

International Agreement Without Agreement

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How the Convention on Protection of Children DOESN'T

Around the world today there are families who want to adopt children and children in need of permanent homes. Intercountry adoptions have become one solution to bring these families and children together. This solution has not been without controversy, however. For many reasons, allowing children from one country to be adopted by parents in another country sometimes causes suspicion and uneasiness. Corruption, both real and imagined, complicates the situation further. But the fact is that there are many children today who would not find permanent homes without the option of intercountry adoptions.

To allay some of those fears, and combat some of that corruption, the Hague Conference on Private International Law created in 1993 a "Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption." Modeled after other successful international agreements, this convention was meant to ensure that adoptions between signatory countries would be safe and ethical. Its initial goal was to uphold "the best interests of the child" as the standard by which child placement decisions and policies are made. In practice, however, the convention has not only failed to achieve that goal, it has actually become an impediment to it. In attempting to meet its inconsistent regulatory requirements, many countries have instituted policies and legal hurdles that have restricted intercountry adoptions unnecessarily. Rather than protecting children in intercountry adoptions, these signatory countries seem to have interpreted the Convention as protecting children from intercountry adoptions. For those children who rely on these adoptions to find permanent homes, the implementation of the Convention is acting against their best interests. Furthermore, it is acting to deny those children their fundamental human right to grow up as part of a family.

Some of these problems are introduced by the various countries' attempts to interpret the Convention's requirement that "An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests" [Article 4-B; emphasis added]. What is problematic is the way in which countries interpret the middle part. There seems to be an assumption that even the worst local placement option is far superior to the best intercountry option, no matter where it may be. What constitutes "due consideration" of local placement options? This is really a question of how long a child should have to wait, at the convenience of adults, before he can be placed into a permanent home, the most common tool being some sort of national registry on which children have to wait before intercountry adoptions are allowed.

As with many issues of public policy, this assumption comes with hidden costs. All things being equal, the desirability of a local placement is perhaps understandable. But in the lives of endangered children, all things are rarely equal. The fact is, for every day a child spends in a temporary setting, such as foster care or orphanages, that child is exposed to further physical and psychological abuse. That abuse can effect children for the rest of their lives, shaping the adults they are to become. It is of the utmost importance that children be placed in permanent stable homes as soon as possible. What seems an innocent requirement, to give local parents extra opportunities to adopt a child, quickly becomes a detriment to the life of the child it is supposed to protect. In the end, these requirements only serve the consumer-oriented interests of adults, not the best interests of children.

Far better would be to consider local and intercountry options concurrently and weigh them against one another using many different criteria and a consistent decision making methodology. Maintaining children's connection to the locality of their birth may or may not be an important factor in their future safety and wellbeing, but in either case it is never the only determining factor, and it is a mistake to treat it as such. It may very well be the case that for some children, the desirability and high possibility of a local placement will recommend that option. But there will also be other children for whom, from their first day in the child

welfare system, it is clear that an international adoption is their best, and sometimes only, option. To make these children wait, at the convenience of adults, before they can reach those homes is in stark opposition to their best interests.

Any international agreement that does not make the best interests of the child its primary consideration will devolve into an instrument that merely asserts the consumer rights of adults to the detriment of children. Conversely, a convention that puts children front and center would not only serve their vital interests, but also the interest of the other members of the triad as well. Biological families would be assured that children were never taken from them without an overwhelming interest on behalf of the child. And adoptive parents would be treated as precious resources who should not be overburdened with regulations that place unreasonable barriers of time, money, and effort between them and their future children. It is demonstrably in the best interests of children everywhere to grow up in a stable family and to have the opportunity to do so as quickly as possible. It is not only desirable; it is one of their fundamental human rights.

The purpose of having countries work together to develop international agreements is so that we can elevate the level of cooperation and civility in the world and achieve those goals we all hold in common. To the extent that any such agreement actively works against those goals, it is our moral obligation to cast it aside and start anew. The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption allows countries to make and enforce regulations that work against the best interests of the child, frustrating the very purpose for which it was created. It is time for those nations who claim to have the best interests of children at heart to work together to forge an agreement that is capable of achieving a better world for our most endangered children.

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