

Center for Adoption Policy:

Adoption and Children's Rights: Getting it So Very Wrong

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The Council of Europe, the EU, and Romanian Adoption

In June of 2004, the European Court of Human Rights (ECHR) issued a decision in a matter concerning intercountry adoption, in particular concerning Romania's alleged failure to honor the rights of two Italian couples and the Romanian children they were attempting to adopt.¹ As the ultimate human rights court within the regional Council of Europe system, the ECHR has had frequent occasion over the years to settle questions at the intersection of fundamental rights and family life.² This decision was eagerly awaited because it was seen in some quarters as an implicit response to Baroness Emma Nicholson's relentless attempts, as rapporteur on Romanian accession to the EU, to stem the tide of children leaving Romania to join adoptive families in other parts of the Europe and in the United States.³

¹ Pini and Bertani & Manera and Atripaldi v. Romania, 2004-V (provisional) Eur. Ct. H.R. ____, available at <http://ehcr.coe.int/eng>; see also Press Release, European Court of Human Rights, Chamber Judgment in the Case of Pini and Bertani & Manera and Atripaldi v. Romania (June 22, 2004) [hereinafter *Press Release*] available at <http://ehcr.coe.int/eng/press/2004/june/chamberjudgmentpini&bertini220604.htm>.

² See Ignaccolo-Zenide v. Romania, App. No. 31679/96, 31 Eur. H.R. Rep. 7 (2001); Gaskin v. United Kingdom, App. No. 10454/83, 12 Eur. H.R. Rep. 36 (1990); W. v. United Kingdom, App. No. 9749/82, 10 Eur. H.R. Rep. 29 (1988); Johnston v. Ireland, App. No. 9697/82, 9 Eur. H.R. Rep. 203 (1987); X, Y and Z v. Sweden, App. No. 8811/79, 5 Eur. H.R. 147 (1983).

³ See 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, 249-50 (Fall, 2003) [hereinafter *Dillon*]; see also Diane Taylor, *Parents: The Lost Children: Whatever Happened to the Romanian Orphans Adopted by British Couples after the Fall of Ceausescu's Regime?*, The Guardian (London), July 31, 2002, § G2, at 10; *UN Body Supports Romania in Dispute with EU over Child Adoptions*, BBC Monitoring Int'l Reps., Feb. 11, 2004; Jon Swain & Ann McElhinney, *Child Traffickers Pray on Romania*, Times (London), May 9, 2004, at 21.

The decision was not as gratifying to adoption opponents as might have been expected.⁴ But while adoption advocates welcomed certain aspects of the decision, it must be said that the ECHR uttered little if anything to the effect that children have a right to be adopted, a right to a permanent family, and a right not to grow up in an institution.⁵ Perhaps the Court was merely responding to the facts at hand; indeed, as a test case on the human rights dimension of intercountry adoption, the facts were particularly unhelpful from an adoption advocates point of view.

Of background interest in the case was the fact that the private residential center in which the two children in question were living refused, over a period of several years, to honor local court orders recognizing the adoptions.⁶ The girls were at the time of the adoption orders nine years old.⁷ By 2002, they themselves made application to the Romanian court of have the adoption orders put aside, in light of the fact that they did not wish to go live in Italy, and did not know the adoptive parents at all.⁸ Hence, the facts here are unusual. The children are clearly old enough to be consulted as to their views, and even international adoption advocates would consider that the “human rights” element is at best diluted under these circumstances.

What caught the attention of those with an interest in the case were the statements of the court about the nature of adoption as a general matter. The Italian applicants’ most important argument centred on Article 8 of the European Convention on Human Rights,

⁴ Letter from Antonia Forkin Edwardson, Executive Director, Joint Council on International Children’s Services, to Emily Bell, Editor in Chief, The Guardian Unlimited (July 7, 2004) *available at* <http://www.jcics.org/GuardianLettertoEditor.pdf>.

⁵ Press Release, *supra* note 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

guaranteeing the right to respect for family life.⁹ On this point, the ECHR “reiterated that although the right to adopt was not guaranteed by the Convention as such, the relationship between an adoptive parent and the child was in principle of the same nature as the relationship within a family that was protected by Article 8 of the Convention.”¹⁰ At least the rights of adoptive parents and children were not conceptually demoted by the Court.

The Court continued that “In the light of the circumstances of the case, the Court found that the relationship between the adoptive parents and their adoptive daughters, under lawful adoptions that were not shams, could be considered sufficient to warrant the respect required by Article 8 of the Convention, which accordingly was applicable.”¹¹ So, if there was any previous doubt about the matter, the Court was making clear its view that the adoptive relationship, assuming ethical procedures, was the same as any other familial relationship, and required the same respect and protection from the point of view of the Convention. However, as the Court’s decision proceeds, it also becomes clear that a mere court order cannot give complete life to these rights, especially where the older children in question are themselves opposed to the adoption.

The Court made clear that, at this stage, it was the expressed desire of the girls to remain where they were, and that “their interests lay in not having imposed upon them against their will new emotional relations with people with whom they had no biological ties and whom they perceived as strangers.”¹² The Court termed the interests of the applicants in creating a family relationship with these girls to be “legitimate,” but not

⁹ Press Release, *supra* note 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

such as to enjoy absolute protection.¹³ Taking account of the best interests of the child, the Court went on, is especially important in the adoption context, since “adoption meant ‘giving a family to a child, and not a child to a family.’”¹⁴

The Court acknowledged the deplorable manner in which the Romanian proceedings had taken place, as well as the sad lack of psychological support for the girls as they faced an international adoption experience, support which might have “enabled the applicants’ interests to converge with those of the children.”¹⁵

It is clear that the Italian applicants had an unusually weak case, apart from the fact of a Romanian court order which had been ignored by the Romanian child welfare authorities. Troubling though that might be, it would have been equally troubling to order articulate adolescent girls to go abroad against their expressed will to join adoptive parents whose principal argument is that Romania had failed to show respect for their (as yet unformed) “family life.” This case, in short, does not stand as a metaphor for the complicated and vexed issue of international adoption from Romania.¹⁶ Not surprisingly, the human rights dimension of children living in institutions was not addressed; neither, to be fair to the Court, was it raised. Nothing would have stopped the Court, however, from at least hinting of the existence of such issues, or from resoundingly affirming the importance of finding alternative family life for children growing up without families.

Yet international adoption advocates are forced to grasp at some very slender reeds in their search for official statements in favor of the practice. The fact that the ECHR did not denounce international adoption, and seemed to be according it equal

¹³ Press Release, *supra* note 1

¹⁴ *Id.*

¹⁵ *Id.*

status with protected “family life”, at least in some circumstances, caused some pleasure in the adoption community. International bodies, especially the child welfare bodies, are grudging at best in their recognition that international adoption might sometimes, “as a last resort,” provide some benefit to children living without families.¹⁷ As for press coverage of international adoption issues, it is overwhelmingly negative, repetitious, lurid, accusatory, often incoherent, and utterly inaccurate. There are no official bodies, human rights or child welfare, that seek to put intercountry adoption in a rational context, let alone challenge the many distorted descriptions of adoption that reach the public airwaves.

It has long been my contention that there is only one question that is relevant when it comes to assessing the moral validity of international adoption as it occurs in any given “sending” country: Would the children have been in a system of non-family care in the absence of laws allowing international adoption to take place?¹⁸ If so, and there is every reason to believe that they would be there in their tens of thousands, then there is perversity in the suggestion that it is a violation of their rights to allow them to find loving homes in whatever country a loving and willing family exists. Where, on the other hand, artificial means are at work to make children available for international adoption, in situations where they have genuine family relationships and/or a genuine prospect of being adopted into a loving family nearby, we may by all means call such a program corrupt and halt its functioning. But simply stating that such in-country family alternatives exist does not make it so.

¹⁶ The press release quotes the founder of the Romanian children’s home stating that “it was time to put a halt of the export of Romanian children.” *Id.*

¹⁷ See Statement, *infra* note 31.

¹⁸ See generally Dillon, *supra* note 3.

The recent spectacle of the role of Baroness Emma Nicholson in Romanian accession to the EU, and more specifically the adoption of children from Romania, has been of great interest to the international adoption community. As a member of the European Parliament, the Baroness was given the important task of acting as rapporteur for Romanian accession, making assessments on the state of Romanian readiness to join the EU across a variety of areas.¹⁹ The Baroness had a history as head of Save the Children UK, part of a prominent child welfare NGO with a known stance against international adoption on general principles.²⁰

It was striking that the European Parliament, with the tacit acceptance of the other EU institutions, allowed one person with a virtually obsessive anti-international adoption agenda to make many unsubstantiated public statements as to the supposed horrors of adoption of children from Romania. Noteworthy, again, was the lack of official disapprobation from other quarters in Europe, or at least expressions of skepticism. While all would agree that corruption in the Romanian judiciary was a serious problem, and one that impacted on the ethics of Romanian adoption, Baroness Nicholson did not confine

¹⁹ See Press Release, *Baroness Emma Nicholson to be European Shadow Rapporteur for Romania*, European Parliament, Sept. 16, 2004, available at <http://www.emmanicholson.org.uk/press>; Baroness Emma Nicholson, *Report on Romania's Progress Towards Accession*, European Parliament Committee on Foreign Affairs, Human Rights, Common Security and Defense Policy, Feb. 24, 2004, available at <http://www.europarl.eu.int>.

²⁰ Baroness Emma Nicholson, former head of Save the Children UK and now European Parliament rapporteur on child welfare, is notoriously hostile to intercountry adoption. She is the person most responsible for the current moratorium on Romanian adoptions, but her statements go well beyond the Romanian situation. See Ann Marie Hourihane, Sunday Tribune (Ireland), January 5, 2003 (quoting the Baroness as saying that "the explosion of inter-country adoption which happened [since the 1980s] has been driven by the USA. There is a global movement of hundreds of thousands of children from country to country. Inter-country adoption has been hijacked by the child traffickers.") Baroness Nicholson reportedly believes that even children in war zones are better off staying where they are, because "follow up studies on intercountry adoption" show that intercountry adoptions are not a success. Id. She also believes that a child's language, culture and community "must be given priority over a foreign family, no matter how loving." Id. She points out the UNCRC's statement that "contrary to public sentiment, institutional care is no reason for inter-country adoption." Id. See also Curriculum Vitae of Baroness Emma Nicholson, at <http://www.db.europarl.eu.int> (Save the Children Director of Fundraising, 1977-1985).

her concerns to corruption in the Romanian judiciary and other organs of the state. Rather, she used her position as rapporteur for Romanian accession to argue that international adoption, while in some cases “providing loving couples with a child whose life would otherwise be miserable,” in fact “children exported abroad—often against their will—are often subjected to paedophilia, child prostitution or domestic servitude.”²¹ Baroness Nicholson repeatedly linked such unspeakable abuses to otherwise legal adoption by ordinary adoptive families.²²

Due almost entirely to the efforts of the Baroness, Romanian adoption was stopped temporarily, and then virtually outlawed under a new legislative regime.²³ The legislation reflects the view that international adoption should be limited to those circumstances where there is a biological connection between the children and the adoptive families.²⁴ The closure of the infamous large institutions and replacement of these with foster care and smaller group homes became a point of pride with the Baroness and others anxious to convince the world that Romania was now treating its children well.²⁵ Of course, the proposition that children living in foster care, group homes or institutions are better off than children adopted internationally is suspect at best.

²¹ Emma Nicholson, *Red Light on Human Traffic*, The Guardian, July 1, 2004 [hereinafter *Nicholson*], available at <http://www.guardian.co.uk/child/story/0,,1250908,00.html>.

²² The Baroness has on several occasions related her negative of attitude toward intercountry adoption of children in Romania to the years of hardship and oppression Romanian children faced under the Ceausescu regime where abortion was prohibited and large numbers of unwanted children were subjected to desperate conditions in institutionalized care. *See id.*; *see also*, Eve Conant, *Romanian adoption tug-of-war*, Newsweek, available at http://www.emmanicholson.org.uk/media_centre.html#; Press Release, *Romania: Battling to save the lost children of Ceausescu*, The Economist, Sept. 5, 2002 [hereinafter *Ceausescu*] available at http://www.emmanicholson.org.uk/media_centre.html#.

²³ *See Note on the Political and Economic Situation in Romania and its Relations with the European Union*, European Parliament, Sept. 24, 2002, available at <http://www.europarl.eu.int/meetdocs/delegations/roma/20021105/478777EN.pdf>; Petru Serban Mihailescu & Jonathan Scheele, EU brochure on new childcare regime in Romania (2004) (on file with author).

²⁴ *Id.*

²⁵ *See Ceausescu, supra* note 22.

It would be difficult to find any expert in the field of child psychology or even general pediatrics who would agree with the proposition that family life is essentially the equivalent of foster care or small group homes. While the point of view that children can do quite well, thank you, without adoption, this view does not appear to be based on any objective understanding of children's "rights," unless one privileges cultural content and geographical location above all else. It does seem to reflect a partiality towards the international child welfare establishment as care providers and surveillance officers, and a general mistrust towards the motives of international adoptive parents, probably based on the fact that they tend to live in wealthier countries. In the Baroness's worldview, intercountry adoption was a corrupt force to be stopped as a general matter. Those who cooperated in this cessation of adoptions were heroic advocates for children's rights. To the extent that the discourse of the United Nations Convention on the Rights of the Child has facilitated persons of the Baroness's persuasion, the manner in which that document is being acted upon by the international human rights establishment must also be queried.

UNICEF

If we accept the idea that growing up in institutions causes children to be damaged in a number of significant ways, and that international adoption can prevent certain children from meeting that fate, then it should also be acknowledged that the United Nations child rights establishment, UNICEF and the major child welfare NGOs are more problem than solution.²⁶ Despite our knowledge that many countries have thousands of children living in non-family situations—institutional care, on the streets, in

²⁶ The negative effects on children residing in Romanian orphanages are well known and have been widely studied. See, e.g., Sandra R. Kaler & B.J. Freeman, *Analysis of Environmental Deprivation: Cognitive and Social Development in Romanian Orphans*, 35 *J. Child & Adolescent Psychol. & Psychiatry* 769 (1993) [hereinafter *Kaler & Freeman*]. See also Dillon, *supra* note 3, at 254-55.

bonded labor, and many other ore terrible situations—the child welfare bodies have not demanded a rigorous, empirically based accounting by individual countries of how and when these children come into care.²⁷ If it is the case that many countries do not have the resources to accomplish this, then it is incumbent on “grown ups” in the international children’s rights field to form a separate and objective body to make this happen.

UNICEF is currently marking the end of Carol Bellamy’s ten year stand as Executive Director. During this period, UNICEF has shifted its emphasis to some degree from feeding children and distributing medicines and vaccines to advocating for “child rights.”²⁸ UNICEF has taken a strong and striking interest in the question of intercountry adoption, and has raised questions with individual governments whenever the number of children being adopted out of the country seems particularly large.²⁹ Questions addressed directly to UNICEF about their position on adoption are responded to in an apparently even-handed manner, without overt condemnation.³⁰ However, what UNICEF is actually asking national governments to do in terms of devising adoption programs remains clouded in mystery. There seems to be no instance of UNICEF publicly demanding that governments ensure that children’s group homes and institutions be dismantled as a matter of priority, or even that domestic adoption should be promoted, urgently or otherwise.

There was a brief flurry of excitement last year, when UNICEF released a statement that seemed to indicate that it was not as implacably opposed to international

²⁷ See Dillon, *supra* note 3, at 183-85.

²⁸ See Richard Horton, *UNICEF Leadership 2005-2015: A Call for Strategic Change*, 364 *Lancet* 2071, 2072 (2004) [hereinafter *Lancet*].

²⁹ See generally, UNICEF, Innocenti Social Monitor, *Social Monitor 2003: Intercountry Adoption: Trends and Consequences* (2003) [hereinafter *Social Monitor*]; UNICEF, *Innocenti Digest 4: Intercountry Adoption* (Dec. 1998) available at <http://www.unicef-icdc.org/publications/pdf/digest4e.pdf>.

adoption as might usually appear to be the case.³¹ While the statement might well have dismayed those who rely on UNICEF's opposition to bolster their own, for adoption advocates, it said relatively little about the true value of international adoption in many situations; and said nothing at all about the duty of governments to make sure that all children have some form of family or family-like care available to them.

Having set out the consensus proposition that the CRC "clearly states that every child has the right to know and be cared for by his own parents," the statement went on to assert that "for children who cannot be raised by their own families," UNICEF wrote, "an appropriate alternative family environment should be sought in preference to institutional care, which should be used only as a last resort and as a temporary measure."³² Inter-country adoption is then described as "one of arrange of care options which may be open to children."³³ Such adoption, the statement goes on "for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution."³⁴ The statement emphasizes that the best interests of the child must be the guiding principle, another consensus proposition, although the true meaning of the principle is certainly in the eye of the beholder.

The statement continues: "Over the past 30 years, the number of families from wealthy countries wanting to adopt children from other countries has grown substantially."³⁵ The statement did not choose to put focus on the fact that in these

³⁰ See, e.g., Carol Bellamy, Correspondence: Kosovo Kids, *The Weekly Standard*, May 7, 2003, at 6, 6 (UNICEF response to criticisms of its intercountry adoption stance.)

³¹ Press Centre, UNICEF, UNICEF's position on Inter-country adoption [hereinafter *Statement*] at http://www.unicef.org/media/media_15011.html (last visited Feb. 1, 2005).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

adopting (“receiving”) countries, adoption has become acceptable and commonplace.³⁶ Without that social precondition, adoption simply does not happen on a large scale. UNICEF chose instead to draw attention to the fact that people from *wealthy* countries are seeking out children from poor countries.³⁷ This emphasis is exactly in line with popular prejudice—the wealthy couple, desperate to adopt, as the newspapers often put it, appear in a remote foreign country, paying the locals and taking children away.

The statement describes a situation of insufficiently regulated adoption systems in the sending countries (without mentioning that there is great variety in this regard), and explains that this weak regulation, “coupled with the potential for financial gain, has spurred the growth of an industry around adoption, where profit, rather than the best interests of the children, takes center stage.”³⁸ UNICEF, in an arguably irresponsible manner, does not make clear whether it is the national governments, or agencies, or adoptive parents, or some, or most, or all of these, who are engaging in this unethical approach to adoption. We are then told that “Abuses include the sale and abduction of children, coercion of parents, and bribery, as well as trafficking to individuals whose intentions are to exploit rather than care for children.”³⁹

It would be useful to ask UNICEF to explain exactly whom it is accusing, and of what. Is the implication that adoptive parents are posing as such, and are really as abductors? Is there any distinction to be drawn between profiteering by local officials and actual trafficking of children? UNICEF, as an official body charged with protecting children, should clarify its position and document its charges specifically and in detail.

³⁶ Social Monitor, *supra* note 29, at 24.

³⁷ Statement, *supra* note 31.

³⁸ *Id.*

³⁹ *Id.*

Ironically, this statement was seen by some as a new “pro adoption” departure by UNICEF, a fact which serves to highlight how negative most adoption-related statements emanating from international child welfare bodies are.

The change in UNICEF’s emphasis over the past few years from child survival to child rights has drawn criticism.⁴⁰ It is unclear on what basis UNICEF is interpreting child rights, particularly when it comes to adoption. UNICEF cannot provide a family or individualized love to children who lack these essential life ingredients, and if, as it seems, UNICEF is attempting to reduce international adoption in the name of “child rights,” this is a weighty matter with human rights implications, and UNICEF must be called to account over it. In ways specifically physical and psychological, the family—when it is functioning as it should—allows the vulnerable child to grow to adulthood without undue trauma and without being harmed by ill-intentioned adults. The public in both sending and receiving countries deserves to know what UNICEF is saying to national governments on the subject of intercountry adoption, and where this mandate, if such UNICEF sees it, derives from.

The United Nations Convention on the Rights of the Child and the CRC Committee

The United Nations Convention on the Rights of the Child, with its near-universal ratification, has brought into being an entirely new discourse of “child rights.” The Convention is divided between sections dealing with children’s rights to protection, and what we could call sections dealing with children as active, non-dependent, participatory beings.⁴¹ The most prevalent types of child suffering and exploitation in the world today (child prostitution, trafficking, bonded labor) demonstrate the inherent dependency and

⁴⁰ Lancet, *supra* note 28, at 2071.

vulnerability of children, yet many international bodies dedicated to children's rights appear to emphasize rights that bear some supposed analogy to adult rights. That is, they emphasize rights to participate and be heard, to be "empowered."⁴² While there is nothing harmful in facilitating children as active participants in their own situations, in reality, children are not strong participants in creating the conditions of their existence. But to adopt this focus, with its conferences and congresses and declarations, is perhaps easier than emphasizing rights based on vulnerability, in that a 'vulnerability focus' necessitates, at least implicitly, pointing a finger at the adults in charge.

The Committee for the Rights of the Child operates in a similar manner to other UN human rights committees; it assesses progress reports submitted by States parties to the Convention and asks states to clarify or rectify when child-related issues come to its attention.⁴³ Here too, it would seem that there is a striking disproportion between the time spent by the Committee in seeking information about international adoption practices, as opposed to time spent seeking information and positive change concerning children residing without families in residential or group care, or on the streets. There is a special "complaint line" set up so that the Committee can receive information about corruption in the intercountry adoption process in any country.⁴⁴ Again, it would be useful to request the UN children's rights establishment to explain the nature of their focus on adoption; it

⁴¹ See Convention on the Rights of the Child, Nov. 20, 1989, 1577 UNTS 3, available at <http://www.unicef.org/crc/fulltext.htm#001>.

⁴² See generally Karl Hanson & Arne Vandaele, *Working Children and International Labour Law: A Critical Analysis*, *The International Journal of Children's Rights*, 11: 73-146 (2003); Antonella Invernizzi & Brian Milne, *Are Children Entitled To Contribute to International Policy Making? A Critical View of Children's Participation in the International Campaign for the Elimination of Child Labor*, *The International Journal of Children's Rights*, 10: 403-431 (2002); William E. Myers, *The Right Rights? Child Labor in a Globalizing World*, 575 *Annals* 38 (2001).

⁴³ See Committee on the Rights of the Child, Overview of the working methods of the Committee on the Rights of the Child, at <http://www.ohchr.org/english/bodies/crc/workingmethods.htm>.

is predictably inquisitorial, skeptical, and certainly not encouraging. At best, the attitude could be described as tentative tolerance accompanied by deep suspicion and readiness to condemn.

It could be argued that for the UN—including UNICEF and the CRC committee personnel -- to involve itself in the adoption question constitutes a conflict of interest. Countries need and depend upon the support of the UN for desperately needed resources. When the UN puts pressure on countries to essentially eliminate international adoption, that country is put in a very difficult situation. It must preserve its reputation by cutting down drastically on the number of children sent out of the country through adoption programs. What happens to the remaining children without families is anyone's guess. It certainly does not appear to be the case that the international child welfare bodies are insistent in a quest to learn the fates of these children left behind. If these follow up inquiries are carried out, it is certainly not a featured topic in the public discourse of the human rights establishment.

Children as an international “client population”

The UNCRC has had a mysterious and complex conceptual impact on our understanding of children and their needs. It is easy to forget that it was of course adults who created the CRC, and that a certain vision of children by adults is at the heart of the Convention. This is the case despite the fact that so many adults have written to the effect that the importance of the Convention lies in its view of children as autonomous right holders and participants in their own destiny. The purpose of this paper is not to cast aspersions on the motives of people dedicated to the international welfare of children,

⁴⁴ Americans for Open Records, U.N. Form & Instructions for Reporting Adoption Abuses to the United Nations, *available at* <http://www.abolishadoption.com/UNFormLetter.html>.

since few of these people are likely to hold any treacherous motives, and, on the contrary, have in most cases spent lives dedicated to helping as they have seen fit. All can agree that the scale of children's suffering is staggering. But there is a strong possibility that the Convention contributes to the idea of children as a 'client population,' and that the mythology of the Convention makes it more likely that those in the child welfare establishment will be hostile to solutions that might actually save the lives of particular children. In other words, resistance to international adoption does not rest purely on the notion that adoption is inherently corrupt, but rather on a deeper conceptual resistance to adoption, since it runs counter to the idea of children as a client population in situ, subjects and objects of the doctrines of the CRC. It is not a foregone conclusion that the international child welfare organizations have the interests of individual children at heart in every instance. Misplaced theories of child empowerment, theories that tend to maintain children as a client population, can be seen in the hostile rhetoric that characterizes, incessantly, international adoption as exploitation, trafficking and theft.

Two poles of the cautionary tale: Bruce Harris and Lauren Galindo

Bruce Harris, a British national, spent many years in Latin America where he headed Casa Alianza, affiliated with Covenant House in New York. Casa Alianza has been the principal organization working with and defending the many street children of Latin America, offering them shelter and bringing public attention to their abuse at the hands of the police.⁴⁵ Bruce Harris had another passionate interest as well: denouncing intercountry adoption, particularly as it was practiced in Guatemala.⁴⁶ Harris made good

⁴⁵ See Susan Schindehette, Don Sider & Auriana Koutnik, *Safe Havens; Bruce Harris Provides a Refuge for Some of Latin America's Most Desperate Street Children*, *People*, Apr. 2, 2001, at 119.

⁴⁶ See Matthew Chapman, *Babies go on sale in Guatemala*, *The Times Union* (Albany, NY) Sept. 12, 1999, at A10.

use of the credibility in the child welfare arena, and worked tirelessly, some would say obsessively, to denounce and deride international adoption from Latin America, charging lawyers, government officials and the judiciary with corruption and baby selling.⁴⁷ In an unsuccessful case against Harris, Guatemalan adoption attorney Susana Luarca, at the time married to the president of Guatemala's Supreme Court, accused Harris of defamation because of his accusations that she had used her influence to speed up lucrative international adoptions.⁴⁸ Harris took all this on as a hero, confident in his mission and never wavering in his condemnation of intercountry adoption. In his view, birth mothers were victimized, children were stolen, and nations impoverished by this practice.⁴⁹ At least publicly, Harris never connected the dots between the vast numbers of street children and the issue of infant abandonment and adoption. Perhaps for Harris, these were unrelated phenomena.

In September of 2004, Harris stepped down from his position at Casa Alianza, purportedly to spend "more time with family."⁵⁰ It became known that Harris had been accused of offering money to one of his organization's former juvenile residents for sexual favors.⁵¹ Harris comment on this was that the public ought not to judge his entire career of commitment to children by what he called a "fifteen minute mistake."⁵² The crudity of Harris' characterization of what he had done tells us a good deal about his own attitude towards the adolescents he worked with.

⁴⁷ See Jim Rankin, *Wanted: Babies; 'For Lawyers it is Good Business'*, Toronto Star, Sept. 29, 2001, at B01 [hereinafter *Rankin*]; Matthew Chapman, *Babies go on sale in Guatemala*, The Times Union (Albany, NY) Sept. 12, 1999, at A10 [hereinafter *Chapman*].

⁴⁸ See *Activist Not Guilty in Defamation Case*, Chicago Tribune, Feb. 1, 2004, at 6.

⁴⁹ See Rankin *supra* note 47, at B01; Chapman *supra* note 47, at A10.

⁵⁰ See Rebecca Kimitich, *Director of Casa Alianza Fired After Paying for Sex*, Tico Times Online, Sept. 20, 2004, at http://www.ticotimes.net/dailyarchive/2004_09/Week4/daily_09_20_04.htm#story1.

⁵¹ *Id.*

One hesitates to make too much out of one horrific example. It would be unfair to extrapolate from Harris' case some larger principle to the effect that international child welfare specialists are living off the misery of children for their own illicit aims. Yet, there is too much of the metaphor in Harris to fail to see the cautionary tale. Harris was the most self-righteous of the anti-adoption spokespersons. He happily accused all those involved in international adoption in Guatemala of the worst sorts of profiteering, trafficking, exploitation and abuse. He publicly exhorted Guatemalans to stop "selling our children."⁵³ He contributed to the widespread view that adoption was necessarily the equivalent of buying and selling human infants; he disparaged the motives of all concerned; he did his utmost to frighten the local population and whip up their anger against adoptive parents. Yet when Harris attempt to buy sex from a former Casa Alianza resident became widely known, he asked the public to believe that it was a "fifteen minute mistake," an aberration in an otherwise stellar career.⁵⁴

It is difficult to avoid the conclusion that at least some advocates for children's independent "rights" are in fact living off, in a variety of ways, the perpetual suffering of children. (Of course, few would have anything like Harris's twisted motives.) Children without families are completely vulnerable to exploitation in a way that no NGO and no orphanage can begin to alter. Being an advocate for "family" has nothing to do with being either a social conservative or progressive; the family is a timeless, transcultural phenomenon that is fundamentally about protection and a unique bond of trust. UNICEF and other international bodies can and do feed children, provide

⁵² See Jose Eduardo Mora, *Central America: Sexual Misconduct Could Overshadow Critical Work*, *Inter Press Service*, Sept. 28, 2004 [hereinafter *Mora*].

⁵³ Guardian Features Pages, *The Guardian* (London), Aug. 27, 1999, at 4.

⁵⁴ See *Mora*, *supra* note 52.

vaccinations and even administer important centers for community life. But one must be extremely wary on the question as to why these bodies display so much hostility towards intercountry adoption, especially when their hostility is generally not substantiated by facts.

On the opposite extreme stands Lauryn Galindo, recently sentenced for “visa fraud,” in what has amounted to the most significant prosecution ever of an American involved in international adoption, in this case for allegedly falsifying children’s documents to make them appear to be truly abandoned, thus “orphaned,” to meet the standard required to allow them to be adopted into the United States.⁵⁵ Galindo maintained a virtual monopoly on Cambodian adoptions, working as a facilitator for several well-known US agencies.⁵⁶ It is impossible to know how many of the adoptions she brought about involved children who would not otherwise have been abandoned by their birth parents. It is likewise impossible to know whether these children would have been given to someone else for some other purpose in the long-term had there not been any international adoption from Cambodia.

Galindo’s defense was that she had done great humanitarian work, and that she was suffering the effects of her own traumatic childhood, something that made her unable to distinguish the ethical from the unethical in her work.⁵⁷ Certainly the amount of money Galindo amassed in the course of her adoption work was unacceptably large; her methods in a country where corruption was rife and legal procedures unreliable at best were

⁵⁵ See Donna Jackel, *Baby-Seller Sentenced to 18 Months*, Rochester Democrat and Chronicle, Nov. 20, 2004, at 1B.

⁵⁶ See Maureen O'Hagan, *Adoption Facilitator Sentenced; She Gets 18 Months in Prison for Defrauding Families in Connection with Agency*, The Seattle Times, Nov. 20, 2004, at B1

⁵⁷ *Id.*

contrary to every notion of good practice.⁵⁸ Two aspects of Galindo's story are worth noting. First is the completely unregulated nature of Cambodia's adoption system was unusual.⁵⁹ Nothing about Galindo's method is common to adoption in the former Soviet Union or China, two of the major "sending" countries. Secondly, none of the critics of Galindo's work seem to have carried their mission a step further and demanded that adoption be resumed under ethical conditions in order to save the lives of those children who were in fact abandoned, and who did in fact reside in orphanages and group care.

To the extent that Galindo was causing to be in the group care system children who would not otherwise have been there, the Cambodian adoption system deserved to be "shut down" on the US end. But the failure of the US authorities to work out an ethical alternative is troubling. A similar failure to work effectively with Vietnam to revive their problematic program is also difficult to fathom. There is no question about the fact that children allegedly "sold" for adoption receive the priority treatment of the press, NGOs and national governments. Once adoption systems are shut down, the children involved recede into the shadows, and are scarcely mentioned again. No international organization makes it a point of urgency to track down these children and make sure their existence is documented. The disproportion in concern is striking and unquestionable.

Changing the mix: Into the empirical

A person involved in international adoption in a country of the former Soviet Union recently said to me that in her country, "adoption is something that is legal, but that is treated as if it were illegal." This seemed an insightful formulation. Much of the sense of danger and fear emanates from the international child welfare establishment,

⁵⁸ *Id.*

including the United Nations and the best known NGOs. Where official statements are made in favor of international adoption, these are often cautious and grudging at best. Because their default position has been one of suspicion and accusation, it is wrong to look to the international child welfare or human rights establishments to assess the rights implications of intercountry adoption. Another, separate and independent set of analyses are required.

In its recent criticism of UNICEF for shifting its focus from child survival to child rights, the Lancet noted that without child survival, there could be no exercise of rights.⁶⁰ The Lancet's scathing denunciation of the skewed notion of child rights that has developed at UNICEF might provide the right occasion to note the lack of interest by the international child welfare establishment in the aspect of international adoption that saves lives; not only in the sense of physical survival, but rather in the sense of psychological and emotional healing.⁶¹ International adoption has in this sense remained a repressed solution through the agency of orchestrated innuendo, often by persons at the highest level in the child rights community.

The functional role of rhetoric: creating fear of adoption

It is worth trying to understand what it is critics such as the Baroness Nicholson and Bruce Harris are positing. These and other prominent persons in the international child welfare community seem to rely on outright misrepresentation: that children are not really being “adopted” by loving families, but are being trafficked for body parts, that the

⁵⁹ See Donna Jackel, *Cambodia's Rampant Poverty Bred a Boom in Baby-Selling*, Rochester Democrat and Chronicle, Nov. 19, 2004, at 8A.

⁶⁰ Lancet, *supra* note 28, at 2072.

⁶¹ See *e.g.*, Kaler & Freeman *supra* note 26.

true intent of adoptive parents is sexual exploitation or using children as servants.⁶² And yet one does not hear repudiation of such allegations from the UN, the EU, or other sources of human rights authority. It should be obvious that legitimate and legally vetted adoptive parents would not go through a charade in which their real motives were to “procure” a child for unlawful and exploitative purposes. Those engaged in that sort of behavior are far more likely to be acting locally as an initial matter, and anyone with such motives would know the channels of international organized criminals through which to act. How exactly would criminal organizations induce ordinary people to act a part as adoptive parents? Although the Baroness never fully connected the dots of her own insinuations, she frequently hinted that adoptive parents from Europe and the United States were acting in complicity with organized criminals to bring children to tragic fates.⁶³ The EU responded to these accusations⁶³ by a particularly inapposite use of the language of children’s rights, by stating that adoption must in all cases be a matter of finding a family for a child, rather than a child for a family, and that principle had been violated in Romania.⁶⁴ The EU failed to distance itself from the wild and destructive charges made by the Baroness, perhaps because of a more commonly held wish to make sure that a new EU entrant country would not be a “sending” country in intercountry adoption. That the judiciary would profiteer off otherwise ethical or unethical adoption one could imagine. But that adoptive parents were colluding in the procuring of children is surely an unfounded charge.

⁶² Nicholson, *supra* note 21; International Association of Voluntary Adoption Agencies and NGOs, Ten Tears Later, Covenant House’s Bruce Harris Continues his Attacks, *at* http://www.iavaan.org/Archives/2003/November%202003/Bruce_Harris_Body_Parts.htm (last visited Feb. 1, 2005).

⁶³ Nicholson, *supra* note 21.

⁶⁴ Press Release, *supra* note 1.

The fact that the United Nations human rights establishment shows itself to be far more concerned about anecdotes concerning unethical practices in intercountry adoption than about the prospect of children by their thousands coming of age without family protection is at best troubling. The myth that all biological families can be put back together is apparently a powerful one, as it is embraced by so many child welfare NGOs, but it is also one that breaks down in the face of the facts. With or without international adoption, thousands of children will grow up in a distorted and dangerous environment, without families of their own. With international adoption, at least a small number will not have to grow up in that way.

There have been genuine adoption scandals, where children were presented to adoptive parents and agencies as if they were legitimately relinquished, but in fact were procured through fraudulent practices.⁶⁵ These instances have received so much attention that it is often assumed that this is the norm. Once an international adoption program shuts down, few seem to bother to investigate the situation of children without families left behind. I would go so far as to argue that the reason scandals have rocked the adoption world is that no international NGO has been energetic in the pursuit of a true empirical picture of children available for adoption. More strikingly, the official international child welfare bodies have failed to take an interest in this, because of the fact that they are implacably opposed to international adoption. Whatever their official position might be, the facts point unmistakably in that direction.

Children without families are largely invisible and largely silent, despite the discourse of child “empowerment” that had grown from the UNCRC. As it now stands, empowerment generally refers to empowering children in severe difficulties—child

laborers and street children, as examples. National law, including the perception of courts, will continue to be influenced by the negative tone of persons who occupy high positions in international child welfare. As long as adoption agencies, considered by many to be self-interested in the matter, are left to advocate for intercountry adoption, the human rights establishment will continue to distance itself from the question of children left behind when there are no families, no national culture of adoption, and finally no international adoption allowed. Until those concerned with the issue of children without families manage to help establish an independent investigative body, one with impeccable credibility and empirically based analyses, there will be no resounding link made—not by courts, not by NGOs, not by the EU-- between the true rights of children and international adoption.

⁶⁵ *See supra* notes 46-47, 55-56.