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**CHILD, INTERRUPTED:  
INTERNATIONAL ADOPTION IN THE CONTEXT OF CANADIAN  
POLICY ON IMMIGRATION, MULTICULTURALISM, CITIZENSHIP,  
AND CHILD RIGHTS**

**Zofia Sonia Worotyneć**

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**Series Editor for 2005/06  
Michael J. Doucet, PhD  
Department of Geography  
Ryerson University  
350 Victoria Street  
Toronto, Ontario  
M5B 2K3  
mdoucet@ryerson.ca**



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Telephone (416) 946-3110 Facsimile (416) 971-3094**

**CHILD, INTERRUPTED: International Adoption in the context of Canadian Policy on Immigration, Multiculturalism, Citizenship, and Child Rights**

**ZOFIA SONIA WOROTYNEC**  
**E-mail: zs.worotyne@utoronto.ca**

**ABSTRACT**

This paper examines how international adoption fits within the legal and conceptual frameworks of Canadian policy and legislation (the Immigration and Refugee Protection Act, the Multiculturalism Act, the Citizenship Act and the Charter of Rights and Freedoms) and international treaties to which Canada is a party (the United Nations Convention on the Rights of the Child and The Hague Convention on Intercountry Adoption).

**KEY WORDS:** International adoption, The Hague Convention, United Nations Convention on the Rights of the Child, policy, legislation, immigration, multiculturalism, citizenship, Canada.

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## INTRODUCTION

Within days of the December, 2004 Indian Ocean tsunami, the media reported on the rush to adopt what was most likely thousands of children separated from their parents who, it was feared, were swept out to sea and their deaths. The outpouring of generosity in the calls for adoption was depicted as a symbol of great charity from the west. Along with cash donations came open invitations to take children who, ostensibly, needed families.

Historically, adoption itself began in a contrary way: the impetus originally was to find families for children who were orphaned as a result of war, poverty, and natural disasters. Today, however, it can be argued, adoption, and in particular, international adoption, has become a way to find children for families (Lovelock 2000). While a disaster to the affected regions, the tsunami also presented the opportunity for some in the western world to locate children who would be available for adoption. War, poverty, and natural disasters continue to secure a surplus of children in developing countries without parents. Without doubt, the increasingly common problems of infertility and a lack of domestic infants available for adoption in the west have contributed to the increase (and some would say success) of international adoptions, that is the adoption of a child living in a different country from the adoptive parent(s). (Adoption Council of Canada 2005a).

But is international adoption an appropriate response to the tragedy of children left parentless because of natural and human-made disasters? The answer, of course, depends on the individual or group to whom the question is directed. Melone has been among the few to have taken a severe position on international adoption, labeling it as exploitive and less an act of love than an act of aggression against the Third World (Melone 1976, 25). Others, moreover, have taken the position that international adoption is cultural genocide and borders on child trafficking (Ngabonziza 1991). Within the literature, as this paper will show, there appears to be some consensus that while there may be abuses, given appropriate safeguards, international adoption represents both the best policy response for the international community and the best life chance for needy, orphaned children (Bartholet 1993).

Canada's policy responses to international adoption has been layered with jurisdictional complexities. At present, the government of Canada does not have a discrete policy on international adoption, but it is a signatory to The Hague Convention on Intercountry Adoption. Briefly, The Hague Convention provides guidance to countries that wish to become involved in international adoption. Through ratification of this Convention, countries agreed to designate "contracting states" to act as authorities for the administration of international adoption. In Canada, the central authorities and/or contracting states are the provinces, who are responsible for enacting implementing legislation. The role of the federal government with regard to international adoption falls within the mandate of the Department of Citizenship and Immigration. One might, therefore ask: What are the implications of these jurisdictional splits? This paper explores how international adoption fits within the legal and conceptual frameworks of both Canadian legislation and policy and international treaties to which Canada is a party.

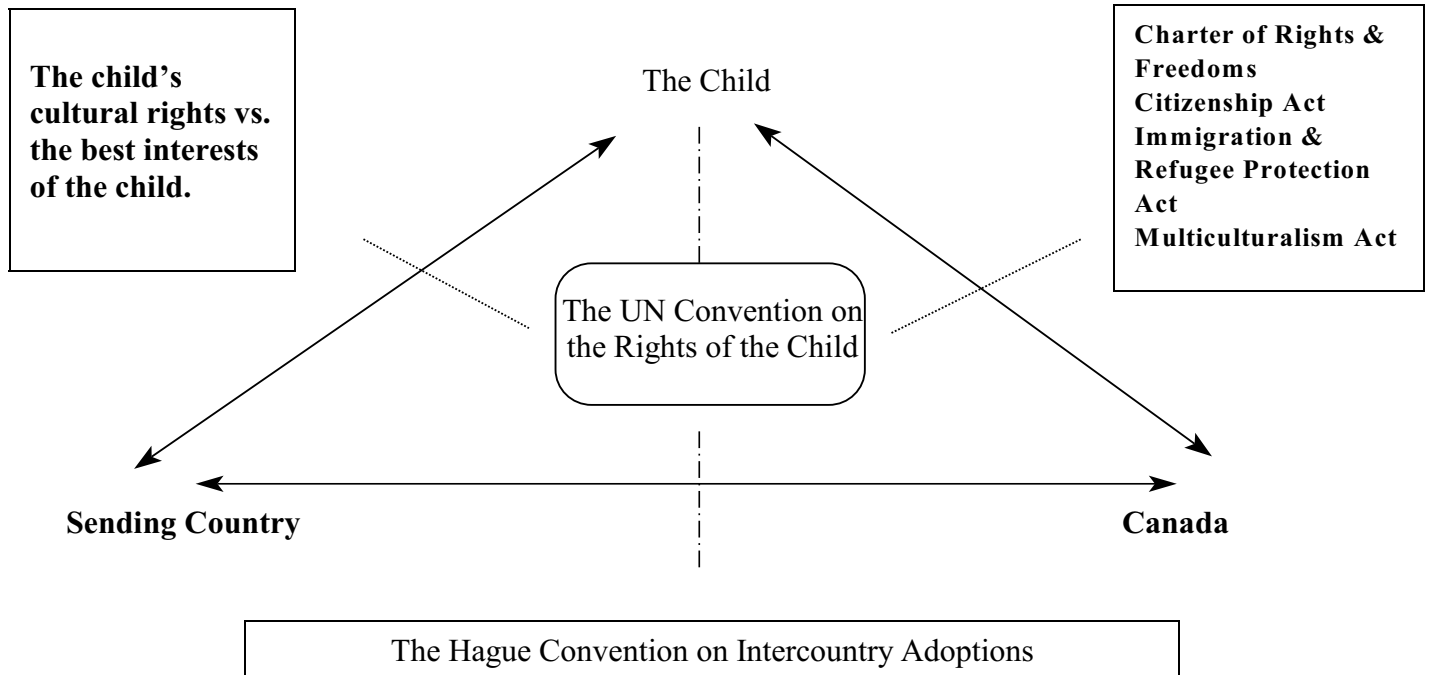
## **METHODOLOGY**

To explore the question of Canada's policy response to international adoption, a literature review and policy scan were conducted. The review of the literature was undertaken to provide a foundation for the examination of the policies and practice of international adoption in Canada in the context of how it has been understood, accepted, or challenged. The parameters for the literature search included two key factors. To ensure a balanced approach to the issue, arguments both for and against international adoption were sought and included. The search found more opinions in favour than against. While not surprising, this finding supports one of the conclusions of the paper and its call for further research. A Canadian perspective on the issues was desired, but unfortunately, the search did not locate many significant, or specific, Canadian sources. The search, however, did yield a good overview of the issue, and not an overly American one.

The international treaties under examination were the Hague Convention and the United Nations Convention on the Rights of the Child. Any Canadian legislation chosen for study, therefore, needed to be relevant to the discussion. The list of such legislation is not a particularly long one. As would-be citizens, or citizens-in-waiting, the Citizenship Act has an impact on children, mostly because of the clear exclusion of children in that legislation. Moreover, as new Canadians entering a country that purportedly celebrates the ethnic diversity of its people, the provisions of the Multiculturalism Act may have a profound impact on both children and their parents, and has obvious implications for multiethnic families. The Charter of Rights and Freedoms also is important in the context of this study. Finally, the federal role in international adoptions falls within the purview of the Department of Citizenship and Immigration Canada (because children entering Canada as adoptees from foreign countries come as immigrants), therefore, the Immigration and Refugee Protection Act also needed to be examined.

In the field of adoption search and reunion, the three key parties involved are the birth parent, the adoptive parent, and the adoptee. This constellation is referred to as an adoption triad (Adoption Council of Canada 2005a). An international adoption policy triad, thus, is proposed as a model within which to examine the issues. The model (Figure 1) consists of the child, the sending countries, and Canada, as a receiving country. Guided by the United Nations Convention on the Rights of the Child, this paper will analyze international adoption within the legal and conceptual frameworks of Canadian policy and legislation on immigration, multiculturalism, citizenship, and human rights. Use of the triad model also will allow an examination of relationships between those governing the key parties.

**Figure 1: The International Adoption Policy Triad**



**THE STRUCTURE OF THE PAPER**

After a brief history of international adoption, the paper will introduce the United Nations Convention on the Rights of the Child (UNCRC) and will illustrate, through the literature, the issues related to international adoption and children’s rights. As will be shown, adoption policy and practice use a child-welfare model, that is, one in which primary consideration is given to the *best interests of the child*. While clearly linked, I hope to make a meaningful distinction between child welfare and child rights.

The following section of the paper will outline the international treaty, stemming from the adoption of the UNCRC, that addresses and sets standards for international adoption, namely, the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (The Hague Convention). Through the literature, the paper will provide insight into the relationship between the sending countries (where the children originate) and the receiving countries (the nations into which the children are adopted, and in this paper, Canada) and how the Hague Convention intersects with the laws of relevant nations.

A comparison of the UNCRC and the Hague Convention will be highlighted and will set the stage for a further comparison in the next section of the paper that addresses the disparity between the commitments Canada has made to children through their ratification of both the UNCRC and the Hague Convention and the Canadian legislation that impacts internationally adopted children.

The following section of the paper provides recommendations for both policy development and for future research directions. Finally, an appendix has been prepared that provides a chart comparing the top-ten countries sending adoptees to Canada and their status with regard to both the UNCRC and the Hague Convention.

## **AN INTRODUCTION TO INTERNATIONAL ADOPTION AND POLICY FORMATION**

The question of how international adoption fits within the legal and conceptual frameworks of Canadian policy and legislation and international treaties to which Canada is a party must begin with an introduction to the topic of adoption itself. What is the history of adoption and international adoption? What is the history of adoption and international adoption policy? What are the issues, current and emerging, in the field of adoption? Readers are referred to the bibliography for an in-depth treatment of these questions, but it is hoped that the following overview will serve as a foundation for understanding the issues raised in this inquiry.

The literature makes a distinction between domestic adoption (within a country) and international adoption (between countries). Within international adoption, the literature tells us that adoption has been applied as a solution against problems of war, natural disaster, and/or political instability, while themes in domestic adoption have been focused on such issues as open adoptions and transracial adoption. Bagley et al. (1993), Hollingsworth (2003), Lovelock (2000), and Ressler et al. (1998) have provided comprehensive accounts of the history of international adoption and the development of international adoption policy.

Although international adoption has been in existence for many years, there is agreement in the literature that it became more common after World War II (Bagley et al. 1993; Ressler et al. 1998). International adoption began as a response to meeting the needs of children orphaned by war. World War II, and its aftermath, created the conditions for innovative approaches and understandings to intercultural conflict. For example, the advent of the human rights movement has been linked to the end of World War II (Bagley et al. 1993, 135). International adoption benefitted from this new awareness and sympathy for the plight of orphaned children (and for children fathered by soldiers, and ultimately abandoned by them and rejected by their mothers and their country).

Like Bagley et al. (1993), Hollingsworth (2003) began her history of international adoption with the post-World War II period. She found that Germany and Greece, in particular, had large numbers of children orphaned by war who were adopted into North American families. The next major time period for international adoptions was the post-Korean War period. From 1973 to 1977, increasing numbers of children from Central and South America were being adopted. In 1989, with the fall of communism in Romania, large numbers of children living there became available for



adoption. As noted by Hollingsworth, this represented the “first time since post-World War II that white children were available for international adoption,” which may speak to the popularity of such adoptions (Hollingsworth 2003, 210). The final, and current, phase for international adoptions has been the adoption, mostly of girls, from China, where a one-child policy and a cultural preference for boys has been producing excess numbers of unwanted female babies.

Lovelock has distilled the history of adoption into two distinct waves. She has characterized the first wave, from World War II to the mid-1970s, as one in which the emphasis was on “finding families for children” displaced as a result of war. The second wave, from the mid-1970s to the present, has been described by Lovelock as a period during which the emphasis has shifted to “finding children for families” (Lovelock 2000, 908).

Berebitsky’s social history of adoption is in basic agreement with Lovelock’s characterizations although more sympathetic to the childless women. She found that even when women were called on to provide homes and families for abandoned children “they needed the children as much as the children needed them” (Berebitsky 2000, 55). Noonan has admitted to some ambivalence about the adoption process that brought her a child: “My partner and I struggle with the contradiction between the joy our daughter has brought us and the knowledge that the system through which she came to us has the capacity to exploit impoverished and oppressed people for the benefit of relatively wealthy ones” (Noonan 2004, 146). In her overview of the history of international adoption, Serbin, too, agreed that the motivation for adoption has moved from one of a desire to help rescue abandoned children to helping create a family where there is infertility. An adoptive parent of a Third World child herself, Serbin observed that she had “never forgot the grim images of orphanage babies listlessly lying in cribs” and believes she saved a child from a destitute life (Serbin 1997, 83).

Exploitation of Third World women and countries has been chief among arguments against international adoption. Ironically, the needs of western women may have heightened their sympathies for Third World children. This may be among one of the first policy problems in international adoption. How can policy protect children both from the exploitation they may suffer as orphans in a war-torn, poverty-stricken nation and from the exploitation they may suffer as they are taken abroad to serve the needs of a relatively wealthy family and nation? Members of child welfare organizations “cited numerous cases known to them in which inter-country adoptions had not been based fundamentally on the welfare of the child. For example, couples are sometimes allowed to adopt Third World children to fulfil their own needs” (Bagley et al. 1993, 138). A key event in the post-World War II history of policy formation in international adoption was the 1960 Leysin Conference. Among the outcomes of that gathering was the development of a series of principles, and first among these was the importance of protecting the best interests of the child, as opposed to meeting the needs of the adult or nation.

The 1960 Leysin Conference brought together experts from the United Nations, the International Social Service,<sup>1</sup> the International Union for Child Welfare,<sup>2</sup> and sixteen European

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<sup>1</sup> The International Social Service (ISS) is an international non-governmental organization established in the 1920s to assist individuals and families with problems as a result of the mass migration of people to the Americas. The organization was known as International Migration Service until 1946, when it expanded and became known as International Social Service (ISS).

countries. Invitations to Third World countries were not extended and no representatives of the sending countries were present at the conference (Bagley et al. 1993, 138). The main outcome of the Leysin Conference was a comprehensive report detailing the issues and problems in international adoption. It also produced twelve principles for best practice in international adoption and is considered the precursor to The Hague Convention on Intercountry Adoption (Saclier 2001).

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**Table 1**  
**The 12 Principles of the Leysin Conference, 1960**

1. Adoption is acceptable as long as the best interests of the child are primary.
2. The search for a family for an orphaned or abandoned child should be conducted in the child's country first.
3. To limit institutionalization, decisions to place in- or outside the country to be made as soon as possible.
4. Every attempt should be made to find homes in-country for children with special needs.
5. Parents must operate with fully informed consent.
6. Parents must be educated about what their child's new life might be like.
7. An adequate home study must be completed.
8. The appropriate 'match' must be considered.
9. Once a child is placed, there must be a trial supervised period to determine fit.
10. All documents must be legitimate and scrupulous.
11. The legal responsibility for the child must be established as soon as the child is in the new country.
12. The adoption must be deemed legal in both the sending and the receiving country.

Source: Bagley, C.; Young, L.; and Scully, A. 1993. *International and Transracial Adoptions: A Mental Health Perspective*. Vermont: Ashgate Publishing Co., 138-144.

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The principles of the Leysin Conference have been important in that they have been reflected in current policy statements but researchers such as Bagley et al. found that they have been "widely ignored in practice" (Bagley et al. 1993, 138). Perhaps this can be related to another key outcome of the Leysin Conference, namely, the call to centralize the administration of international adoption (Bagley et al. 1993, 145). While there is recognition of international private law governing international adoption within the 1993 Hague Convention, which will be addressed in detail below, that body of law has been structured in such a way that two participating countries may not necessarily be confident in each other's processes and practices. The Hague Convention provides standards that countries are legally obligated to meet, but there is not a single coordinating body that

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<sup>2</sup> The International Union for Child Welfare (IUCW) began in 1920 as Save the Children International. In 1946, it merged with the International Association for the Promotion of Child Welfare to work on promoting the United Nations Declaration on the Rights of the Child and to raising the standards of child and adolescent welfare internationally. At that time, it took on the new name, IUCW.

oversees the practice to ensure consistent, even application of the Hague Convention in both nations. A second concern arising out of the existence of an international law is that, to date, only sixty-seven countries have ratified the Hague Convention. In fact, of the top-ten countries that send adoptees to Canada, only half are signatories.

Adoption has been part of the social fabric of Western society for many years, and inter-racial and international adoption has been increasing in Canada since the end of World War II (Social Planning Council of Metro Toronto 1966). Since the mid 1990s, children adopted from developing nations have numbered between 1,800 and 2,200 a year (Adoption Council of Canada 2005b). This is not a large number, but coincidentally, it closely parallels the annual number of children adopted domestically (Adoption Council of Canada 2005b). Out of the total number of immigrants to Canada each year, such adoptions represent less than two per cent of the total flow. Where a child is concerned, however, any number warrants serious attention, particularly when the child in question is in the vulnerable position of relying on the State to act on his or her behalf. The literature shows that international adoption is increasing in North America. But while international adoption has become more prevalent, critical policy questions have seldom been raised (Noonan 2004; Ressler et al. 1998). This paper attempts to respond to this research and policy gap.

While international adoption is not highly placed on the public or policy agendas in Canada, many in this country have been steadily addressing children's issues, to varying degrees and with differing success, at least since the 1980s. For example, Canada observed 1979 as the International Year of the Child. In 1990, Canada co-hosted the World Summit for Children and, in 1997, the Canadian government embarked on an ambitious National Children's Agenda, developing policy and programs to support and promote healthy child development (Canada 2000). More recently, the "new brain research" popularized by neuroscientists has drawn attention to the importance of the early years in a child's development, and both the government and policy makers have attempted to respond with policy and program initiatives (Keating and Mustard 1993). Parallel to the increased interest in child development has been the question of children's rights. In 1989, the United Nations embarked on creating the Convention on the Rights of the Child. Canada ratified that Convention in 1991.

### **The United Nations Convention on the Rights of the Child**

The 1991 United Nations Convention on the Rights of the Child (UNCRC) laid out the basic human rights to which children everywhere are entitled. Generally speaking, these are considered to be the rights of provision, the rights of protection, and the rights of participation (Covell and Howe 2001). The UNCRC says children have, without discrimination: the right to survival; to develop to the fullest; to protection from harmful influences, abuse, and exploitation; and to participate fully in family, cultural, and social life (Office of the United Nations High Commissioner for Human Rights 2005a). The UNCRC set standards in several areas, including education, health, and social services. Countries that are parties to the UNCRC are legally obligated to meet these standards.

In international law, a declaration is a statement of principles, and not a legally binding document. A convention, however, is a legal document and carries with it obligations. Canada was already a signatory to the International Covenant on Economic, Social, and Cultural Rights, ratified in 1976, which implied extension of human rights to children. But it was not until the UNCRC enactment, that children's rights were explicitly recognized and outlined in Canada and elsewhere. The UNCRC is a legal treaty, and it has been the most widely ratified international human rights instrument in the world (UNICEF, 2005).

Covell and Howe found significance in Canada's ratification of the UNCRC because it meant that: "the rights of children [were] now required to be the central objective of policy" (Covell and Howe 2001, 22). The main objective of the UNCRC was to establish that children had human rights and that parents and states are obligated to ensure not only these rights but also that existing national laws and policies also protect children's rights. There are several articles in the UNCRC that are applicable to the discussion of international adoption and one article that address it specifically. These are described below.

### **The United Nations Convention on the Rights of the Child and International Adoption**

The UNCRC views children in a holistic way. That is, it sees children within the context of their families, and recognizes families as the fundamental unit for the nurturance, support, and guidance of the child. Consider the following passage from the Preamble to the UNCRC:

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

These statements clearly articulate the belief that it is in the best interests of the child to have and be raised in a family. Furthermore, Article 20 sets the stage for rights related to adoption by outlining the rights of the child in cases where he or she may be deprived, either temporarily or permanently, from his or her family. It makes clear that in such circumstances, the child is "entitled to special protection and assistance provided by the State" and that "[w]hen considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background." Moreover, Article 21, speaks specifically to the issue of adoption and international adoption:

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of 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;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

The literature reveals that there have been, and likely will continue to be, challenges with regard to all of the above clauses. Are the children portrayed as parentless really without a family? Do birth mothers relinquish children with full and informed consent? Are children released to countries that, in practice, safeguard the child's best interests? How does international law interpret "improper financial gain;" how does it enforce or prosecute those who contravene the clause?

Article 21 of the UNCRC begins with the *best interests of the child* element. This is something that was paramount in earlier documents, such as the Leysin Conference and the United Nations 1959 Declaration on the Rights of the Child. The UNCRC, however, does not differentiate between a child's interests and her/his rights. Are a child's *interests* parallel to her/his *rights*? Are there situations where something in the child's best interest might contravene that child's rights? Within the field of child welfare, child protectionists and child liberationists have, in fact, formulated quite distinct interpretations of the meaning of the best interests of the child. Broadly speaking, child protectionists interpret the best interests of the child as an approach that subordinates the child and elevates the authority of the adult and/or State responsible for taking decisions on behalf of the child. The child, it is presumed, does not have the rational, logical capacity to make decisions. Child liberationists, on the other hand, may see the child's rights as paramount in determining the best interests of the child. This view is supported in several Articles in the UNCRC, most notably in the UNCRC's section regarding the child's participation rights. Consider, for example, the right of the child as specified in Article 12: "States Parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

Where children have not yet reached an age and/or developmental level where they can make or participate in major decisions affecting their lives, adults are called upon to do so for them. The existence of the UNCRC is an important vehicle for safeguarding these decisions. Indeed, its status as the most widely ratified human rights instrument bodes well for the issue of children's rights. The Hague Convention, discussed below, has not enjoyed such widespread acceptance, and yet it is the legal document that provides the standards for states on *how* to conduct international adoptions. Do the two legal instruments correspond? Are there conflicts or contradictions? If so, how do countries resolve them?

### **The Hague Convention on Intercountry Adoption**

The Hague Conference on Private International Law, established in 1893 is an inter-governmental organization whose purpose is to “work for the progressive unification for the rules of international law” (The Hague Conference on International Law 2005a). The Hague Conference is governed and funded by its Member States. It is administered by a Secretariat and meets every four years.

Private international law resolves differences between legal systems of two or more countries engaged in, or considering engagement in, a personal or commercial activity. The Hague Conference seeks to find common standards and approaches that protect the interests of its Member States. In 1993, it developed a convention on international adoption, entitled The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (The Hague Convention). The Hague Convention was developed in response to Article 21 of the UNCRC, and sought to expand and elaborate on standards for international adoption begun with the UNCRC article (Lovelock 2000; Rios-Kohn 1998; Saclier 2001). Canada signed The Hague Convention in 1994, and ratified it in 1997.

More than sixty “Member States” currently participate in The Hague Conference, including Canada. Sixty-seven States have signed and/or ratified the Hague Convention.<sup>3</sup>

The Hague Convention has established standards in seven areas: Scope, Requirements, Central Authorities and Accredited Bodies, Procedural Requirements, Recognition and Effects of the Adoption, General Provisions, and Final Clauses. Not surprisingly, the opening statement in the preamble to the Hague Convention was taken from the UNCRC, and the rest of the preamble mimics the UNCRC both in its language and intent:

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<sup>3</sup> For a list of the top-ten countries that send adoptees to Canada and their status with regard to both the United Nations Convention on the Rights of the Child and the Hague Convention on Intercountry Adoption, see Appendix 1. With the exception of the United States, all of the sending countries have ratified the UNCRC, although some have reservations and objections to specific articles. Some countries that are not Member States of the Hague Conference have nonetheless signed and/or ratified the Convention, and are also noted).

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the UNCRC, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally.

The objectives of The Hague Convention were to:

- a) establish safeguards to ensure that intercountry adoption take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- b) establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of or traffic in children;
- c) secure the recognition in Contracting States of adoptions made in accordance with the Convention (The Hague Convention on International Law 2005a).

Not all supporters of international adoption, however, have expressed an appreciation for the Hague Convention. Indeed, some detractors have argued that it prohibits children from being rescued because its requirements are too stringent, while others have found it ineffective in protecting children's rights and interests. Varnis has suggested that international law and policy "holds orphans hostage" and, in fact, international conventions and agreements are barriers to the rescue of abandoned and orphaned children and allegations of abuse and exploitation are overdrawn and politically motivated. Furthermore, Varnis has argued that the law is "frequently little more than a set of discretionary hoops to be exploited by officials for institutional or personal gain" (Varnis 2001, 40-41). His examination of the matter, however, provided only a narrow view of international adoption. Varnis's chief concern was with the issue of parents in the United States who

could afford to internationally adopt but who were prevented from doing so, citing the Hague Convention as the major barrier. He found that the United States received 50 per cent of all international adoptees and spent, on average, \$20,000 per adoption for a total account in 1998 of \$300 million dollars ‘invested’ by Americans (Varnis 2001, 39). Varnis pointed to a shameful situation in which a surplus of adoptable orphans, numbering between 4,000 and 5,000 thousand from China and between 80,000 and 630,000 from Russia, could emerge and for whom there could be waiting and willing parents in the United States (Varnis 2001, 44). Bartholet also agreed that the Hague Convention sets up barriers to international adoption, noting that: “the law poses as a protector of children, but in the end functions as their enemy” (Bartholet 1993, 91). She argued that many of its procedural requirements were prohibitive. For example, she observed that the Hague Convention disqualified some children “simply because they appear to have two living parents” (Bartholet 1993, 92).

The key difference between the UNCRC and the Hague Convention has been characterized by Rios-Kohn in the following way: “The UNCRC subordinates intercountry adoption to foster care while the Hague Convention prioritizes family relationships to foster care or institutional care (Rios-Kohn 1998, 2). Both legal treaties, then, see intercountry adoption as a last resort for children. Neither is meant to serve as a vehicle for the childless to make a family.

Of the countries that make children available to Canadians for adoption, China is at the top of the list, and has been since 1995. The Adoption Council of Canada statistics reveal that 771 Chinese babies were adopted into Canadian families in 2002. China ratified the UNCRC in 1999 (with a reservation to Article 6 - see Appendix I), but it was not until 2005 that China ratified the Hague Convention. We might ask why Canada received the bulk of its adopted children from a country that had not ratified the universally recognized legal instrument established to protect children in international adoptions. But China was not alone. Today, Canada accepts children from countries that are not signatories to the Hague Convention, though these sending countries have signed the UNCRC. Such countries include Russia, South Korea, Haiti, Vietnam, and the United States. How do children from these countries of origin find their way to Canadian soil? Is the process by which they are made available for adoption up to scrutiny? Is ratification of the UNCRC enough of a guarantee to keep the best interests of the child in mind for Canada to receive children from non-Hague Convention supporters?

Canada has signed and ratified both the UNCRC and the Hague Convention and, as a consequence, is legally obligated to uphold the standards set forth in each treaty. Should Canada not insist on this minimum for the countries from which it accepts children? This question is not posed to raise barriers to the adoption of children, but a number of questions are worth pondering. Should Canada not expect, at minimum, such an explicit endorsement of relevant standards from the sending countries as it sets for itself? Should Canada enter into agreements with countries that do not share this commitment, in particular when lives – children’s lives – are at stake? The triad of perspectives outlined earlier, namely, the child, the sending countries, and Canada as the receiving country, will be reviewed below. This analysis will be conducted in light of the commitments Canada has made with regard to its ratification of the UNCRC and the Hague Convention, as well as with regard to its relevant national policies and legislation.



## THE INTERNATIONAL ADOPTION POLICY TRIAD

### The Child in the International Adoption Policy Triad

Several criticisms surrounding international adoption have underscored the need to put the child at the centre of the debate. This section examines one of the most cited issues, namely, the matter of the child's culture in the context of her/his human rights. Several questions arise: what is the responsibility of the receiving country to honour the rights of another country's child? What, if any, rights does the sending country relinquish on behalf of the child? Who speaks for the child? Children who are adopted into different families and different countries are still raised in, and therefore, have a culture. The question is, *whose* culture – and do children have a birthright to *their* culture of origin? Some guidance in this area is contained within the UNCRC. Indeed, the rights to one's creed, religion, language, and culture are explicitly recognized in certain of its provisions:

Article 7: The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

Article 8: State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

Articles 7 and 8 of the UNCRC clearly reflect the right of a child to her/his culture, that is, the culture into which the child was born. With regard to adoption, Article 21 of the UNCRC says that: “due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.” The qualifier is, as always, if it is in the best interests of the child.

Is the placement of an adopted child in a culturally foreign environment in that child's best interests? The literature was found to contain arguments on both sides of this debate. Rios-Kohn suggested that “opponents of intercountry adoption not only question the legitimacy of the adoption process, but also raise the ethical dilemma of depriving children of their national heritage and culture” (Rios-Kohn 1998, 4). Herrmann and Kasper insisted that the child's social adjustment and identity must be considered in the context of the adjustment in a potentially racist environment “and question if the good adjustment of these children is accomplished at the cost of their ethnic identity” (Herrmann and Kasper 1992, 49). A child of colour could go from being a typical citizen of her/his country of origin to being a visible minority in their new milieu, and possibly into a culture of racism. Adopted by white parents into Canada, for example, a Chinese girl or a Haitian boy may be legally considered a Canadian child, and treated with love and dignity by their adoptive parents, but these children will be viewed – and treated – as visible minorities. Certainly, visible minorities experience a continuum of tolerance, but Canada's claims to multiculturalism as a tool for successful integration have been, and are continuing to be, contested (Duncan 2005).

The literature raises issues of race and identity development in children adopted from one culture into another very different culture, however, much of it glosses over the impact of ethnic diversity and suggests that globalization has rendered cultural and ethnic differences as unimportant and that international adoption creates an “ethnoscape” that lessens differences and ‘Americanizes’ everyone (Noonan 2004, 150). Far from supporting intolerance, this view argues that international adoption promotes tolerance and an appreciation of diversity.

Ressler et al. acknowledged that the cultural identity aspect is an issue in international adoption and devoted significant attention to the question. They observed: “by removing these children from their native lands and raising them in families and communities where they will always be different, Western countries may condemn these children to the psychological status of refugees” because they “bring with them histories of deprivation, loss and the psychological vulnerability that results from drastic cultural change” (Ressler et al. 1998, 182 and 185). They concluded that “adoption entails psychological risks” and “adopted children must forsake the histories of their biological families” (Ressler et al. 1998, 181). Not all, however, would agree. For example, one noted researcher in the field of adoption, Bartholet, stated that “there is no evidence that a multicultural identity is problematic from the perspective of the children involved” (Bartholet 1993, 98). She challenged these concerns as identity politics: “children are being sacrificed to notions of group pride and honor” (Bartholet 1993, 98). Moreover, Bartholet argued that: “the current tendency to glorify group identity and to emphasize the importance of ethnic and cultural roots combines with nationalism to make international adoption newly suspect in this country as well as in the world at large” (Bartholet 1993, 100).

Among some, there is the belief that children are resilient and a cultural myth suggests that children can ‘bounce back’ from adversity quicker than can adults. In 1966, the Social Planning Council of Metro Toronto embarked on a project to promote the adoption of Black children into white families, a program that met with some controversy. Those involved in this initiative believed that “whatever problems the child may face as a member of a minority group, they are for him inescapable, however, he will certainly be better equipped to cope with them if he has love and security in his formative years” (Social Planning Council of Metro Toronto 1966, 8). A coalition of Black social workers in Canada and in the United States, however, successfully lobbied to end this practice, citing racial and cultural identity as paramount to a child’s best interests.

Cultural identity and the right to know one’s family are protected under the Convention on the Rights of the Child. This means that all children, including internationally adopted children, are entitled to know who they are, where they come from, what their heritage is. The removal of a child from his/her culture represents not only the child’s loss of culture, but also the country’s loss. In Canada, the practice of sending aboriginal children to off-reserve boarding or residential schools has been called cultural genocide. Once the full implications of this racist practice had been recognized, Canada ended it. To its credit, the federal government has taken some steps to redress the wrongs associated with this practice and to ensure that they not be repeated. As a consequence, today, Aboriginal cultural rights are afforded greater sensitivity and respect in Canada.

Indeed, Canada has declared exceptions to some articles in the UNCRC because they can be interpreted as violating Aboriginal cultural rights. For example, Canada has declared an objection

to Article 21 of the UNCRC and, in so doing, stated: “with a view to ensuring full respect for the purposes and intent of Article 20 (3) and Article 30 of the Convention, the Government of Canada reserves the right not to apply the provisions of Article 21 to the extent that they may be inconsistent with customary forms of care among Aboriginal peoples in Canada” (Office of the United Nations High Commissioner for Human Rights 2005b). Yet, sending children internationally might represent an even more extreme form of cultural removal. In a review of countries that have ratified the UNCRC, Hollingsworth found that this right is not honoured in 20 per cent of signatory countries, and only superficially maintained in 60 per cent of them (Hollingsworth 2003, 217). How does a child’s status as “adoptable” or “adopted” alter or disregard these rights? In response to the May 2002 United Nations Special Session on Children, Canada stated that it would respect the “unique cultural identities of Aboriginal children” (Canada 2004). What of the unique cultural identities of the world’s children? Is Canada protecting its own indigenous peoples but freely appropriating the indigenous peoples of other countries?

The child does not choose to be adopted. This decision is taken on behalf of the child by the State. Adoption disclosure is common in many countries, but it was not addressed in the Hague Convention. This placed the Hague Convention in conflict with an article in the UNCRC which did recognize a child’s right to know his or her parents. Of course, the qualifier, as always, is if it is in the best interests of the child. For children who are removed from abusive or neglectful parents, it may not be in the child’s best interests to maintain contact, but the literature, current practice, emerging policy, and public opinion seems to weigh on the side of the right of the individual to know the identities of their birth parents. There is, furthermore, a lack of acknowledgment in the Hague Convention either of modern movements towards legislated adoption disclosure or the prominent desire of adults, who were adopted as children, to discover their birth parents. International transfer of the child mitigates all these possibilities. Disclosure in the sending country, even if legally mandated, may not be accessible from the receiving country. While outside the scope of this paper, it is worth remembering that a child’s entry into an adoption transaction may be the result of theft, trafficking, slavery, or other criminal activity (International Federation *terres des hommes* 2004). Indeed, guarding against trafficking in children and “inappropriate financial gain” were the prime motivators for establishing The Hague Convention.

### **Sending Countries and Receiving Countries in the International Adoption Policy Triad**

Much of the literature supports the practice of international adoption provided there are sufficient safeguards both to protect the interests of all involved and to prevent abuse and exploitation. This is the basic premise in almost all of the literature that supports international adoption and it seems to have been the driver behind major international policy responses to the issue. Any challenges to the *best interest of the child* approach focus their criticism in one of two areas: the impact of international adoption on the cultural identity of a child, as discussed above, and the independent policy responses (and needs) of sovereign nations and their relationships with (and obligation to) international law.

Looking at the issue in a microcosm, there has been an absence of analysis on the social structures that create the social-political conditions whereby either children are 'made available' for adoption or childless parents take action to claim the children of others. From a larger, or macro, perspective, there has been a parallel lack of debate about the responsibilities of receiving countries either to the sending countries and to the adopted children, globally.

What obligations do receiving countries have to countries that relinquish their children? What obligations does Canada have to sending countries? Is meeting the standards of the Hague Convention enough? Is the Hague Convention itself sufficient to protect children's interests and needs? Are the Hague Convention and the UNCRC complementary or contradictory? How do the UNCRC and the Hague Convention work together to secure a child's rights and best interests in circumstances where he/she migrates for adoption? Do the Hague Convention and the UNCRC complement or contradict the national laws and policies of Canada? These are some of the questions to be addressed in this section of the paper.

The most common criticism of international adoption is that it represents an exploitation of women, children, and Third World countries for the benefit of the western world. Ngabonziza, for example, found the north-to-south, east-to-west, poor-to-rich flows of migrant children clearly mimicked a deficit-surplus market, and viewed intercountry adoption as bordering on child trafficking. He charged the media with exploiting images of children needing rescue. Ngabonziza insisted that many of the children taken off the streets were not without families, but that the families lived in the streets with their children. For Ngabonziza, "poverty is not a reason for adoption" (Ngabonziza 1991, 80). Similar challenges have been made by Briggs who credits a visual iconography of the Madonna/child motif for increasing the practice of and support for international adoption (Briggs 2003, 184). Images of children with bloated bellies in dirt-poor environments lend themselves to the view that adoption is a viable and honourable solution to meet the needs of innocent, impoverished children. Furthermore, Herrmann and Kasper have argued that "the mere acceptance of international adoption overlooks the negative impact on children, birth mothers, adoptive parents, and the Third World countries from which the children are removed," and completely neglects the political and social impact on Third World countries from which these children come from (Herrmann and Kasper 1992, 46). One of the main objectives of Canada's Action Plan Against Racism has been stated as a need "to demonstrate federal leadership in the international fight against racism" (Canadian Heritage 2005a, 5). Yet, Canada's acceptance of foreign adoptees under the guise of providing a better life for Third World children can, itself, be seen as a racist and classist activity.

There are some who have gone so far as to argue that international adoption is an act of "cultural genocide" and the "ultimate form of imperialism" (Serbin 1997, 85). From this perspective, the sending of children abroad is seen as as clear a loss of human resources as can be described. Through international adoption, children as potential family contributors, labourers, and farm workers, are taken away from their families and out of their countries. From a global vantage point, it appears as if rich countries are taking youth from poor countries. Poorer countries, with fewer resources for enforcement, may be the most vulnerable to the very practice of child trafficking the Hague convention condemns. Less regulation, inspection, and supervision of the adoption process can result in less transparency and reduced confidence that the child's interests have been made

paramount. The lack of certain types of official social structures in sending countries may result in orphanages full of children who have parents, but have been separated from them as a result of famine, flood, civil unrest, and other potentially addressable issues. International adoption is clearly not a last resort in these cases; there are alternative strategies. Actions, for example, could be taken to address the social service infrastructure in stricken countries, and supports for the family of origin could be created.

In times of natural disasters, the Leysin Conference stipulated that every effort should be made to locate the parents of apparently lost children before they could be considered available for adoption (Bagley et al. 1993). The aftermath of the December 2004 South Asian tsunami illustrated how quickly this principle could put to the test. A statement released on 10 January 2005 by the Hague Convention underscored this point: “it is clear that in a disaster situation, like that brought about by the tsunami, efforts to reunify a displaced child with his or her parents or family members must take priority and that premature and unregulated attempts to organize the adoption of such a child abroad should be avoided and resisted” (The Hague Conference on International Law 2005b). At times of disaster, parents may be pressured into signing agreements they do not understand in the hope of obtaining health and safety provisions for their children. As one study has suggested: “in such circumstances, foreign agencies should provide material assistance for the families, rather than removing a child to adopters in another country” (Bagley et al. 1993, 140). This seems a clear example of the potential for exploitation of parents in the aftermath of natural disasters, and a call to not mine the country of its most valuable resource. Nevertheless, Bartholet has attacked such criticism, and has argued that: “sending countries can talk of their homeless children as ‘precious resources,’ but it is clear that the last thing these countries actually need is more children to care for. At the same time, the well-off countries of the world have no burning need for these children” (Bartholet 1993, 99).

The research to date has not adequately examined the unjust social structures that allow and encourage adoption. Indeed, the literature suggests that as long as Westerners have access and resources, adoption will continue to be seen as a solution to the problems of infertility, homelessness, and abandoned children. The market approach to adoption will go on. As Kapstein has observed:

The baby trade is likely to continue to grow, partly because it is no longer simply a response to wars and humanitarian crises. For better or worse, it now behaves much like a commodities market, with demand informing supply; and neither demand nor supply is likely to subside (Kapstein 2003, 1).

Moreover, Rios-Kohn found that “a thriving black market” has developed and that “children are treated as a mere commodity and the sale of infants can yield much higher sums of money” (Rios-Kohn 1998, 7).

Welbourne found that “some research suggests that the traditional welfare-based approach created, or at least failed to solve, longstanding issues for many adults: the needs of adopted children are more complex than simply the establishment of a new legal family (Welbourne 2004, 270). Furthermore, Hollingsworth conceded that desperation for a baby drives many parents, and they may

not even be aware of the conditions under which a child may have been made available to them (Hollingsworth 2003). The unjust social structures that allow children to be removed from their countries may be said to be as exploitive against desperate couples seeking to build a family as it is exploitive of sending countries and birth parents. Bagley et al. were sympathetic to this point but asked “should we, because of the manifest success of adoption placements, advocate the continuation or the increase or should we prevent the need for international adoption?” (Bagley et al. 1993, 154).

On the basis of her content analysis of existing legislation and regulations, including the UN Adoption Convention and the Hague Convention, Hollingsworth argued that neither addressed the need for “social change aimed at modifying the structures that result in children being apart from their families” (Hollingsworth 1993, 215). In her view, both the UNCRC and the Hague Convention have failed in this regard. Moreover, Lovelock has argued that:

the Hague Convention provides the fundamental framework, ultimately it is up to the political will of the Contracting States to ensure that definitions and related mechanisms are put in place to protect the welfare of children migrating for adoption (Lovelock 2000, 942).

Sadly, saving one child through intercountry adoption seems to condemn others to a life of deprivation. If international adoption is the preferred solution, and the vehicle that is supported publicly and by policy, then only a handful of the world’s needy children will be helped. The luck of the draw is no way to address child poverty, hunger, disease, and other ills suffered by Third World children.

Saclier has asked “should not the receiving State, instead of simply criticizing the State of Origin where such practices are taking place, be in duty bound to question its own responsibility when it allows its citizens to condone, consciously or not, such reprehensible practices?” (Saclier 2001, 18). On this question, much of the literature has been silent and, regrettably, so was Saclier. She merely stated that “the research community has an obligation to contribute its observations, based on research and theory, to ongoing debates on public policy” but rather than explore this question, she concluded that policy makers “will be forced to deal with the issues involved in permitting and or promoting international adoption” (Saclier 2001, 91). Unfortunately, she provided no further elaboration in her brief paragraph on implications for social policy.

The receiving countries are complementary to the sending countries. For the most part, poor, Third World countries send children to wealthy first world nations.<sup>4</sup> If the wealthy countries truly wished to help displaced and orphaned children in poorer countries, direct financial assistance to the social agencies in those countries, and capital investments would have been used as meaningful measures. In reality, the adoption of children from poorer countries represents a solution of abandonment of those nations by the west. Surely international adoption primarily must be seen as a measure aimed at serving the social needs of those in wealthy countries. And some even profit

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<sup>4</sup> Russia, Belarus, and the United States are major sending countries for Canada, but they can not be considered to be Third World countries.

from this practice. Agents, in fact, do take large amounts of money for arranging adoptions. Within Canada, Alberta, for example, has accepted the notion that some countries will require funds from adoptive parents, and has chosen to believe, perhaps naively, that these funds will be used to support child welfare services in the sending country. As reported to a recent Hague Conference, Alberta:

[understands] that this funding is the only means available to many countries to support and assist their child welfare systems. Adoptive parents must be made aware of the fees and agree to them prior to the adoption [and that] China, currently not a Hague jurisdiction, expects families to pay high fees, but also delivers services without delay (The Hague Conference on International Law. 2005b).

In relative terms, Canada receives a small number of foreign adopted children, with the number remaining constant at around 2,000 for the past several years (Table 2). The top-ten source countries for children migrating to Canada for adoption in 2002 were China, Russia, India, South Korea, Haiti, Vietnam, the United States, the Philippines, Belarus, and Colombia (Table 3). In 2002, these countries provided 79.3 per cent of all Canadian intercountry adoptions, a figure that rose to 80.4 per cent for 2003, the most recent year for which data were available. China, by itself, accounted for 41.5 per cent of the adoptions in 2002, and 50.8 per cent in 2003.

**Table 2**

**Number of Intercountry Adoptions for Canada, 1995-2003**

<b>Year</b>	<b>Number</b>
1995	2,010
1996	2,061
1997	1,800
1998	2,222
1999	2,019
2000	1,866
2001	1,874
2002	1,926
2003	2,181

Source: Adoption Council of Canada, 2006

**Table 3****Top-Ten Source Countries for International Adoptees for Canada, 2002 and 2003**

Country	Numbers	
	2002	2003
China	800	1,108
Russia	146	92
India	127	70
South Korea	98	73
Haiti	98	149
Vietnam	84	45
United States	53	74
Philippines	43	56
Belarus	41	50
Columbia	38	37

Source: Adoption Council of Canada, 2006

In a document prepared for a United Nations special session on children, Canada publicly declared its responsibilities with regard to receiving international adoptees: “we must [also] ensure that adoptions involving a change in country of residence are in the best interests of the child and comply with [The Hague Convention] and all other applicable provincial/territorial/federal laws” (Canada 2004, 67). But do we? The following section of the paper will examine how international adoption and the laws governing the protection of children’s rights and best interests comply with four major pieces of Canadian legislation.

## **RELEVANT CANADIAN POLICY AND LEGISLATION**

The Canadian legislation under review in this paper includes the Citizenship Act, the Canadian Multiculturalism Act, the Canadian Charter of Rights and Freedoms, and the Immigration and Refugee Protection Act. What implications do these pieces of legislation have for children migrating to Canada for adoption?

### **The Citizenship Act**

Under some circumstances, children can be placed in an unstable position vis-à-vis citizenship. Children who are born in Canada are automatic citizens. Despite this legal status, however, children do not enjoy full citizenship benefits as a result of their age. Children, for



example, cannot vote or stand for public office. Citizenship status for children, then, is less substantive than it is for adults. Even more precarious is the situation of children who migrate to Canada for adoption. Such children are sponsored as members of the family class of immigrants, and must, therefore, proceed through a naturalization process before they can become citizens. But again, they become the kind of citizen that does not enjoy the same rights as an adult citizen. The Citizenship Act offers no distinction, or even definition, concerning what a citizen is or how old a person should be before enjoying the rights and responsibilities of being a citizen. How, one might ask, does Canada reconcile this lack of citizenship rights in its national legislation while applauding and promoting its participation in the UNCRC?

The UNCRC contains provisions that grant several rights that can be interpreted as citizenship rights. In particular, Article 12 highlights the participation rights of a child. In its introduction to the UNCRC, UNICEF Canada has stated:

The Convention places equal emphasis on all of the rights for children. There is no such thing as a 'small' right and no hierarchy of human rights. All the rights enumerated in the Convention – the civil and political rights as well as the economic, social and cultural rights – are indivisible and interrelated, with a focus on the child as a whole (UNICEF Canada 2005).

But within Canadian legislation, there is a clear hierarchy: adults do enjoy more rights and responsibilities than do children. It might be asked, therefore, is a child a citizen of the world before she/he becomes a citizen of her/his country?

The current Citizenship Act was proclaimed into law in 1977. Since 1999, changes have been proposed by various government committees in an effort to update the legislation, including an effort to “lessen the distinction between natural-born and adopted children” on the basis of the need for both “principle and equity” (Frith 2003, 74). This amendment would update the legislation and address the question of citizenship rights, but it also seems it would be in contradiction to some provisions of the Canadian Multiculturalism Act, discussed below. For example, to “lessen the distinction between natural-born and adopted children” contradicts the multiculturalist rhetoric of celebrating, recognizing, and supporting the distinctions between Canadian-born and those born elsewhere.

### **The Canadian Multiculturalism Act**

In 1971, Canada became the first country in the world to adopt a policy on multiculturalism (Canadian Heritage 2005b). By 1988 the policy had become entrenched in legislation with the enactment of the Canadian Multiculturalism Act; An Act for the Preservation and Enhancement of Multiculturalism in Canada. There are strong opponents of this piece of legislation who have come to see it as contributing to divisions within the country. Many research studies have been produced that address this question, but these will not be addressed here. This section of the paper will ask whether and how the Canadian Multiculturalism Act impacts on children migrating to Canada for

adoption and how does it compare and fit with or contradict commitments Canada has made through its ratification of the UNCRC and the Hague Convention?

Multiculturalism has many meanings. For example, it has been argued that it is a:

description of the composition of Canada both historically and currently, referring to the cultural and racial diversity of Canadian society. It is an ideology that holds that racial, cultural, and linguistic diversity is an integral, beneficial and necessary part of Canadian society and identity. It is a policy operating in various social institutions and levels of government, including the federal government (Tator et al. 1995, 276).

Recognizing the distinctions between Canadians is what unifies Canadians, or so a popular myth goes. Today, multiculturalism is part of the Canadian national identity. To lessen such distinctions would blend us into a melting pot, and given our geographical location, might force Canada into assimilation with a larger US-dominated North America.

The Canadian Multiculturalism Act claims entitlements on behalf of Canadians, but do these apply to children? Do they apply equally to children born in and outside of Canada? Consider the following passage from the preamble to the Act: “persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practice their own religion or to use their own language.” This statement begs two questions: *whose* culture is the internationally adopted child free to practice? And are not internationally adopted children routinely denied this right by virtue of being brought to Canada by their adoptive parents and under the sanction of the Canadian government?

The Act clarifies that it is “all members of Canadian society” who shall benefit from official multiculturalism, not only citizens. This, then, would seem to be inclusive of children (both those born within and outside of Canada). Since “the Constitution of Canada recognizes the importance of preserving and enhancing the multicultural heritage of Canadians” it must surely apply to internationally adopted children, regardless of their citizenship status.

Canada’s policy of multiculturalism was established to “acknowledges the freedom of all members of Canadian society to preserve, enhance, and share their cultural heritage.” Are children members of Canadian society or are they members-in-waiting? Is there a distinction between Canadian-born children and adopted children born elsewhere? Whose cultural heritage are adopted children free to practice – the culture into which the child was born or the culture in which the child is raised? Most will answer both. Without question, there is evidence that many adoptive parents are improving their own “racial literacy” and finding ways to keep the child’s birth culture prominent in the child’s life (Winddance Twine, 2004); but is that enough? Some adoptive parents of girls born in China impose a new first name on the child, but allow the child to keep her birth name as a middle name. These are token gestures and beg the question: Are paper lanterns in the nursery enough?

## **The Canadian Charter of Rights and Freedoms**

The Canadian Charter of Rights and Freedoms outlines the fundamental freedoms that *everyone* in Canada has. These include: the freedom of conscience and religion; freedom of thought, belief, opinion, and expression; freedom of peaceful assembly; and freedom of association. The section on equality rights explicitly includes “protection and equal benefit of the law without discrimination and, in particular, without discrimination based on . . . age.” Like the Citizenship Act, the glaring omission of children raises questions. The Charter of Rights and Freedoms makes reference to children only in the context of minority language rights. Otherwise, references to “citizens,” “every one,” “anyone” and the like do not implicitly include children, and never have been interpreted to include children. Likewise, the Multiculturalism Act does not address children and, therefore, we must ask, when the Act states its intent is to “recognize that all individuals receive equal treatment and equal protection under the law, while respecting and valuing their diversity,” whose diversity is being respected and valued: the adoptive parents or the adopted child’s? And, therefore, who really holds the rights for the child?

## **The Immigration and Refugee Protection Act**

Children who are adopted from foreign countries and brought to Canada are classified as immigrants, in a category identified as “Immigration for Social Purposes” (Dolin and Young 2004). In such situations, then, the adoption process is also an immigration process, and, as a consequence, families find themselves grappling with the administration of immigration law and policy at some point in their adoption journey.

Canada frequently cites family reunification as a cornerstone of its immigration policy. Yet, international adoption is surely the very opposite of that. The breakup of families in poor countries to suit the needs of those in the first world is a harsh interpretation of some examples of international adoption, but not a false one. In a recent interview, the then-Minister of Citizenship and Immigration, Joe Volpe, said the family reunification goal of the Immigration and Refugee Protection Act (IRPA) reflects “the importance of extended families in many cultures” (Interview with Joe Volpe, *Canadian Issues* 2005). At best, then, it is disingenuous for Canada to claim a commitment to family reunification; at worst, it is hypocritical. In stating a desire to keep families together, Canada is implicitly demonstrating a paternalistic state. Under the IRPA, an adopted child cannot sponsor her/his (former) family members to come to Canada, despite the conditions in which they may be living, even if these conditions, coincidentally, would qualify them for refugee status. Under current Canadian policy, then, the adopted child loses all rights to his or her family of origin. The family that matters in this situation is the Canadian family. Conversely, the nation and culture that matters here must, therefore, be Canada and Canadian culture (including the culture of multiculturalism).

A child migrating to Canada for adoption enters the country as a member of the family class. As such, they are granted immediate permanent resident status, not citizenship. The process for such

children to acquire Canadian citizenship is lengthy, and adoptive parents often become frustrated with the bureaucracy and the 12-18 months it takes to process the child's citizenship application. Among several attempts to update the legislation to more directly address the plight of internationally adopted children, a recent proposal sought the ability to confer citizenship status on such children immediately (Frith 2003, 73). This initiative was supported by several Canadians who appeared before a Standing Committee on Citizenship and Immigration in the Spring of 2005:

I think the Canadian government has been ambivalent about international adoptions. I don't think it has come out and said that it actually approves of international adoptions, and as a result I think we have a wishy-washy law where adopted kids are not actually identified as Canadians at the point of adoption. I think the issue of whether we identify this process as being a valid process is one that is worth addressing, and I think this committee is well placed to address that (Mr. Donald Galloway. Canada. House of Commons 2005a).

Newfoundland and Labrador Families Adopting Multiculturally (NLFAM) represents members who have adopted children from China, Romania, Russia, Kazakhstan, Guatemala, Thailand, Nunavut, and the United States. NLFAM appeared before the Standing Committee on Citizenship and Immigration to advocate for immediate citizenship for children migrating to Canada for adoption. In its submission, it cited several examples of how immediate citizenship would facilitate the transfer of the child, using as support the finding of Selinske et al. that the:

powerful motivation of couples to acquire a child, and the naive motivation of others to rescue children from apparently substandard material circumstances, means that very often careful adoption practices which ensures the welfare of all parties is ignored, swept aside or even criticized (Selinske et al. 2001, 146).

Speaking on behalf of NLFAM, Lynn Haire reminded members of the Standing Committee that:

There are foreign travel difficulties for adoptive families. For families to travel without the child's citizenship in place, there can be requirements for special visas, which can be costly. Traveling with a child who does not share his or her parent's citizenship can also lead to many questions asked of adoptive families by authorities in foreign countries.

Awareness of child trafficking is very high these days, and rightfully so. However, adoptive parents are often subject to suspicion and undue questioning from foreign officials, a situation that could likely be circumvented if the child just had his or her parent's Canadian citizenship in place.

There is a perceived discrimination against adopted children. If a Canadian family is resident outside Canada and gives birth to a child, the child is not required to go through the landed immigrant process. Rather, the family can just apply for the

child's citizenship. We perceive the different citizenship process for biological and adopted children as discriminatory against the adopted child and the adopted family.

The volume of files that is now being processed every year for adopted children can be considerably decreased, giving Citizenship and Immigration employees time to work on more pressing and complicated citizenship issues (Ms. Lynn Haire, on behalf of NLFAM. Canada. House of Commons 2005b).

NLFAM, in fact, sees these checkpoints as barriers. What could be more valuable than time spent in securing the safety and well-being of children? As Eekelaar has suggested: "we may think that our present decisions concerning our children are directed at our children's interests, but they may be just as strongly directed at designing a future society as we would like it to be" (Eekelaar 2004, 178).

## **CONCLUSIONS AND RECOMMENDATIONS**

Despite the UNCRC, in Canada, children enjoy few real rights. As minors, children rely on parents and the State to protect their interests. As a first world nation, but with some notable exceptions with regard to its treatment of Aboriginal children and children of low-income families, Canada does a good job in most areas of child protection, the provision of early childhood development opportunities, and in supporting parents in caring for their children. But it is the fundamental right of being who you are that appears to be in jeopardy for internationally adopted children and this is an issue that rarely has been raised either in the research literature or through government policy.

Is international adoption a stealth immigration policy? Is it a stealth population policy? Perhaps, sadly, it has not been considered enough of a public-policy issue to warrant such extreme accusations, for it really is only an inconspicuous adjunct to the family-class aspect of immigration policy. As a consequence, it has not been given much thought at all. International adoption warrants international attention. Within Canada, the practice of international adoption requires increased scrutiny.

The issue is not whether adopting a child from a foreign country is wrong, or even that Canada's involvement in international adoption should end. The issues associated with international adoption are complex and layered. They involve the lives of some of the most vulnerable of the globe's inhabitants. People who cannot have children, and yet yearn for them, are acting out of love when they consider and then navigate the system of international adoption. That process, too, is complex and layered, and involves tremendous time, commitment, and resources (both financial and emotional). International adoption, as an ideal, is, therefore, not wrong. But as a practice and a policy, it merits challenges and scrutiny. To save or rescue a child, who is living in poverty and without much potential for prosperity, or even life itself, is noble. The selection of individual children deserving of western-style help, however, only contributes to "the continued oppression of tens of millions" (Herrmann and Kasper 1999, 50). If the only solution put forward to deal with

the massive numbers of Third World, poverty-stricken children is international adoption, then that problem will surely only grow, as will the numbers of children left unsaved. If, as Briggs has asserted that “to adopt a child is to participate in foreign policy,” then Canadians need to pause and consider their involvement in this practice (Briggs 2003).

The Hague Conference met in September of 2005 to examine the Convention on Intercountry Adoption. In preparation for that meeting, State Parties were asked by the Secretariat to respond to a questionnaire to identify issues or concerns they have with implementing The Hague Convention. Canada has not responded as a State Party, but individual provinces have, following Canadian convention that established the provinces as the contracting states in such circumstances. These responses articulated a range of issues and raised questions about the role of, or more specifically, the lack of a role for, the federal government. One of the recommendations of this paper (see below) is for the government of Canada to take leadership in developing and monitoring a coordinated approach to international adoption. The range of issues raised by the individual provinces lends weight to this proposal. For example, one province stated it had no concerns while Alberta charged that many sending countries had “no infrastructure to process adoptions.” British Columbia stated a desire to see the issue of child trafficking addressed, and Québec suggested that it wanted to discuss the issue of how children come to be available for adoption, including the issue of children being made available for adoption prior to their birth (The Hague Conference on International Law 2005c).

These issues hark back to the time of the Leysin Conference. At the juncture, 12 principles were developed, but there was concern that a lack of central administration would allow the practice of inconsistent application to continue. It seems that the Hague Convention, with its vulnerable “contracting states” authority, has allowed this inconsistent application to continue. While there are now specific organizations and/or bodies with relevant mandates *within* the contracting states, there remains no single, legal, over-seeing body to adjudicate the transfer of children for migration.

In 2003, the annual report to Parliament on Canada’s immigration program boasted of its achievements:

immigration has always been a defining characteristic of Canada, bringing together families, providing a safe haven to refugees and attracting newcomers with job skills. Canada has developed a dynamic and well-managed immigration program that is focused on our future needs and our international responsibilities” (Canada 2003, 3).

But the history of children’s immigration in Canada includes some dark periods. Between 1826 and 1939, an estimated 100,000 children between the ages of 5 and 18 years old were sent to Canada to serve as farm labourers or domestic servants. Ostensibly saved from a destitute life as “street Arabs,” these children either were taken from London streets or had been abandoned by parents who could no longer care for them. “Child savers” in the United Kingdom, supported by the Canadian government, operated child emigration societies that shipped children to Canada to awaiting “masters” who purchased them and, regrettably, too often abused and neglected them (Kohli 2003). These children were not formally adopted, and this paper is not claiming mass abuse of internationally adopted children, but the purpose and process is eerily parallel. As recently as

thirty years ago, in the chaos of the Vietnam War, Canada participated in another notorious child-saving scheme. Although organized by the United States, Canada received 57 babies who were assumed to have become orphaned and who were removed from their country. One of the tragic markers of this event was that the very first attempt to airlift the babies out of the country ended with a massive plane crash in which several of the children lost their lives. Today, the “Operation Baby Lift” orphans have been forming coalitions to find each other (Toronto Star, 17 April 2005, A5).

Within the literature, some have raised questions on whether children who are adopted into other countries are truly without a family. In the winter of 2005, Canadians were told a heartbreaking story of Alexandra Austin who was adopted out of Romania but unceremoniously returned five months later. Not recognized as a citizen of either country, her life has been, as she has stated, “stolen” from her (Austin, 2005). The 57 orphans of Vietnam (as they call themselves) and Ms. Austin stand as two visible reminders to us of the conditions under which Canada has accepted children deemed in need and the manner in which these children have been treated.

The goal and objective of taking someone else’s child as your own is loaded with socio-political implications. Accepting children from countries where human rights abuses are widely known (and often as widely ignored) is tacit endorsement of those policies. Canada accepts Chinese babies, for example, because otherwise, they may very likely come to harm. But allowing a handful of parents to save a handful of babies surely condemns the others, and may well serve to perpetuate the human rights abuses that created the pool of babies in the first place.

On the world stage, Canada ought not be identified as a participant in such a fundamental breach of human rights. On many occasions, Canada has acknowledged its international obligations not only to its children, but also to all of the world’s children. As such, it must re-examine the policies and practices related to international adoption. The notion that international adoption provides a kind of “universal family insurance for every child” must be challenged at the policy level (Ressler et al. 1998, 182). Other gaps in the research and literature on international adoption include the need to question the market approach to international adoption and to both view the issue through the lens of the human rights of the child and to begin to employ those rights as a framework for decision-making.

As a result of the foregoing discussion, recommendations are made in two areas, namely, policy and research.

### **Policy Recommendations**

Given that Canada’s participation in the practice of international adoption has proven problematic it is recommended that:

Canada encourage ratification of the Hague Convention by countries that routinely relinquish their children for adoption;

Canada develop a Children's Rights Policy Framework as a lens to view policy for its implications for children and, specifically, for internationally adopted children;

Canada review its policy and legislation to ensure compatibility with the United Nations Convention on the Rights of the Child and the Hague Convention on Intercountry Adoption;

Canada fund relief organizations to conduct public education campaigns highlighting the impact of adoption on the Third World countries, calling for collaboration among government, community, business, non-profit organizations, and individuals in raising dollars to support adequate and sustainable long-term infrastructure in the Third World countries;

Canada assume a leadership position and play the central coordinating role for the provinces and territories (except for Québec<sup>5</sup>) in all matters related to international adoption; and

Canada refuse adoptions from countries that are not signatories to the Hague Convention.

## **Research Recommendations**

Given the lack of policy research in matters related to international adoption, it is recommended that:

Faculties of Sociology, Cultural Studies, Social Work, Child and Youth Care, and Early Childhood Education should pursue research in international adoption and encourage undergraduate and graduate students to undertake research in this area;

Metropolis Canada should promote research in international adoption as it relates to immigration and settlement in Canada's urban centres. Further, Metropolis and its various research centres across the country should support and facilitate the development of Community-University Research Alliances to undertake research studies in international adoption; and

The government of Canada should fund an academic Research Chair to investigate the issues related to international adoption and Canada's role and to promote research into identity development and cultural adjustment ensuring that issues of racism, cultural heritage, multiculturalism, and citizenship are addressed.

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<sup>5</sup> It is recognized that Québec will preserve sole responsibility on its social matters, including child and family services.



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**APPENDIX 1: Status of Top Sending Countries to Canada with Regard to the United Nations Convention on the Rights of the Child and The Hague Convention on Intercountry Adoption**

Sending Countries	The UNCRC	The Hague Convention
<p>China</p> <p>(Top source country for all immigration to Canada)</p>	<p>Ratified in 1999.</p> <p>Reservation to <i>Article 6: 1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.</i></p> <p>The People’s Republic of China shall fulfill its obligations provided by article 6 of the Convention under the prerequisite that the Convention accords with the provisions of article 25 concerning family planning of the Constitution of the People’s Republic of China and in conformity with the provisions of article 2 of the Law of Minor Children of the People’s Republic of China.</p>	<p>Member State, signed in 2000; Ratified in September, 2005</p>
<p>Russia</p>	<p>Ratified in 1990.</p>	<p>Member State, signed in 2000; Not ratified</p>
<p>India</p> <p>(2<sup>nd</sup> top source country for immigration to Canada)</p>	<p>Accession in 1993.</p> <p>Declaration: As a developing nation, India requires support in the form of resources in order to meet the obligations as set out in the UNCRC and calls upon developed nations to assist them in meeting these obligations.</p>	<p>Non-Member State Signed and ratified in 2003 with no reservations or declarations.</p>
<p>South Korea</p> <p>(6<sup>th</sup> top source country for immigration to Canada)</p>	<p>Ratified in 1990.</p> <p>Reservation to <i>Article 9, paragraph 3: States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.</i></p> <p>Reservation to <i>Article 21 (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary.</i></p> <p>The Republic of Korea considers itself not bound by the provisions of paragraph 3 of article 9, paragraph (a) of article 21.</p>	<p>Korea is a member of The Hague Conference and participated in the 17<sup>th</sup> Session* but has not signed.</p>

<b>Sending Countries</b>	<b>The UNCRC</b>	<b>The Hague Convention</b>
Haiti	Ratified in 1995.	Haiti is not a member of The Hague Conference, although they participated in the 17 <sup>th</sup> Session* and has not signed.
Vietnam	Ratified in 1990.	Vietnam is not a member of The Hague Conference, although they participated in the 17 <sup>th</sup> Session and has not signed.
United States (8 <sup>th</sup> top source country for immigration to Canada)	Signed in 1995, not ratified.	Signed in 1994, not ratified.
Philippines (4 <sup>th</sup> top source country for immigration to Canada)	Ratified in 1990.	Non-Member State, signed in 1995, ratified in 1996.
Belarus	Ratified in 1990.	Member State, signed in 1997, ratified in 2003.
Colombia	Ratified in 1991.  Upon signature and ratification, Colombia stated its reservations with respect to age of child participating in armed conflict. The UNCRC sets the minimum age at 15, Columbia construes the age to be 18.	Non-Member State, signed in 1993, ratified in 1998.

Sources: Top Source Countries for immigration to Canada (Citizenship and Immigration Canada 2003); Top Ten Sending Countries for children migrating to Canada for adoption (Adoption Council of Canada 2002); UNCRC Status (UNHCHR 2005); Hague Convention Status (The Hague 2005)

\* Countries that were present at the 17<sup>th</sup> session (when The Hague Convention was adopted), though not member states of The Hague Conference, are entitled to become signatories and to ratify The Hague Convention.

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**For more information about CERIS contact:**

**The Joint Centre of Excellence for Research on Immigration and Settlement - Toronto  
246 Bloor Street West, 7<sup>th</sup> Floor, Toronto, Ontario, Canada M5S 1V4  
Telephone: (416) 946-3110 Facsimile: (416) 971-3094  
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