The Commission also noted a change in Bulgaria’s adoptions law providing that international adoption was allowed only if all options for domestic placement or adoption had been exhausted and three Bulgarian candidates had declined to take the child within a six-month period. The Commission also stated that “intercountry adoptions should remain an exception in order

to ensure to a maximum extent the continuity of a child's upbringing in line with the child's ethnic, religious, cultural and linguistic background.”

The European Parliament, however, has taken a more negative stance on the question of international adoption. On March 11, 2004, it passed a resolution, based on a draft by the Committee on Foreign Affairs, Human Rights, Common Security and Defense Policy, identifying areas where Bulgaria needed to make progress prior to accession. The resolution expressed concern about the large number of children sent for international adoptions, and insisted that the Bulgarian Government take urgent action to ensure that international adoptions be used only as a last resort and that the welfare of children be the primary concern, not the financial revenue accruing to a family, institution or intermediary.

Romania came under even closer scrutiny. In 1999 the European Commission required that Romania address all issues identified as priorities, which included that its government “guarantee adequate budgetary provisions for the support of children in care and undertake a full reform of the child care system.” In 2001 the Regular Report, issued after Romania itself declared a moratorium on international adoptions in June, expanded this requirement to include a reform of Romania's intercountry adoption laws, which were incompatible with Romania's obligations under the CRC and risked children becoming the victims of trafficking and other abuses.<sup>36</sup> The Commission demanded that, before international adoptions could resume, the laws be reformed to ensure that adoption decisions be made exclusively in the best interest of the child. These demands were repeated in the Regular Reports of 2002 and 2003.

The European Parliament's Resolution of March 11, 2004 identified areas where Romania needed to make progress before accession. It praised the progress made but urged that reforms continue to focus on protecting the interests of children and ending the corruption. It also recognized the rights of families currently engaged in the process – “pipeline cases” – to receive responses. However, the Resolution passed did not include language that the Committee on Foreign Affairs, Human Rights, Common Security and Defense Policy had included in the draft resolution, mentioning children's rights, especially those of children living in institutions, as issues needing to be addressed for Romania to join the EU in 2007. It also made no mention of the Committee's allegations that EU institutions had been misled as to the process used to identify children as suitable for adoption, and that Romanian authorities are responsible for depriving numerous children of a suitable family.

The Romanian government's June 2004 ban on international adoptions might be seen as a victory for Emma Nicholson, the European Parliament's special envoy for Romania, whose pronouncements on the plight of Romanian children did not distinguish between legitimate adoptions carried out in the best interest of the child and those carried out essentially for profit. When in January 2004 the Romanian government acknowledged that it had made arrangements with the Italian government for 105 children to be adopted by Italian families, Baroness Nicholson condemned the act as a “flagrant breach of the UN Convention of [sic] the rights of the child,” even though these were “pipeline cases” where families were ready to adopt the children in question. The

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<sup>36</sup> Romania's moratorium and subsequent ban on international adoptions have received relatively little press attention in the United States. For a report on the 2001 moratorium, see CNN.com,

new law certainly reflects that lack of distinction, by banning adoption outright instead of criminalizing the abusive practices that can be associated with it. While Baroness Nicholson and the British government supported the moratorium, fellow EU members Italy, Spain and France lobbied hard for the adoptions to resume.<sup>37</sup> The ban, however, appeared to consolidate the victory for the foes of international adoption.

Yet the Hague Convention, to which all these nations adhere, explicitly places international adoption above both foster care and institutionalization as a solution to the plight of abandoned or orphaned children. According to the Joint Council on International Children's Services, which unsuccessfully petitioned President Iliescu to veto the legislation banning international adoptions, 37,000 Romanian children still live in institutions.<sup>38</sup> With a ban on intercountry adoption in place, and continued scrutiny from the European Union as accession nears, Romania will have difficulty concealing its enduring problem. European leaders, including Italian Minister for Equal Opportunity Stefania Prestigiacomo, have publicly asserted the right of Romania's children to a family either in Romania or abroad, in accordance with the Hague Convention.

The European Union appears to have facilitated an easy solution to Romania's adoption predicament. But a ban on intercountry adoption, while relatively harmless in a country like Finland that can take care of its own, does a terrible injustice in Romania, where thousands of children remain abandoned in every sense but legally by their biological parents. For now, the law of the land likewise protects this interests – or lack thereof – of parents rather than children, and it seems intended to allow the country to

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<http://archives.cnn.com/2001/WORLD/europe/06/22/Romania.adoption> (accessed November 29, 2004).

<sup>37</sup> January 23, 2004 BBC news story at <http://news.bbc.co.uk/2/hi/europe/3423067.stm> (accessed December 22, 2004).

once again hide the plight of its abandoned children from the scrutiny of the rest of Europe and the world. Romania's transition away from communism in 1989 was different from that of all the other East European states that transformed themselves that year. Romania's claim to embrace the economic, social and political values considered normative by European Union members is open to question. Whether or not the accession process will subject Romania to the kind of scrutiny that will force it to rally to the cause of its abandoned children – or whether the process has become a bureaucratic formality -- remains to be seen.

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<sup>38</sup> JCICS, Romania and International Adoption Press Information, at <http://www.jcics.org/JCICSPressInformationRo.pdf> (accessed December 21, 2004)