

AMERICAN BAR ASSOCIATION
CENTER FOR HUMAN RIGHTS

RECOMMENDATION

- 1 RESOLVED, That the American Bar Association supports the implementation of the Hague
2 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption,
3 which entered into force with respect to the United States on April 1, 2008, so as to advance the
4 responsible practice of intercountry adoption as an integral part of a comprehensive, concurrent
5 strategy to address the problems of children around the world who are without permanent homes;
- 6 FURTHER RESOLVED, That the American Bar Association supports international adoption as
7 an integral part of a comprehensive child welfare strategy to address the worldwide problem of
8 children without permanent homes and supports policies that make the process of international
9 adoption more timely, less costly and less burdensome, while ensuring that international
10 adoption practices are ethical and legal;
- 11 FURTHER RESOLVED, That the American Bar Association supports the provision of
12 comprehensive social services, economic support, and other family preservation resources in
13 countries of origin to parents, or other relatives who have assumed a parental role, so that they
14 can keep and nurture their children, and urges the United States government to provide resources
15 and technical assistance to support such efforts;
- 16 FURTHER RESOLVED, That the American Bar Association supports worldwide development
17 of safe and nurturing family-like temporary care for children without permanent homes pending
18 their reunification with families of origin or their permanent placement with adoptive families,
19 avoiding institutional placements to the greatest extent feasible so as to prevent the detrimental
20 effects of such placements on the cognitive and psychological development of young children;
- 21 FURTHER RESOLVED, That the American Bar Association supports laws, policies, and
22 practices that help assure that in-country adoption, permanent guardianship, and other permanent
23 nurturing placement options are readily available for children without permanent homes; and
- 24 FURTHER RESOLVED, That the American Bar Association urges the U.S. government, state
25 and local governments, bar associations, and relevant non-governmental organizations to
26 promote policies to improve child welfare systems and enhance opportunities for international
27 adoption that are consistent with these policies, in the United States and throughout the world.

REPORT

The ABA has long played a leadership role in the development of laws and policies designed to protect children's interests and enhance their welfare. The ABA has established important programs in this area through the ABA Center on Children and the Law, and the Family Law Section. In 1994, the ABA adopted a Resolution urging ratification and implementation of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. In August 2006, ABA then-President Karen Mathis launched the ABA Youth at Risk Initiative, an initiative of seminal scope and importance in the domain of child welfare. That initiative is being carried forward by the ABA's current President, William Neukom.

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It requires no elaborate exposition to recognize that much remains to be done to better the welfare of children. One major area where measures can be adopted to lower the number of children at risk is adoption.

There are many chambers in the adoption habitat. Stated broadly, every nation should have comprehensive social services, economic support and other family preservation resources that would enable parents or relatives who have assumed a parental role to keep and nurture these children in their country of origin. The Resolutions here enumerate that objective and urge our government to provide resources and technical assistance to support that objective. The Resolution also recognizes the importance of permanency. Hence, it supports laws, policies and practices that help assure a permanent nurturing placement, such as domestic adoption, international adoption or permanent guardianship. An effective child welfare system in any venue should encompass and support such options.

But even a small dash of realism teaches us that to achieve the broad objective of a comprehensive, effective and meaningful child welfare system, takes persistence and commitment and, inevitably, time. It is not an enterprise for the short-winded.

But an area where the need is immediate, pressing, and substantial, and where the ABA can make a beneficial difference, is the area of International Adoption. It is the support of International Adoption that is the central focus of the Recommendation (sometimes referred to as the "Resolution") preceding this report. Here is why:

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International adoption has grown dramatically over the decades since World War II, and it has developed important recognition as a method of serving the needs of children without homes worldwide. Adoption research has demonstrated that adoption -- whether domestic or international -- generally serves children's interests far better than foster care or institutionalization. Indeed, when children are placed in adoptive homes at an early age they do roughly as well as children raised by non-troubled birth families. At the same time social science research has demonstrated the severe harm to children done by time spent in the kinds of

institutions in which children without homes worldwide are generally held. And the developing science of early brain development has provided dramatic new evidence of the fact that infants' and young children's brains do not develop in the ways they need to in order to enable normal intellectual and emotional growth when the children are deprived of nurturing parenting relationships, as they are when they live in institutions.

Research on orphanages shows how devastatingly harmful institutional life is for children.[1] Even the better institutions have proven incapable of providing the personal care that human children need to thrive physically and emotionally. Research on children who started their early life in institutions demonstrates vividly the damage such institutions do even when the children are lucky enough to escape the institutions at relatively early ages. On the other hand, multi-disciplinary studies have shown that prompt adoptive placement of children without homes is a prime predictor of their physical, mental and psychological health.

Recently, the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption came into force with respect to the United States. (April 1, 2008). This Convention provides that international adoption should be preferred to any in-country placement except for family preservation and in-country adoption. It also provides new layers of protection against adoption abuses, and helps guarantee that international adoption will be handled legally.

To be sure, a Resolution supporting international adoption is most desirable, but more is required than a simple endorsement. Too often the process of international adoption has been costly and burdensome. There is no good reason for that to be so. Hence, the Resolution proposed to the HOD also supports policies that make the process of international adoption more timely, less costly, and less burdensome, while ensuring that international practices are ethical and legal.

Despite the obvious benefits of international adoption and the Hague Convention, it is at a crisis moment now, with the numbers of such adoptions into the U.S. down these last three years in contrast to the steady growth over the previous six decades. Romania is one nation that essentially closed down international adoption. Guatemala has recently closed down international adoption, pending development of a new regulatory regime. China has recently passed restrictions which limit significantly the parents considered eligible for adopting. Yet the needs of children without homes in these countries and worldwide for the nurturing homes that international adoption provides have not diminished. Indeed it seems clear, among other developments, that there are terrifying numbers of newly orphaned children produced by the AIDS disaster. Certainly, the needs have escalated.[2]

A primary concern in this field is that there have been abuses involving exploitation of birth parents or of children in connection with the transfer of children to adoptive parents in another country. This is not a concern to be taken lightly. We know that payments sometimes get made to birth parents in connection with their decision to surrender children, in violation of the laws prohibiting baby selling. We know that birth parents have been induced to surrender by fraudulent misrepresentation, and even that children have been kidnapped to be placed in adoption. These abuses, where they occur, have raised alarms. Some countries have eliminated or restricted international adoption in recent years in response to such abuses, and the numbers of children placed in adoption have plummeted as a result.

Some also contend that potential adoptees might be better placed in in-country foster care, and in that way benefit from remaining in their country and culture, as well as possibly still be linked in some way with their birth family. But foster care simply does not exist to a significant degree in the sending countries of the world. And even where foster care exists, it generally cannot compare to the benefits of adoption. Social science demonstrates clearly that while foster care works better for children than living in birth families characterized by child abuse and neglect, it does not work nearly as well as adoption. The bottom line for children who might find adoptive homes abroad is that nurturing foster care rarely exists now, nor will it ever likely exist as an option superior to adoption. [3]

We note and underscore that this Resolution is consistent with action taken in recent decades by the Congress in enacting the Multiethnic Placement Act (MEPA) as amended in 1996, and in enacting the Adoption and Safe Families Act of 1997 (ASFA). MEPA constitutes a powerful rejection of the idea that children must at all costs be kept within their community of origin, and the related idea that racial and ethnic communities are necessarily benefited by keeping “their” children within the group. ASFA similarly rejects ideas absolute priority of birth heritage as compared to other interests, and related ideas about the last resort status of adoption. ASFA also rejects the idea of holding in limbo children who have only technical ties to their birth parent. As noted above, this Resolution is also consistent with the Hague Convention on Intercountry Adoption which rejects the idea that children should be kept in foster or institutional care in their country of birth in preference to being placed in international adoptive homes.[4]

In summary, International Adoption now serves some 40,000 children per year. This Resolution proposes that international adoption should be an integral part of a comprehensive strategy to address the problems of children without permanent homes. The Hague Convention indicates that international adoption should be seen as preferable to all in-country alternatives except for adoption. This Resolution emphasizes the importance of prompt, lawful and ethical adoptive placement and rejects mandated holding periods that would require delay in international adoptive placement and place those children at severe and unnecessary risk.

This is a key moment in history for international adoption, with the potential for movement either in the direction of expanding the potential of international adoption to serve the needs of children without homes, or of closing it down. The ABA has an important role to play at this moment of crisis for international adoption. Given the ABA’s commitment over the years to promoting the best interests of children, this is an appropriate area for it to exercise a leadership role.

Today, many children spend many months and years of their lives in institutions, despite the fact that numerous prospective parents are ready and eager to step forward to adopt them. Eliminating international adoption altogether or limiting it to very last resort status does not serve the best interests of these children. The ABA, relying on the best that science and social science has to offer, is in a position to support the many who believe, along with the experts, that what children most need is a nurturing home as early in life as possible, and to take action to promote laws and policies which will better serve children’s best interests.

[1] Dr. Dana Johnson, a widely respected specialist in international adoption pediatrics, has appropriately condemned the practice of relegating children to institutions as follows:

[P]utting a child in a long-term institution is an act of abuse. Children in institutional care have deteriorations in many things that we want to see children improve in during the earliest years of their life. . . . Their cognitive abilities are lower, their growth is terrible and their brain development is abnormal as well. . . . *A few days in an institution should be as long as children are asked to endure.*

MENTAL DISABILITY RIGHTS INTERNATIONAL, HIDDEN SUFFERING: ROMANIA'S SEGREGATIONS AND ABUSE OF INFANTS AND CHILDREN WITH DISABILITIES at 21 (2006), <http://www.mdri.org/projects/romania/romania-May%209%20final.pdf>

[2] Documentation for various claims made in this Report is contained in Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, 13 Buff. Hum. Rights Law Rev.151 (2007).

[3] See BARTHOLET, *NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE* 81-97 (Beacon Press 1999).

[4] We recognize that international adoption will only help a limited number of children, and that an ongoing objective is to eliminate the kind of desperate poverty that produces parents unable to keep and raise children. But making the goal of improvement a deterrent for supporting international adoption is unrealistic. Denying children adoptive homes will not produce a better child welfare system in the sending countries. Neither individuals nor governments will use the money spent on international adoption to redress poverty or improve social services. Indeed, in many countries, allowing international adoption will benefit social services rather than impede them. Many countries require adoptive parents to pay fees or make contributions to orphanages, and many international adoptive parents and agencies make contributions on an ongoing basis to improve orphanage conditions and otherwise support social services in sending countries as a result of their adoption experience.

Respectfully submitted,

Karen Mathis,
Immediate Past President of the ABA

Jerome J. Shestack
Steven T. Walther -
Co-Chairs - Center for Human Rights

GENERAL INFORMATION FORM

Submitting Entity: Center for Human Rights

Submitted By: Karen Mathis – Immediate Past President of ABA
Jerome J. Shestack, Co-Chair, Center for Human Rights

1. Summary of Recommendation(s).

This Recommendation is part of the ongoing ABA initiatives to advance the welfare of children at risk. While supporting policies and programs to improve child welfare, the Recommendation focuses on International Adoption (sometimes called intercountry adoption). The Recommendation supports international adoption as an integral part of a comprehensive child welfare strategy to address the worldwide problem of children without permanent homes and supports policies that make the process of international adoption more timely, less costly and less burdensome, while ensuring that international adoption practices are ethical and legal.

2. Approval by Submitting Entity.

The Recommendation was approved through a series of e-mail communications and telephone conferences with members of the Center's Executive board.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The adoption of the proposed policy is consistent with and builds upon current ABA policies and programs dealing with promotion of the welfare of children at risk. It also is consistent with ABA support for the Hague Convention on Protection of Children and Cooperation in respect of intercountry adoption.

5. What urgency exists which requires action at this meeting of the House?

Intercountry adoption has severely declined in the past year, although many adoptive children are available and waiting for legal and ethical international adoption. Passage of this Recommendation would give the ABA an opportunity to restore momentum to ethical and lawful international adoption.

6. Status of Legislation. (If applicable.)

Unaware of any pending legislation.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

N/A

9. Referrals.

The Recommendation and Report was circulated for comment to more than 100 ABA members of sections and committees, and to a number of executives of prominent international adoption organizations who expressed interest in this subject. The Recommendation and Report was also circulated at a Council, meeting of the Section of International Law. Of the more than 100 ABA members and experts who were asked to comment, no one objected to the Recommendation. A few commented on the Report, suggesting additions, deletions or substitutions. These comments were evaluated, and where found to be meritorious, were incorporated.

Concurrently with submission of this Report to the ABA Policy Administration Office for calendaring on the August 2008 House of Delegates Agenda, it is being circulated to the following:

All Sections and Divisions
ABA Commission on Youth At Risk.

10. Contact Person. (Prior to August meeting.)

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11. Contact Person. (who will present the report to the House.)

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EXECUTIVE SUMMARYa) Summary of the recommendation:

The Recommendation supports international adoption as an integral part of a comprehensive child welfare strategy to address the worldwide problem of children without permanent homes and supports policies that make the process of international adoption more timely, less costly and less burdensome, while ensuring that international adoption practices are ethical and legal.

b) Summary of the issue which the recommendation addresses:

Intercountry adoption has severely declined in the past year, although many adoptive children are available and waiting for legal and ethical international adoption. Passage of this Recommendation would give the ABA an opportunity to restore momentum to ethical and lawful international adoption.

c) Explanation of how the proposed policy position will address the issue:

This Recommendation is part of ongoing ABA initiatives to advance the welfare of children at risk. While supporting policies and programs to improve child welfare, the Recommendation focuses on International Adoption (sometimes called intercountry adoption), specifying various ways in which intercountry adoption processes should be augmented and streamlined.

d) Summary of any minority views or opposition which have been identified:

There is no known opposition to this proposal.