

The Hague Convention on Intercountry Adoption: Policy and Public Decision Making

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Recent years have seen a dramatic decrease in intercountry adoption figures from many of the top sending countries to the US including China, Russia, Guatemala, and South Korea. This decrease, coupled with heightened regulation on intercountry adoption through the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, has caused much anxiety amongst adoption promoters, who attribute the primary cause of the decrease in numbers of adoptions to be new regulations enforced by the Hague Convention. Because of this association, many families who have adopted or are planning to adopt have a negative image of the Hague Convention on adoption. It would be unfair, however, to assign culpability to the Convention without investigating a particular country's adoption policy and practice. With deeper individual research into causes for adoption slowdowns from different sending countries, families may come to better understand the Hague Convention not as a bureaucratic failure contributing to a slowdown, but as a tool to achieve more ethical and transparent adoptions.

My research focused on domestic law in the top five sending countries to the United States in fiscal year 2009. In my analysis of sending countries' laws and regulations regarding adoption, I found that countries that have not signed onto the Hague Convention have still been influenced by Hague regulations and have incorporated

Chrestomathy: Annual Review of Undergraduate Research, School of Humanities and Social Sciences, School of Languages, Cultures, and World Affairs, College of Charleston
Volume 10 (2011): 27-54

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aspects of the Convention into their own domestic law. In my case study of families who adopted from China, I focused on knowledge of future implementation of the Convention for families who began the adoption process before 2008, and the impact of the Convention on families' decision-making process for those who began the process after April 2008. In this latter group, knowledge of the Hague Convention increased, a small percentage of families were influenced by the Convention (7.8%), and a larger group of families listed reasons in choosing to adopt from China that fall in line with Hague Convention values and regulations (31.8%).

In this paper, I first provide a review of my research questions and methodology. I then present literature delineating the establishment of the Hague Adoption Convention and its expectations. The second section of the paper considers the incorporation or rejection of the Hague Convention into domestic law by member and non-member countries. The third section includes full analysis of a study I conducted on families who have adopted or plan to adopt from China. The last section summarizes my findings from the case study of China. In conclusion, I discuss the need of HC regulations on intercountry adoption to protect the best interests of the children. I also explore areas for improvement in my own study and possibilities for future research.

Research Questions and Methodology

I framed my research to address the following questions: 1) how has the Hague Convention impacted domestic law in the China and the United States 2) do statistics from FY 2009 indicate whether knowledge of future implementation of the HC influenced families decision making process? and 3) Has the implementation of the Hague Convention influenced decisions made by families that have adopted or are in the process of adopting from China?

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (HC), May 29, 1993, guides signatory sending countries and receiving countries, as well as adoption agencies and families seeking to adopt

The Convention was enacted to ensure that "the best interests of the child" are upheld. Through creating a more transparent international

adoption system, it aims to prevent adoption abuses, specifically child trafficking (The Hague Convention 1993). Most notably, the Hague Convention includes the creation of a central authority in each member country that oversees all adoptions, facilitates accrediting agencies, and ensures that adoption agencies and families follow the standards entailed in the treaty. The subsidiarity principle, which instructs Central Authorities to first seek “suitable” family placement domestically before opening the child’s dossier to intercountry adoption, is one of the key tenets of the Hague Convention. The requirements to investigate the status of the child as adoptable or not, assuring that no money was used to bribe parents to relinquish their child, and to examine prospective parents to ensure their eligibility and readiness to adopt are also detailed. Furthermore, all Central Authorities are required to “prevent improper financial or other gain in connection with an adoption.”

To clearly frame the various positions present in the international adoption literature, I conducted a review of literature. This review enabled me to assess academic positions relating to my case study of China and to better understand critiques and commendations of the Hague Convention. While the list of authors debating within this field is fairly extensive, here I focus on a select few that assist in describing the larger debate within the field, and those articles that bear particular significance to my own research.

Joanne Selinske et al. researched actions leading up to the Hague Convention, and highlighted key phrases used in describing the need for an international form of protecting children and regulating adoption. In the UK and the United States, there were discussions regarding the need for an oversight body due to “serious gaps” and the lack of a “particularly well-monitored process” (Selinske et al. 659, 657). Due to various allegations of adoption abuses and the conditions of orphanages worldwide, increased protection for children was a great concern. This became particularly apparent when Ceaușescu’s rule in Romania ended, and the condition of Romanian orphanages was broadcasted worldwide, a driving force in the creation of the Convention on the Rights of the Child (the CRC). Thousands of people flocked to Romania to adopt children from the horrid orphanages. Following the creation of the CRC in 1989, the Hague Convention on Adoption

was developed in 1993. The Hague Convention's full implementation into US law occurred in April 2008. All adoptions between the US and other member countries initiated after April 2008 operate under HC law.

Judith Masson frames the regulation debate following the creation of the Hague Convention within the intercountry adoption field, providing a system with which to analyze various authors' value positions. Within these positions lie questions at the heart of the debate: could the extensive costs paid by parents be more beneficial if given to the birth family itself? Is regulation beneficial if it slows the process for individual children? These questions, along with others, surfaced repeatedly in my research. Masson's system proved helpful to quickly determine the stance of the various authors. She also helped to identify positions of parents in my case study of China.

Masson constructs three descriptions of various positions; abolitionists, pragmatists, and promoters. Abolitionists argue that when resource allocation is focused on intercountry adoption, human resources are being taken away from domestic welfare systems and other programs that help economically disadvantaged mothers. They argue that this occurs because governments and private welfare services profit from the high fees foreigners pay for the process, which would be comparable to a wealthy man's salary in poorer countries. Graff, an author falling into both this category, and the following category, the pragmatists, pushes for investment in social services worldwide that will "help children stay with their families," acknowledging intercountry adoption as a last resort (1). The abolitionist value position is questioned by Dowling and Brown, whose research on China has determined that many non-profits working in the field of children's services within China are financially supported by families who have adopted (Masson 359).

Masson's pragmatists push for more regulation to further protect interests of children, families, and agencies. They hope that with more regulation, adoption abuses will not occur. Unethical adoption practices slow adoption due to heightened regulation and many times stop adoption cases for a period of time. Adoption pragmatists hail the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption as needed progress because it is a

“formalized mechanism to ensure universally implemented ethical and legal practices” (Selinske et al. 665).

Promoters believe that there are too many regulations; they advocate making the process quicker and easier for parents and children. They argue against any form of regulation that requires children to stay in sending countries for a certain period of time, including certain applications of the subsidiarity principle focused on later in the literature review. Bartholet, a staunch promoter of intercountry adoption, argues that every barrier should be removed that blocks a child’s access to a family, because institutional life violates a child’s basic human rights. She acknowledges that there are systemic abuses including child selling, but believes that individual transgressors should be punished, not all families and children through shutting down the adoption program. Bartholet argues the media focuses on these sensational types of abuses instead of children living in institutions, which she considers a more widespread abuse (“Intercountry Adoption Thoughts” 188).

The Convention’s domestic implementation by more than eighty countries represents extraordinary progress in international law. However, the Convention stipulates that the standards only apply between two member countries. If one of the countries is a member and other country is not, HC regulations do not apply. It is unfortunate that out of the top five sending countries to the United States – China, South Korea, Russia, Guatemala, and Ethiopia – only two, China and Guatemala, are members of the Convention. Hague Adoption Convention standards do not apply to adoptions between the others and member countries such as the United States.

Some scientists argue that the US needs to continue allowing adoption from both member and non-member countries, including Guatemala, which is currently struggling to implement the Convention (Schmit 378, 391). Ethan Kapstein agrees, further arguing that not allowing adoption only shifts demand to other countries, which may have corrupt practices as well (Kapstein 115). However, the problem with continuing adoptions between member countries that have implemented the Convention and those that have signed the Convention but not implemented it, is that there is no incentive for the sending country to reform its policies to be in line with the HC.

Others, such as Graff, support banning adoptions from non-member countries (1). With this pragmatist/abolitionist position Graff counters Schmitt's promoter argument that not allowing adoptions between member countries and non-member countries would be "heartless" (Schmit 391).

If families and adoption agencies are not pushing to adopt from countries that have signed and fully implemented the Hague Convention, and the majority of the top sending countries are not members of the Convention, then it is logical to conclude that the Convention does not cover the majority of children being adopted. Top sending countries have not signed the HC and, therefore, the children of the countries and the families trying to adopt them are not participating in the Convention's impact.

Bailey, in an effort to gain a wider understanding of the proposed impact of the Convention before its implementation in April 2008, interviewed adoption professionals to determine what they expected the impact of the Convention would be for families, agencies, and children, (174). In her qualitative study, based on non-random and snowball sampling, professionals predicted the Convention would "protect children and families from unscrupulous adoption practices" through greater transparency and standardization; however, professionals also stated possibilities for negative "latent consequences" including smaller agencies closing (169). Professionals also believed that the increase in paperwork could lead to lengthened application time. (This increase includes an extensive background check to see if either parent has a history as a sexual predator.) Please note that participant numbers were too low for the results to be generalized and reflect a series of opinions rather than actual outcomes.

The subsidiarity principle, a central tenet of the Hague Convention, requires that suitable family placement is sought domestically before allowing the child to be adopted internationally. It is difficult to access the degree to which countries are practicing the subsidiarity principle. However, out of the five top sending countries to the US, South Korea, China, Ethiopia, and Russia, have all enacted policies to increase domestic adoption such as a waiting period before the child's case can be opened for intercountry adoption. Below I present various academic analyses of the subsidiarity principle.

Bartholet argues that domestic should not be favored over intercountry adoption (“Intercountry Adoption: Thoughts” 183). If domestic adoption must be emphasized, then the process for a child to be put on the list for international adoption and a country’s search for domestic options should begin simultaneously (193-94). Masson, in a pragmatist analysis, defines the subsidiarity principle:

“children who can most readily be cared for in the state of origin — those with good health and without disabilities — remain there. However, healthy babies are also the ones most likely to be sought after by prospective adoptive parents overseas, and therefore tend to be the focus of attention of intermediaries.” (159).

The perception that intercountry adoption primarily serves healthy children may be inaccurate, however. A recent study conducted by the JCICIS shows that 27% of intercountry adoptions in 2008 were for children with special needs, those with physical or psychological abnormalities or who are three years or older. (JCICIS 1). With the available data, JCICIS determined that in 2008, 59% of children adopted from China were special needs children. (Unfortunately, JCICIS only analyzed statistics for 2008 and data from previous years was not published [1].) This study dispels the argument that children being adopted in intercountry adoption are all healthy children. While only a small group of people from my research chose China because of its special needs program, families are increasingly encouraged to pursue special needs adoption when choosing to adopt from China (Holt International).

Johnson, continuing the discussion on the subsidiarity principle, recognizes that many sending countries have children available for adoption because of difficult “economic factors” which prevent most parents from adopting domestically. Johnson references scholars Barbara Yngvesson (2000) and Claudia Fonseca (2001) believe that “some features of The Hague Convention and other international legal codes” discourage domestic adoption because they come up with an “ideal adoptive family” that “leads social workers and lawyers to overlook local adopters... in favor of international adopters” (380).

Bartholet criticizes UNICEF for promoting barriers against

intercountry adoption by pushing “the idea that unparented children should be kept at almost all costs in their country of origin” (“Human Rights” 92). Her critique of UNICEF opens an extensive philosophical debate about a preference for in-country adoption that should be explored further in future research. As Bartholet argues, multiple studies have shown that a child raised in a family, whether it be of their own culture or not, is preferable to institutional care for the child (91).

Susan Sterrett, Johnson, and Dowling and Brown all provide invaluable analysis of China’s intercountry adoption program, the country I choose to focus on as a top sending county and as a member of the Hague Convention. Sterrett, furthering the discussion on domestic adoption through highlighting the intersection of domestic law and the subsidiarity principle in China, argues that the high fees for intercountry adoption combined with the one-child policy make it doubtful that children are placed in their home country for adoption, (similar situations may apply to other countries) (Sterrett 222). The author references Johnson stating that if domestic policy truly allowed for adoption, more people would be open to adopting girls in China domestically. However statistics show that intercountry adoption rates are decreasing in China; either children are being adopted domestically through foster systems, or there are not as many children being put up or “abandoned” for adoption. Unfortunately, this data is not widely published for China.

Kay Johnson provides an overview of Chinese adoption policy, noting the shift in policy from not allowing, to allowing intercountry adoption, to evolving into one of the largest sending countries. This move greatly increased funding in the welfare system and orphanages in China, and the author notes that many orphanages seem hesitant to lose the increased funding from international adoption, as domestic adoption is not as lucrative (Johnson 388, 394). Johnson’s research shows that many Chinese families were willing to adopt domestically but, according to the adoption law from 1991, both parents had to be over 35 and childless. This law inhibited Chinese domestic adoption in the 90s (379). In 1999, the age limit was dropped to 30, and the new law allowed for parents with children to adopt healthy orphaned children, and increased the use of the foster care system (390). This change might point domestic policy towards Hague convention standards.

Dowling and Brown point to the decrease in intercountry adoption from China, providing evidence of recent communication between the Chinese Center of Adoption Affairs (CCAA, the body overseeing all adoptions from China since 2005), the Ministry of Civil Affairs in China, and French authorities. Quoted in *Children Adopted from China*, the Ministry of Civil Affairs suggests that the decrease reflects “a strong growth in living standards for Chinese people; a cultural change and the application of The Hague Convention” (Dowling & Brown 357).

Kapstein contributes analysis on the need for further support of the Hague Convention, arguing for reinforcement through “common sense policies, diplomatic pressures... and adequate funding” (125). I further extend his argument in this paper to the family sector as well. Families should be encouraged to adopt from Hague countries in the best interest of the child. In turn, this would shift demand to Hague countries, creating further pressure on non-member countries to become members. Kapstein argues that adoption has become a market economy, and when sanctions are placed on one country with perhaps sketchy adoption practices, the demand continues, only shifting to a different nation (120). He says, “the baby trade...now behaves much like a commodities market, with demand informing supply; and neither demand nor supply is likely to subside” (117). If countries can standardize regulation through the Hague Convention, spikes in demand from certain nations will not necessarily coincide with widespread abuse of the system and multiple cases of child trafficking.

Kapstein views one of the strengths of the HC also a limitation as well with what he calls “home country control” which allows for each country to regulate its own program with a central authority. He argues that while this principle respects different cultural views of adoption, it also allows for corruption, and that foreign aid should be directed towards impoverished counties to spend on adoption regulation (124).

Graff contributes to the discussion with concrete plans for reform of the Hague Convention as cases of corruption still continue. As mentioned previously, Graff believes adoption should only be allowed between member countries. She also provides an eight-step plan to reform the current adoption practices with some notable key factors such as: making public agencies in the US whose “referrals have been

denied visas” (4), and prohibiting cash payments during the adoption process (3). She includes that the US should enforce agencies oversees to publicize their budgets in a more “standardized format” with more clear itemization (3), and limit payment for sending countries proportional to “comparable in-country work” (3).

Joan Heifetz Hollinger and Naomi Cahn analyze the decline in adoptions in recent years, contradicting what many parents in my case study of China believe, by arguing that the adoption slowdown in recent years is not because of the implementation of the Hague Convention, but due to various other factors including postponement of adoption from Vietnam and Guatemala, China’s new eligibility standards, and Russia and South Korea’s new commitment to domestic adoption (5).

Evolution of Laws

Below, I explain differences in adoption law in the United States for Hague Members as compared to non-Convention states. The United States, as a signatory to the Hague Convention, must apply Hague laws to adoptions between other Hague members. For adoptions between the United States and non-Hague countries, the law used is US federal adoption and immigration law. I then discuss adoption policy in China and give a review of China’s adoption history and its incorporation of the HC into domestic law.

The United States

In 1994, The United States signed the Hague Convention, and in 1998 President Clinton presented the Convention to the Senate for ratification (Kim and Smith1). Although the initial intended date for full implementation was February 2006, the IAA was not implemented in the US until April 2008. Following the terms of the Hague Convention, the United States has given to the State Department central authority to oversee and accredit adoption agencies wishing to work with another country that is a Hague member. During this accreditation process, agencies are required to become more transparent, come up with a strategy to become Hague Compliant, train all staff on Hague compliance, prove they are financially stable and have insurance backing all of their adoptions, and advise the board on fiscal requirements for Hague compliance (Hague Evaluation). One important area in which

they need to be more transparent is the declaration of fees and expenses associated with their adoption program. Agencies must declare all fees upfront and clearly (US Department of State, Intercountry Adoption Overview). The State Department lists on its website those agencies that are approved as well as those who have been denied accreditation.

In the U.S., the State Department, also now requires adopting parents to list any substantial altercations with the law, revealing if they have ever “been arrested, cited, charged, indicted, convicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations, but including driving or operating a vehicle while intoxicated or while impaired by or under the influence of alcohol or other intoxicant” (Form I-800-A). They must specifically declare any legally documented history of sexual harassment, presenting police records from all places in which they have lived. Proof of counseling or rehabilitation services must be attached to the forms as well. (Form I-800-A).

Lastly, another principal change for Hague Convention member countries is in the shift to shared responsibility in determining the eligibility of the child to be adopted. Both countries abide by these same basic standards:

1. The child is under the age of 16 . . . is unmarried, and lives in a Convention country;
2. The child will be adopted by a married U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least 25 years of age, habitually resident in the United States, whom USCIS has found suitable and eligible to adopt . . . with the intent of creating a legal parent-child relationship.
3. The child’s birth parents (or parent if the child has a sole or surviving parent), or other legal custodian, individuals, or entities whose consent is necessary for adoption, freely gave their written irrevocable consent to the termination of their legal relationship with the child and to the child’s emigration and adoption;
4. If the child has two living birthparents who were the last legal custodians who signed the irrevocable consent to adoption,

they are determined to be incapable of providing proper care for the child; and

5. The child has been adopted or will be adopted in the United States or in the Convention country in accordance with the rules and procedures elaborated in the Hague Adoption Convention and the Intercountry Adoption Act of 2000 (IAA), including that accredited adoption service providers were used when required, and there is no indication of improper inducement, fraud, misrepresentation, or prohibited contact associated with the case. (US Department of State, Who Can Be Adopted?)

With non-Hague adoptions, the United States determines eligibility using its own laws defining an orphan, and the sending country determines eligibility based on its own law. It is possible that another country would determine that a child meets the requirements for orphan status, but the US would not agree (Department of State, Who Can Be Adopted?). These children are not eligible for adoption in the US. For a child to be classified an orphan under the Immigration and Nationality Act (INA), they must have no living parents, have a single parent deemed unable to care for the child, and be under the age of 16 unless adopted with a sibling.

China

China's adoption history and legislative changes over the past two decades are unique among the world's top sending countries. I chose China as the focus of my research, because it is a Hague Convention member and was one of the top five sending countries to the U.S. in 2009. In addition, China's one-child policy, which was established in 1973 as a form of population control, distinguishes it from other top sending countries. This population control tool, combined with gender disparity and no legal method to put over-quota children up for adoption, created a socio-economic situation in which hundreds of thousands of female babies have been abandoned over the years (Dowling and Brown 354). These children have been placed in welfare institutions across China. From 1995 to present, in comparison to other sending countries in the world, China has adopted out the most children. The numbers of children adopted from China have

decreased each year starting in 2006; however there has been a slight increase from 2009 to 2010 with 3,401 children adopted in 2010 (U.S. Department of State. *FY 2010 Annual Report on Intercountry Adoptions*).

Table 1: Adoptions from China to the United States

[insert Table 1 here]

(US Department of State, China Country Information).

In the past two decades, China has changed perspective from discouraging domestic adoption to promoting it. In 1991, two years before the creation of the Hague Convention, Chinese legislation limited domestic adoption of abandoned children to couples at least thirty-five years old who are childless (Dowling and Brown 356). In 1998, the year Bill Clinton sent the Hague Convention to the Senate for ratification, deliberations began in China, and a new law was sent to the National People's Congress for review. In 1999, China passed a new law lowering the adoptive age limit to thirty and, more importantly, allowing families with children to adopt (390). This new law also encouraged domestic adoption of mentally and physically-handicapped children (Dowling and Brown 356).

Furthermore, in 2002 revisions were made to the one-child policy, which increased the potential for domestic adoption. These revisions

allowed “rural families to have a second child if their first born is a girl, minority groups with populations under 100,000 not to be subject to the one-child policy, an only child marrying an only child to have two children,” and “an infertile couple to raise a second child from the husband’s brother as their own” (Dowling and Brown 355).

In examining the history of adoption and current adoption policy in China, it is apparent that the Hague Convention has been an impetus for change in China’s adoption policy. China has implemented the Convention requirements through the creation of a central authority oversight body. In 2005, The Chinese Centre for Adoption Affairs was appointed the oversight body for both domestic and international adoptions. It also oversees the foster care system currently in place. China claims to be promoting domestic opportunities through foster care and pushing for domestic adoption through the CCAA and the Ministry of Civil Affairs (MCA). According to Johnson and Dowling and Brown, the 1999 law promoting domestic adoption reflected China’s effort to further mold its policies towards ones established in the HC. However, on CCAA’s website, the law states that couples must be childless to adopt. CCAA representatives maintain that couples do not need to be childless to adopt, but this message was incorrectly conveyed (as of February 2011) on their official website. If the law in Article Six listed on CCAA’s website is incorrect, then China is possibly sending mixed signals to its citizens, which can potentially confuse and discourage couples from domestic adoption. Or, it could simply be a sign of an overburdened or underfunded bureaucracy, unable to update its website regularly or maintain up-to-date communication.

Limited data on domestic adoption and decreasing numbers of intercountry adoptions from China raises concern over whether there are increasing numbers of orphans remaining in orphanages and foster care. One theory is that several factors – fewer children being abandoned, the push to adopt out special needs children, and a renewed focus on domestic adoption – have begun to reduce the high number of institutionalized orphans. If China continues on the trend it seems to be setting, its international adoption figures will most likely continue to decline (Dowling and Brown 358). Supporting statistical evidence, however, has not been produced to confirm this possibility.

Indeed, it may be that there are still as many orphaned children,

but China, wishing to protect its image, has created the new eligibility requirements to reduce rates of intercountry adoption of healthy children, meanwhile keeping available children in institutional and temporary foster care. If this is found to be true, the Convention's subsidiarity principle is being used to hide unethical and appalling action.

Impact of Hague Convention

According to the U.S. State Department, of the top five sending countries from 2009, only two were members of the Hague Convention: China and Guatemala. Guatemala has had problems implementing the Convention, and there have been numerous allegations of child trafficking. Therefore, adoptions are currently not being processed between the US and Guatemala. Ethiopia, Russia, and South Korea are not members of the Hague Convention.

Various conclusions can be made by looking at the chart below, Adoptions from FY 2005-2009. First, Ethiopia has risen to replace the position of Guatemala as a top sending country. In 2009, 2,277 adoptions were processed between the US and Ethiopia. As Ethan Kapstein argues, when supply from Guatemala slowed, demand continued, and a new market emerged to replace Guatemala. However, if the Guatemalan adoption program opens and wait times remain short, then demand may again shift towards this nation, which is closer in proximity to the US.

Second, families who adopted after April 2008 were most likely "grandfathered in" under the old laws if they had completed the necessary paperwork and the new regulations did not apply to them. Therefore, while one might assume that those who adopted in FY 2009 adopted under the HC for China, they likely did not, because it is improbable that their adoption was completed in 7 short months (between April 2008 when the Convention was fully implemented and October 2008 when the FY 2009 began). FY 2009 is the only time frame in the data below in which the Hague Convention had been fully implemented in the US. Frankly, to fully gauge the impact of the Convention, we would have to look at adoptions completed from FY 2011 onwards, giving an average two years to complete an adoption from start to finish. With China, the processing times have become even longer, so we might have to look at the data in FY 2012 or FY

**Table: Number of Adoptions from Top Five
Sending Countries from FY 2005-2009**

Insert Eijsink Table 2 here

In February 2011, adoption data for FY 2010 became available. Since the majority of my research had already been completed by that date, I decided to include the data from FY 2010 but limit my analysis to FY 2009. In fiscal year 2010, China (3,401), Ethiopia (2,513), Russia (1,082), South Korea (863), and Ukraine (445) were the top five sending countries (US State Department). Adoptions from Guatemala decreased to 51 (as was expected due to the pause on all new adoptions from Guatemala in 2007), and Ukraine replaced Guatemala as the 5th top sending country. Ukraine is not a member of the Hague Convention, which denotes China as the only Convention-member in the top five sending countries for FY 2010.

In researching families who have adopted from or are in the process of adopting from China, I determined key elements in families' decision-making process of choosing to adopt from China. The research question I developed for my study of China is as follows: Is China's implementation of the Hague Convention on Intercountry Adoption influencing decisions on whether or not to adopt from China? In my analysis, I found that for twenty-one individuals, the Convention played a role in their choice to adopt from China. For an even larger group, 31.8% of respondents, the transparency ethics

of the Chinese adoption program influenced their decision. This category likely reflects the regulations put in place by the Convention on necessary transparency and ethics.

I began my research with the following hypotheses. If parents adopting from China included China's membership in their decision making process, then the Hague Convention would prove to be integral in the adoption relationship between sending country and family. I attempted to analyze the case study of China by answering the following questions: If the Convention did not directly play a role in the decision-making process, then what were the factors that did play a role? Were these factors similar to those instituted by the Hague Convention, or were decisions based on other factors entirely? If the HC did not play a substantial role for the majority of my study participants, then it may be unlikely that it played a role in other families' decision-making process that chose to adopt from non-convention countries such as Russia and Ethiopia. In those relationships, there must be other factors present to sway the decision making process, such as history of adoption, the need of children in the country, or a preference for the culture of a certain country.

Due to the specialized nature of adoptive communities, it was impossible to obtain a random sample of the general population. Therefore, I used a snowball sample to recruit people from specific targeted areas where this population congregates. Participants were recruited through emails to yahoo groups and similar groups online for people who have adopted from China. The groups were sent a letter of consent with a link to a survey from surveymonkey, an online survey tool. By clicking on the link, participants consented to the survey, and had the option of exiting the survey at any point if desired.

China Case Study: Data and Methods

The survey I administered contained eight questions on three different pages. Each page had to be completed before viewing the subsequent page.

Page one:

1. What year did you begin the process to adopt your child?
2. What is your relation to the adopted child or future child to be adopted?
3. What country of citizenship does or will your adopted child have?
4. What were the main factors that guided your choice to adopt from China instead of another country? (Why China?)

Page two:

What is your understanding of the purpose of the Hague Convention on Intercountry Adoption? (This survey relies on your honesty to not search for the answer to this question. Please answer according to your current knowledge)

Page three:

1. Did China being a member of the Hague Convention on Intercountry Adoption influence your decision to decide to adopt from China? (Instead of another country)
2. Did you adopt your child before or after the Hague Convention went into effect in the United States in April 2008?
3. Are you comfortable with me contacting you for more information if needed? If yes, please provide your contact information- either email or telephone number.

I formatted the answers to these questions into code for statistical analysis. Question four, “Why China?” was the most difficult to group into codes because of its open-ended nature and the long responses provided by many parents. Admittedly, there might have been multiple ways to code these responses. Below, I list the categories I devised and explain the logic behind them.

Code 1: Abundance of girls associated with the one-child policy. This grouping isolates a motivation in the interest of the child

particularly related to gender. In analysis later provided, code 1 is grouped both by itself, and with code 6, interest of the child.

Code 2: Personal connection with China or Asia. This grouping includes preferences for the behavior and appearance of Chinese children. Respondents made comments such as, “Chinese children adjust well” and “beautiful children.” This grouping also includes preferences for the nation and its culture as revealed in comments such as China will be the “next possible world power.”

Code 3: Reliability, predictability, dependability of the adoption process. This grouping covers respondents who emphasized the “History of US and China adoption” and those who claimed to have sought a “well-established program.” This group of responses suggests an ethical problem. While it may be difficult for adoptive parents to understand as they anxiously wait for a child, adoption halts are usually placed between one country and another to protect children. Adoptions between the US and Vietnam, for example, have been halted numerous times because many children who were supposed to be available for adoption were taken from families through bribes, or families were told that their children would be returned to them once they were able to care for them.

Code 4: Transparency ethics. Responses in this grouping fall in line with the norms, principles, and regulations put in place by the Hague Convention. Responses included references to the transparency and ethical nature of the adoption process. As shown below in my results section, code 4 proved to be a strong indicator of indirect decision making on behalf of parents.

Code 5: Reasons benefiting already-formed family. This grouping covers various reasons serving the interests of the parents, ranging from the health of the child and birth mother to the safety of travel to China and the perceived “short wait time” and “ease of program.” Respondents also cited the perceived difficulty “for birth parents to ever find child and vice versa.” Such responses also raise ethical issues. Looking at the situation from the philosophy of the Convention, adoptions should always be conducted in the best interest of the child. It is not necessarily in the best interest of adopted children that it is “difficult to re-connect” with their birth parents, or that their birth parents could not “[come] out of the woodwork looking for” them.

These statements do not define the best interest of the child. I believe they define the interests of the parents, and that is why they were grouped as such.

Code 6: Reasons benefiting child. This grouping includes a wide range of responses reflecting a commitment to serve the interest of the child. Respondents referred to “less discrimination in home country toward Asians,” and the perception that “communism and culture attitude toward orphans is very negative.”

Code 7: God, visions, and dreams. Many parents relied on prayer and divine guidance in their decision to adopt. Others had dreams in which an Asian child appeared to them. One mother claimed that she always knew that she would adopt from China.

Code 8: Media, publicity, famous precedents. Some parents referred to influential media articles about adopting from China or a public figure who promoted adoption.

Code 9: Previous adoption. Parents who had already adopted from China referred to the desire that their children would share the same cultural heritage.

Code 10: Relatively low cost of Chinese adoption. Families in this category chose China over other countries because, for one reason or another, expenses were not as high for China as for adoption from another country.

Code 11: Waiting child program. Respondents in this grouping adopted a special needs child from China. Children in this program have a range of mental and or physical disabilities or are over six years old.

The fifth question, “what is your understanding of the purpose of the Hague Convention,” received responses that I divided into three categories. Code 1 included those who professed no understanding or revealed incorrect understanding. Code 2 covered those who revealed moderate understanding by referring to certain provisions of the convention without apparently appreciating its main goals. Code 3 included those who revealed practical correct knowledge of the main goals of the Convention. This category included references to the importance of insuring “appropriate and ethical treatment of all children eligible for adoption” and minimizing “the risk of corruption in the adoption process.”

The sixth question, “did China’s membership in the Convention influence your decision to adopt from China?” had three coded responses. Code 1 included those who were not aware of the Hague Convention when they adopted. Code 2 included those who claimed that it influenced their decision. Code 3 included those who claimed it did not.

Summary of Findings and Future Research

China, a Convention member, claims to have changed its laws to allow for greater possibility for domestic adoption, although, as noted above, there are discrepancies between the laws posted on the CCAA website, and actual law. There is also the question of whether China is using the subsidiarity principle to discourage intercountry adoption and hide lack of domestic adoption. China has, on the other hand, increased emphasis on special needs adoption, and has provided more transparency in intercountry adoption through regulation by its own Central Authority, the CCAA.

Is the subsidiarity principle really in the best interest of the child? This area of discussion is a subject for extensive philosophical and ethical debate, and should be explored further in future research. Some academics such as Masson support the subsidiarity principle, while others, Bartholet in particular, adamantly oppose it. For Bartholet, much of the debate focuses on the length of time the child is required to stay in foster care or orphanages. Proposals for streamlining the time a child is required to stay in institutional or foster care in his or her home country should be a focus in the next round of international adoption talks.

In my case study of China, the data I have collected has allowed me to better understand the extent of adoptive parents’ general knowledge about the Hague Convention, to see whether or not HC guidelines have impacted decisions to adopt from China and to document various reasons why people chose to adopt from China. Out of 283 respondents, 7.8% (21), *believed* the Hague Convention impacted their decision to adopt from China. Because this is such a small percentage, I argue that the Convention needs further support from the State Department and adoption advocacy groups, and families need to be better educated by agencies on the benefits of adopting from a country that has instituted the Hague regulations. It

seems likely, however, that a much larger group has been indirectly influenced by issues raised by the Hague Convention. In response to the “Why China?” question, 31.8% (90) referred to the importance of a transparent and ethical process, thus falling in line with a central value promoted by the Hague Convention. Therefore the Convention seems to have influenced a much larger group, even though participants didn’t make this connection themselves.

In summary, 78% of the 273 respondents were knowledgeable about the Convention, 9.2% had moderate knowledge, and 12.8% had no knowledge or incorrect knowledge. I also found that those who began the adoption process at a more recent date were more knowledgeable about the Convention. This relationship was significant with a p-value of .01, and a correlation value of .178, suggesting a moderate correlation. While this is a weak relationship, it is still statistically significant. Of those who adopted from 2008-2010, two (out of twenty-eight) individuals had no understanding, two (out of twenty-eight) had moderate understanding, and twenty-four (out of twenty-eight) had knowledgeable understanding.

In relation to whether or not the HC impacted parents’ decisions, 21 (7.8%) respondents were consciously aware that it did impact their decision. 139 (51.9%) said that they were not aware of the Convention when they adopted or it was not in effect yet at the time of their adoption. 108 (40.3%) responded that the HC did not influence their decision. Of the 7.8% who were impacted by the HC, 5 (17.9%) adopted during the time period in which the HC had been enacted in China and the United States. The other 16 (82.1%) began the adoption process anytime between 1993 and 2007. These individuals must have been impacted by the anticipated enactment of the Hague Convention.

In their response to the question regarding their choice of China, participants were permitted to list more than one reason, and therefore the total number of responses exceeds the number of participants. The most prominent group, with 128 responses (45.2% of all responses), included reasons benefiting the already formed family: the health of the child, safe travel inside China, closed adoption, etc. The second most popular group, collecting 105 responses (37.1% of all responses), featured personal connections to China/Asia. The third highest response fell to a group of responses indicating the

importance of transparency ethics, with 90 responses (31.8% of all responses). Limitations such as travel time required and age limits had 64 responses (22.6%). The category combining the One-child Policy and Reasons benefiting child garnered 58 responses (20.5%). Stability, dependability had 53 (18.7%) responses. Considered by themselves, reasons benefiting child had 33 responses (11.7%), while the one-child policy had 29 responses (10.2%). The category featuring God, visions, and dreams had 29 responses (10.2%). Previous adoption had 28 responses (9.9%). Media, publicity, and famous precedents had 6 responses (2.1%), as did the special needs/waiting child program.

It is notable that certain reasons why people chose to adopt from China highlighted specific characteristics of China's adoption program. For example, in the category limitations, people chose China because they fit the scope of China's adoption regulations better than regulations for other countries. Some respondents also emphasized the security and stability of China as a sending country based on its long-standing adoption program and history of successful adoption. Others cited a personal connection to China or Asia. Some adoptive parents referred to the one-child policy in China and the related social implications of child abandonment. Even if other sending countries established regulations conforming to the Hague Convention, these factors would still likely exist and continue to attract a portion of adoptive parents.

Nonetheless, many respondents emphasized the importance of a transparent and ethical adoption as a factor in their choice of China, and this directly reflects the impact on the Hague Convention. The large number of responses, with 90 participants filling this category, suggests that nations wanting to attract this group of potential adopters would do well to enforce adoption transparency laws.

It is apparent from several survey participant comments that the Hague Convention could use a marketing campaign designed to disseminate information about its aims and purposes. When asked to comment on the Hague Convention, one respondent suggested its objective was "to increase protection for the children (and increase paperwork, wait time and costs for the families)." Another applauded the effort "to safeguard the rights of children and to prevent abuse and exploitive international adoptions," but went on to complain, "I also

know that it has made it much more difficult and time-consuming for families to adopt internationally.” This respondent concluded, “the result, intended or not, is basically to have shut down international adoption.”

While many such allegations are simply misrepresentations, some of them are accurate, particularly concerning the time it takes for adoptions to now be processed for China. Sadly, in my examination of the history of adoption and current adoption policy in China, I learned that the heightened regulations, independent of the Hague Convention, imposed by the Chinese government have greatly slowed the adoption process. Many parents believe that delays are a direct result of the Hague Convention. While, yes, there are more requirements on the part of the parents, the Convention itself should not, in the long run, slow down the process; rather, by establishing a set of standard regulations and procedures, it should eventually make the process more efficient, once agencies and Central Authorities have incorporated the new process and figured out how best to guide prospective parents through it. At this time it is difficult to tell conclusively whether increased wait times are due to HC regulations or to other regulations that are not endorsed by the Hague Convention. Based on my research, I believe the increased wait time for China to be independent of the Hague Convention regulations. However, China may be discouraging adoption of healthy children under the guise of the subsidiarity principle, in order to not be viewed by the international community as a nation with an orphan crisis. If this is the case, it needs to be discovered, and pressure needs to be placed on China from the majority of the receiving nations to end this unspoken policy.

What is clear is that the Hague Convention provides a set of norms guided by the best interests of children, not of the prospective adopting parents. The increased transparency required on the part of parents, orphanages, agencies, and sending countries will take time to become accustomed to, and more time is needed to evaluate effective and non-effective strategies for its promotion, and effective and non-effective aspects of its policies. It is necessary for prospective adoptive parents to become educated on the necessity of transparent and ethical adoption procedures. Parents must look beyond their own best interest in wanting and waiting for a child to the best interest of the

child and all children waiting to be adopted safely and ethically. With this understanding, I believe parents should first pursue adoptions from countries that have signed the Convention. If a large number of parents from across the globe actively seek out Hague countries, this will encourage non-Hague members to become members, and in turn implement what experts have determined to be necessary safeguards for vulnerable orphaned children in intercountry adoption. A larger group of nations concerned with the best interest of the children in intercountry adoption will ensure more widespread application of the principles enshrined in the Hague Convention, and will open a more diverse dialogue for further reform and improvement within the adoption field.

Limitations and Future Research

Limitations of the current survey results include the absence of basic demographical data including parents' education level and household income. In addition, specific questions regarding parents' perception of the Hague Convention would provide more insights into their understanding and awareness. I would also re-phrase wording of possible responses I included in the question regarding participants' knowledge about the Hague Convention. I would offer only these options: "yes, it influenced me either directly or indirectly," and "no, it did not influence my decision," excluding the possibility that respondents were unaware of the Convention or convinced that it was not yet in place when they adopted. Since the adoption Convention was created in 1993, and participant adoptions from my survey began around that time, participants should have fallen into either one of the two categories, simplifying my results. I might have crafted a question to determine whether respondents who adopted before the Hague regulations thought they would have been influenced by them, positively or negatively. Another limitation of the study involves selection of cases through snowball sampling, which makes it more difficult to generalize results.

For future research, I would conduct a similar case study on families who have adopted or are planning to adopt from Ethiopia, Ukraine, or Russia, all non-member countries, seeking to assess their knowledge and understanding of the Hague Convention. I would like to know if their adoption service provider educated them on

the Convention and its member countries. I would then compare the results of those studies to results of this study for a more diverse cross sectional analysis of families who have adopted from both member and non-member countries to see which factors influenced adoptive parents the most from each respective country. Another area I would like to investigate would be the importance of spirituality, faith, and religion for those who choose to adopt. When looking for different adoption groups and reading the messages posted to the listserv, I noticed the common thread of faith, God, and prayer in many of the messages. This is also the case with adoption blogs, and the 10.2% of respondents who listed this answer as why they chose to adopt from China as compared to another country.

A final area of study crucial to the adoption field is analysis on the role of adoption agencies in promoting Hague countries as compared to non-Hague countries. As the primary liaison between the parents, the US government, and the sending country, adoption agencies provide valuable insight and advice to prospective adoptive parents. The type of information provided by the agencies in choosing a Hague country versus a non-Hague country may prove to be highly influential for families.

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