

CATASTROPHE, TERMINOLOGY AND ADHERENCE: ADDRESSING THE ASSOCIATED LACUNAE IN THE HAGUE ADOPTION CONVENTION

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Inter-country adoption remains one of the most complicated terrains in the realm of private international law. While inter-country adoption is not preferred over domestic adoption, socially and legally, its significance cannot be overlooked. This paper examines the various obstacles surrounding inter-country adoption that hinder its effective utilisation and full potential. These conundrums often result in blanket bans and unfavourable attitudes towards inter-country adoption. Despite establishing an intricate procedural framework and prioritising the best interests of the children, the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, 1993 ('Convention') is not free from certain lacunae that hinder it from achieving its objectives. There is a need to improve the efficiency of the Convention so that the potential of inter-country adoption can be utilised. This paper discusses four key issues that require greater attention to achieve the same. These include the lack of special recourses in situations of crisis or national disasters, the ambiguous language leaving room for loopholes, inhibiting national legal frameworks and a lack of adherence to the Convention. The author calls for special provisions, greater accountability and beneficial interpretations for the resolution of these issues, among other suggestions.

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I. INTRODUCTION

Inter-country adoption offers a viable alternative to providing nurturing homes to children when a suitable home cannot be found within national borders due to rigorous procedures or long waiting periods. In some cases, these difficulties are compounded by sudden changes in the state of origin or the receiving state.¹ One of the foundational principles of the Convention is the principle of ‘subsidiarity’.² The principle provides a hierarchy of placement of the child. This hierarchy is as follows: the biological parents, followed by the relatives, then adoption in the country of origin, and lastly, the inter-country adoption.³ Therefore, inter-country adoption promises a feasible alternative in the absence of other choices. In order to ensure a smooth process of inter-country adoption, cultural barriers and myths need to be dealt with, which foster an unfavourable outlook towards inter-country adoption in particular and adoption in general.

However, the paper does not deal with such sociological perspectives involving the paradigm of shifting mindsets and broadening perspectives. The discussion revolves around legal shortcomings, and the addressing of these lacunae is independent of such socio-cultural modalities. It is limited to what is missing in the Convention to deal with the challenges attached to inter-country adoption and what may be done to bridge these gaps. It is necessary to discuss these gaps in order to ensure the fruition of the objective of the convention. This article is an effort to deliberate upon the efficiency of the Convention and how it may be increased. It entails not only an increased number of possible adoptions but also how the same offers a better alternative than placement in an orphanage in the country of origin. Efficiency must take into consideration how inter-country adoption can lead to a fulfilling upbringing for the child by providing an enhanced quality of life compared to what could have been offered at the child-care home of the country of origin. Given the nature of private international law, only limited steps can be taken to make a convention as efficient as possible. Nevertheless, since inter-country adoption is a highly sensitive domain, every such step must be taken which can potentially help in the fruition of the objectives set in the convention.

This paper delves into four major areas where the Convention leave gaps that hinder the fulfilment of its objectives, namely, inter-country adoptions in events of disasters, ambiguous language, inhibiting domestic frameworks and issues in adherence. These issues have been selected because of their direct impact on the overall functioning of the Convention. These gaps act as limiters on the efficacy of the Convention; for instance, non-compliance has long been an issue which is directly linked to the inefficiency of international law.⁴

¹ Jennifer M. Lippold, *Transnational Adoption from an American Perspective: The Need for Universal Uniformity*, Vol. 27(2), CASE W. RES. J. INT’L L., 465 (1995).

² S.V. Brakman, *The Principle of Subsidiarity in the Hague Convention on Intercountry Adoption: A Philosophical Analysis*, Vol. 33(2), ETHICS INT’L AFF., 208 (2019).

³ *Id.*

⁴ Jacob Katz Cogan, *Noncompliance and the International Rule of Law*, Vol. 31, YALE J. INT’L L., 189 (2006).

Part II of the paper deals with the issue of the absence of special provisions in the event of crisis and catastrophe. While the general consensus remains that intercountry adoption is discouraged in the aftermath of disasters and conflicts, it may still operate as a last resort on the fulfilment of certain conditions.⁵ It analyses the increased vulnerability of children in such situations and the under preparedness of the Convention to deal with such issues with greater vigilance. The second section recommends certain statutory inclusions which may help in mitigating these dangers. Part III addresses a rather comprehensive issue of language and terminologies in the Convention, which are leading to legal uncertainties and decreased efficiency. It is argued that the usage of uncertain and broad terms is ultimately leading to the non-fulfilment of the objectives of the Convention. It further suggests different recourses for mitigating the issues posed by the language of the convention. Part IV highlights two facets of inhibiting national frameworks, *firstly*, unfavourable attitudes towards inter-country adoption leading to restrictive practices, and *secondly*, discrimination towards same-sex couples in inter-country adoption. Part V addresses the factors influencing State adherence to the Convention, including the attitudes of the States, their responses to the obstacles hindering the process of inter-country adoption and potential modifications to the Convention aimed at overcoming these obstacles and enhancing compliance among contracting States. Part VI concludes with the realisation that for achieving the full benefits of inter-country adoption, it is imperative to resolve the issues that surround the same by making suitable modifications in the Convention and increasing adherence to the same.

II. OVERLOOKING UNPRECEDENTED SITUATIONS AND ASSOCIATED LACK OF SAFEGUARDS

A written document of law is often devised bearing in mind the normal circumstances and ordinary way of affairs. However, there are several instances where the law prescribes extraordinary measures in response to exigent circumstances, recognising that the absence of such provisions may indicate inadequate preparedness to safeguard the interests of justice during emergencies. While the convention goes far in establishing procedural frameworks,⁶ it overlooks those situations where the state of origin may lack the necessary infrastructure to fulfil some obligations put forth in the convention. Although this procedural framework is one of the more significant prerequisites of the Convention, the sensitive nature of the subject matter necessitates consideration of unforeseen and extraordinary circumstances. Inter-country adoption must become an option only when all efforts of reunification with family have failed, and the Hague Adoption Convention can be fully complied with.⁷ The Convention does not specifically address such situations of crisis, which result in the application of the same ordinary framework in extraordinary circumstances. The below discussion aims to analyse and increase the safeguards as even though inter-country adoption may only be seldom by virtue of being the last resort, there is no reason why a greater protective framework must not be present if the same can help mitigate the associated dangers in these situations. Such situations have been discussed below in detail, and reforms have been suggested to prevent such inefficiencies.

⁵ For details on the viability of intercountry adoption in situation of crisis, see *infra* Part II.A on “Viability of Intercountry Adoptions in Such Events and its Undermined Potential”.

⁶ Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, 1870 U.N.T.S. 167 (adopted on May 29, 1993, entered into force on May 1, 1995) (‘Hague Convention’).

⁷ UNICEF, *Guidance for Protecting Displaced and Refugee Children In and Outside of Ukraine*, November 1, 2022, available at <https://www.unicef.org/emergencies/guidance-protecting-displaced-children-ukraine#4> (Last visited on June 25, 2025).

In the aftermath of the 2004 Tsunami in Southeast Asia, a number of Americans expressed their willingness to adopt the children orphaned due to the catastrophe.⁸ However, this was soon followed by a decision of the US Department of State to disallow these inter-country adoptions. The reasons for this were the inability of the state of origin to determine whether these children were adoptable or not.⁹ For the determination of the adoptability of the children, it was necessary to verify that the child is left without any guardian. Reports of trafficking and the potential emotional impact of adoption on trauma-inflicted children worked against the practice and perception of inter-country adoption.¹⁰ Situations like this bring forth the realisation that, in the event of calamities, the Convention lacks any special recourse, thereby exacerbating the current problems of procedural delays and blanket bans. Let us examine these issues and the feasibility of inter-country adoption in such circumstances. Furthermore, the last section of this part makes certain suggestions for catering to situations with extraordinary requirements and the workability of these recourses.

A. VIABILITY OF INTER-COUNTRY ADOPTION IN SUCH EVENTS AND ITS UNDERMINED POTENTIAL

A paradox emerges in situations where a disaster has devastatingly struck a region. The destructive nature of these events often disrupts the legal, social and financial working of the affected region, making the circumstances less conducive for the healthy upbringing of children. In such events, when the social and familial set-ups are uprooted, inter-country adoption may at first seem to offer an alternative which is highly required. However, labelling this alternative as a pragmatic first recourse would be viewing the situation through rose-tinted glasses. For the reasons mentioned above and as exemplified by past events, inter-country adoption certainly should not be the immediate remedy. For such an adoption may not be in the ‘best interests of the child’,¹¹ a term often used in the Convention, which makes no mention of such situations of emergency when it comes to inter-country adoption.¹² Inter-country adoption is often not a preferred option due to several legal issues like trafficking and abduction,¹³ along with social and psychological concerns attached to it, even under normal circumstances; in the event of a catastrophe, these concerns are further exacerbated.

In the statement released by the US Government after prohibiting inter-country adoption in the aftermath of the 2004 Tsunami, it was pointed out that it will be difficult to determine the status of adoptability of the child considering that the state of their missing parents is unknown and even if the child is orphaned, they are often adopted by their extended family members which may serve as a better option than completely displacing the child from the roots.¹⁴ These instances bring out a more nuanced outlook that encompasses the situations of crisis. If such an inquiry is not carried out, it will result in an infringement of due process of law, which can result in procedural injustice and lead to unwanted repercussions against the

⁸ Caeli Elizabeth Kimball, *Barriers to the Successful Implementation of the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption*, Vol. 33(4), DENV. J. INT’L L. & POL’Y, 561 (2005).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Hague Convention, Arts. 1, 4, 16, 21, 24.

¹² For details on the issues posed by the term, see *infra* Part III.A on “Hazy Terminologies and Varying Interpretations”.

¹³ J. Masson, *Intercountry adoption: a global problem or a global solution?*, Vol. 55(1), J. INT’L AFF., 141–146 (2001).

¹⁴ Press Release, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, *USICS Statement Regarding Adoption of Tsunami Orphans*, January 5, 2005, available at <https://2001-2009.state.gov/p/sca/rls/pr/2005/40350.htm> (Last visited on June 26, 2024).

best interests of the child. Expediency is to be aimed in these situations so that the child does not get stuck in a state of uncertainty due to a lackadaisical attitude of the concerned authorities in determining the status of adoptability of the child. Though this is not the only issue that ensues in such catastrophic situations when it comes to inter-country adoption.

Beyond procedural concerns, catastrophic situations also exacerbate risks like human trafficking. These risks in the aftermath of disasters led to several states putting a halt to both inter-country and domestic adoption following the 2004 tsunami.¹⁵ Conflicts also result in similar issues, resulting in a greater vulnerability to the ensuing risks. For instance, in the aftermath of the 1994 genocide in Rwanda, children were evacuated to Europe, Africa and the United States. Though some of these children were returned, others were subjected to illegal adoption by foreign families, including the case of 41 Rwandan children in Italy, as cited by a report submitted by Rwanda to the United Nations Committee on the Rights of the Child in 2003.¹⁶

The third aspect relates to a more psycho-social aspect of the emotional impact that the child undergoes subsequent to his/her adoption. For a child who has attained a certain age capable of processing their surroundings, this situation could be greatly traumatic, coupled with the detrimental situation of a compromised environment. Adoption is generally unsuitable immediately following a catastrophic event.¹⁷ The Special Commission recommended that, following the situations of disaster, priority must be given to reuniting the lost children with their parents, and any premature attempts at adoptions should be avoided.¹⁸ However, adoption may still prove to be an option in certain scenarios, for instance, when the orphaned child has not attained enough maturity to understand the ongoing situations of crisis or when it will take a considerably long time for the life-endangering situation to ward off, considering that such an adoption will be in the best interests of the child and a green signal has been given by the concerned legal authorities and is in line with international instruments.

There is no enabling provision in the Convention with regard to the safeguarding of children in such circumstances, specifically as the vulnerability of children to child trafficking under the pretext of inter-country adoption increases.¹⁹ The Convention was framed keeping in mind the lack of domestic and international instruments to deal with the issues posed by increasing inter-country adoptions.²⁰ These situations mandate greater concern when it comes to inter-country adoption since a setback is incurred to the existing resources, which might make it difficult to verify the benignity of intentions of prospective parents fully, since most of the resources are directed towards rehabilitation and damage minimisation. This also goes for social workers in both governmental and non-governmental organisations who may be preoccupied with the task of determining the adoptability of a considerable number of

¹⁵ The Department of Social and Economic Affairs of the United Nations Secretariat, *Child Adoption: Trends and Policies*, U.N. Doc. ST/ESA/SER.A./292 (2009).

¹⁶ Government of Rwanda, *UN Committee on the Rights of the Child: Second Periodic Reports of States Parties Due in 1998, Rwanda*, ¶162, CRC/C/70Add.22, (October 8, 2003).

¹⁷ Evan B. Donaldson Adoption Institute, *Intercountry Adoption in Emergencies: The Tsunami Orphans*, BETTER CARE NETWORK, January 20, 2010, available at <https://bettercarenetwork.org/sites/default/files/Intercountry%20Adoption%20in%20Emergencies%20-%20The%20Tsunami%20Orphans.pdf> (Last visited on June 26, 2024).

¹⁸ Press Release, HCCH, *Asian-African Tsunami Disaster and the Legal Protection of Children*, January 10, 2005, available at <https://assets.hcch.net/docs/76071c36-a666-4a28-a4f9-495cecb0c992.pdf> (Last visited on March 16, 2025).

¹⁹ See Hague Convention.

²⁰ G. Parra-Aranguren, *Explanatory Report on the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, HCCH PERMANENT BUREAU, 39, available at <https://assets.hcch.net/docs/78e18c87-fdc7-4d86-b58c-c8fdd5795c1a.pdf> (Last visited on March 16, 2025)

children. UNICEF also recognises that in the aftermath of emergencies, it becomes nearly impossible to comply with the convention guidelines, suggesting intercountry adoption only when all attempts at reunification of the child with the family are unsuccessful.²¹ The already sensitive framework of adoption becomes more susceptible to the dangers of human trafficking and child abuse. According to an information note from the Permanent Bureau of the Hague Conference on Private International Law ('HCCH'), it is specifically mentioned that in case of armed conflicts, the focus should be more on child protection measures rather than adoption. Therefore, the HCCH 1996 Child Protection Convention has been said to have greater suitability in such circumstances.²² The aftermath of the Haiti earthquake was followed by hastened adoptions under the guise of 'expedited transfers', which was not intended to lead to what has been labelled as 'evacuation of children',²³ also spells out the need for a cautionary approach in further consideration of the cases of impending adoptions. A more active role is needed here, especially when the Convention is a prime instrument of international law governing inter-country adoption, if the same is feasible;²⁴ it must be complemented with an alternative mechanism that can be called into action in such dire circumstances to ensure a greater protective framework.

B. A GREATER CAUTIONARY APPROACH MUST COME INTO PLAY

The above-mentioned incidents set forth cautionary tales for us that emphasise the need for a highly sensitive handling of inter-country adoption. Responsibilities may be listed out to the Central Authorities designated by the Convention for ensuring the expediency of the process of determining the adoptability of the child.²⁵ It should be observed whether the child would be able to manage the changes that would come with inter-country adoption after enduring such high levels of distress, or if time has to be given to ensure that the child returns to a state of normalcy. Other responsibilities may include conducting a comprehensive background check of prospective adoptive parents, assessing whether the parents would be able to provide for the child's needs, which will include not only the immediate requirements but also other such responsibilities that arise as the child grows older. These responsibilities also include consulting child psychologists for any potential negative impact that the child may face and devising methods of healthily coping with the same.

A distinct feature of the Convention is that it permits factual decentralisation through the Central Authorities, thereby not making it the sole operator of the Convention.²⁶ This must be extensively utilised to ensure a collaborative effort between NGOs, disaster management teams and the Central Authority. In practice, while the fulfilment of these

²¹ UNICEF, *Guidance for Protecting Displaced and Refugee Children In and Outside of Ukraine*, November 1, 2022, available at <https://www.unicef.org/emergencies/guidance-protecting-displaced-children-ukraine#4> (Last visited on June 16, 2025).

²² Press Release, PERMANENT BUREAU OF HCCH, *Children Deprived of their Family Environment due to the Armed Conflict in Ukraine: Cross-border Protection and Intercountry Adoption*, March 16, 2022, available at <https://assets.hcch.net/docs/0f9c08e9-75d0-4497-8ca0-12c595aa6845.pdf> (Last visited on March 13, 2025)

²³ Christina Baglietto, Mia Dambach, INTERNATIONAL SOCIAL SERVICES, "Expediting" Intercountry Adoptions Post-Earthquake in Haiti, August 2010, 8, available at <https://resourcecentre.savethechildren.net/document/haiti-expediting-intercountry-adoptions-aftermath-natural-disaster-preventing-future-harm> (Last visited June 25, 2025).

²⁴ See UNICEF, *Intercountry Adoption*, June 26, 2015, available at <https://www.unicef.org/media/intercountry-adoption#:~:text=The%20case%20of%20children%20separated,child%20abuse%2C%20exploitation%20and%20violence.> (Last visited June 25, 2025).

²⁵ Hague Convention, Art. 6.

²⁶ G. Parra-Aranguren, *Explanatory Report on the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, HCCH PERMANENT BUREAU, 81, available at <https://assets.hcch.net/docs/78e18c87-fdc7-4d86-b58c-c8fdd5795c1a.pdf> (Last visited on March 16, 2025).

requirements will warrant a requisite time period, expediency implies that this time is not arbitrarily stretched due to the lax attitude of the Central Authorities or the adoptive agencies. Support may be drawn from the Hague Recommendation on Refugee Children, which lays down extra safeguards in such cases.²⁷ These involve taking reasonable measures for reuniting the child with their guardians. However, the repatriation of the child to his or her country must not be done if it is not possible for the child to receive appropriate care and protection.²⁸ The recommendation also includes a collaborative effort with the Office of the United Nations High Commissioner for Refugees.²⁹ All these are safeguards where adoption happens on account of disturbances in the countries of origin. These cases must be dealt with on a priority basis. The role of the Convention must not just be limited to the actual procedure of the inter-country adoption; it must extend beyond that. This will include the post-adoption and pre-adoption technicalities. The above-mentioned suggestions can help increase the effectiveness of the convention while ensuring enhanced protection in extraordinary circumstances. For realising these goals, international support may be of particular significance, as has also been acknowledged in the Hague Recommendation on Refugee Children.³⁰ The utmost priority must remain on returning to the situation of normalcy through disaster management so that the above-mentioned safeguards can be successfully implemented.

Furthermore, for the facilitation of these provisions, the labelling of such areas must be done as ‘vulnerable’, and a provision may be added to that effect so that the special provisions may apply uniformly to the regions designated so. For the designation of vulnerable areas, the initial step would be to collect technical information through the local hospital and disaster management offices.³¹ Social vulnerability should be determined by looking at the income levels of households and any physical ailments or disabilities.³² While these are general indications of vulnerability, they may be used in the identification of vulnerable children. For reference, in case of a natural disaster, the statistics of orphaned children can be an indicator for being labelled as ‘vulnerable’. The direct legal repercussion of this insertion would be stricter checks in the adoptions, for instance, advanced documentation or the requirement of increased evidence for proving the adoption as benign. This can include testimonials from relatives, neighbours or acquaintances of the prospective parents. While there exists a possibility for biased views, it is nevertheless reflective of the social setup the child will grow up in. While this may be optional for usual adoptions, it should be compulsory for the ‘vulnerable’ category, given the disrupted social state following a disaster. This must be so as to ensure expediency in the case of usual adoptions and increased caution in the extraordinary cases. For an effective implementation of these rules, it is suggested that the receiving countries exercise enhanced vigilance, as the sending nation, already affected by a crisis, may be unable to carry out adequate checks in a worst-case scenario.

The creation of a special fund might prove to be a highly ambitious yet valuable initiative, providing financial assistance in operations looking for the missing parents of children to determine their adoptability, as well as operations for locating orphaned children.

²⁷ HCCH, *Recommendation Concerning the Application to Refugee Children and Other Internationally Displaced Children of the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption*, October 21, 1994, ¶2(a), available at <https://www.refworld.org/legal/resolution/hagueprivate/1994/en/17852> (Last visited on May 22, 2025).

²⁸ *Id.*, ¶2(a).

²⁹ *Id.*, ¶2(b).

³⁰ *Id.*, ¶2(a).

³¹ UNC INSTITUTE FOR THE ENVIRONMENT, *A Guide to Engaging Communities in Understanding Social and Physical Vulnerability to Disasters*, March, 2009, available at <https://www.mdcinc.org/wp-content/uploads/2017/11/Community-Based-Vulnerability-Assessment.pdf> (Last visited March 16, 2025).

³² *Id.*

International support becomes of high significance in the case of the failure of state machinery. An economic setback follows a natural disaster. This can be in terms of direct impact like damage to assets, crops, infrastructure etc., or it can be in terms of indirect impact which is visible in terms of gross domestic production, trade, employment etc.³³ Thereby, in an already hit resource base, it becomes difficult to direct the remaining assets towards adoptive process which includes an array of steps including locating children, confirming status of guardians, placing them in orphanages or child care and initiating eligibility inquiry. As far as the manageability of the fund, the Central Authorities can be tasked with the same. For the purposes of effective implementation, there can be a demarcation in the fund as the amount reserved when the state is the sending country and the amount reserved when the state is the receiving country. The latter fund can be used to aid the other nations from which the child is being adopted. This will be particularly helpful in cases where the state machinery has collapsed.

There can be two issues related to this proposal. *Firstly*, it may be considered as an intervention in the domestic affairs of a state, and *secondly*, states may not be willing to contribute to the fund since they find the objective of the financial assistance a little far-fetched, which may not even result in inter-country adoption. A collaborative effort may be made along with the United Nations Children’s Fund and United Nations Disaster Risk Reduction (‘UNDRR’). The United Nations International Children’s Emergency Fund (‘UNICEF’) runs on voluntary funding and receives a considerable amount from governments, intergovernmental, inter-organisational and global programme partnerships.³⁴ UNDRR also receives in-kind support, like Junior Professional Officers, from member nations.³⁵ In most cases, without international support, it takes a certain amount of time for the situations to return to a certain degree of normalcy before the adoption processes can be initiated. International support helps expedite this process, especially in cases of failure of state machinery. To resolve these issues, there certainly needs to be a shift in mindset. Determining the adoptability of children is a prerequisite for inter-country adoption, which needs to be carried out in a careful manner. Regardless of whether the children are adopted by foreign families, ultimately, their adoptability still needs to be determined to let the prospective parents living in both domestic and foreign lands know of their status. The assistance might only help expedite the process. It bestows an obligation on the international fraternity as they are active stakeholders in both sending and receiving nations. It is reiterated that inter-country adoption must be an option only when other necessary steps have been taken, like child-protection measures have been carried out, their adoptability is determined, the adoption would be in the best interests of the child and is feasible in the situation as discussed above. If it comes to be an option, the suggestions mentioned can help ensure a protected process. The generous response of people living in foreign lands in the past when it comes to inter-country adoption in disaster-impacted regions reflects a willingness on their part to come to aid in such situations of crisis, directly

³³ W. J. Wouter Botzen et al., *The Economic Impacts of Natural Disasters: A Review of Models and Empirical Studies*, Vol. 13(2), REEP, 167 (2019).

³⁴ UNITED NATIONS INTERNATIONAL CHILDREN’S EMERGENCY FUND, *Funding to UNICEF*, available at <https://www.unicef.org/partnerships/funding#:~:text=In%202023%2C%20total%20contributions%20to,UNICEF%20partnerships> (Last visited on March 10, 2025).

³⁵ UNITED NATIONS OFFICE FOR DISASTER RISK REDUCTION, *UNDRR Funding*, available at <https://www.undrr.org/about-undrr/funding> (Last visited on March 10, 2025).

by adopting the orphaned kids³⁶ or in terms of financial assistance.³⁷ Therefore, with the right mindset, this solution may prove to be feasible.

III. LACUNAE IN LANGUAGE: GENERAL AMBIGUITIES

The misinterpretation of the determinative terms used in the Convention might open up possibilities of exploitation and abuse. *First*, the use of broad terms without clear definitions may lead to sudden and temporary delays.³⁸ Some of these terms include “best interests of the child”,³⁹ “improper financial or other gain”,⁴⁰ and “reasonable professional fees”.⁴¹ *Second*, it leads to impediments in inter-country adoption by same-sex couples. The Convention was a result of extensive deliberations and debates spanning over three years of meetings. Some of the phrases were deliberately left ambiguous with the intention of providing leeway to the signatories to implement the Convention as per their own socio-economic realities.⁴² As a matter of fact, increased rigidity and specificity will work against the widespread acknowledgement of the treaty. However, this later proved to be a double-edged sword, which led to the development of certain impediments that have hindered the complete fruition of the Convention.⁴³

Due to a lack of sanctions, the implementation of treaties, such as this, depends on the willingness of the contracting states. In such a scenario, leaving a wide scope for discretion, though well-intended, will only serve as a hindrance to achieving the objective of the treaty. Considerable liberty has been given to the contracting states in deciding the definitions for themselves. While this may be a potential incentive for contracting states, the same may backfire and may result in more harm due to the introduction of legal ambiguity that can ultimately prove to be an impediment to the fruition of the Convention. The subjecting condition of interpretation must be that it must not run contrary to the objectives laid out in the convention. For the practical working of this suggestion, it is necessary that the Central Authorities keep a check on such prejudicial interpretations that work against *bona fide* adoption practices. One way of doing this could be to analyse the reasons behind the denial of adoption and examine how far they relate to prejudicial outlooks. The section also deals with certain other errors in the language of the Convention, which may lead to legal uncertainties. It mentions various modifications that may be made to the Convention in order to bring some clarity.

A. HAZY TERMINOLOGIES AND VARYING INTERPRETATIONS

³⁶ Deborah Bach, *Families Rush in to Adopt Tsunami Orphans*, SEATTLE POST-INTELLIGENCER, January 27, 2005, available at <https://www.seattlepi.com/seattlenews/article/families-rush-in-to-adopt-tsunami-orphans-1165167.php> (Last visited on June 26, 2024).

³⁷ *India: Tsunami - A Report to the Nation*, RELIEF WEB, June 3, 2005, available at <https://reliefweb.int/report/india/india-tsunami-report-nation> (Last visited on December 23, 2024).

³⁸ Rachel M. Schupp-Star, *The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption: the Need for a Uniform Standard for Intercountry Adoption by Homosexuals*, Vol. 16 (1), ROGER WILLIAMS U. L. REV., 139–166 (2011) (‘Schupp-Star’).

³⁹ Hague Convention, Arts. 1, 4, 16, 21, 24.

⁴⁰ Hague Convention, Arts. 8, 32.

⁴¹ Hague Convention, Art. 32.

⁴² Chad Turner, *Hidden Potential: Using the Overlooked Provisions in the Hague Convention to Ensure Children Have Families*, NATIONAL COUNCIL FOR ADOPTION, May 1, 2020, available at <https://adoptioncouncil.org/publications/adoption-advocate-no-143/> (Last Visited on March 11, 2025).

⁴³ See Notesong Srisopark Thompson, *Hague is Enough? Call for a More Protective, Uniform Law for Guiding International Adoptions*, Vol. 22(2), WIS. INT’L L.J., 441 (2004) (‘Thompson’).

The Convention has been heavily criticised as a document bearing terms of an uncertain nature, leading to varying interpretations.⁴⁴ Discretion is given to the national governments to decide the meaning of determinative terms, which guide not only the course of adoption but also the possibility of one. These relate to phrases like ‘best interests of the child’, ‘public policy’ or the designation of ‘competent authorities’. Emphasis has been laid on the significance of the contracting states to lay down their own definitions of the terms.⁴⁵ One reason for excluding definitions was to provide flexibility to the contracting states in the implementation of the Convention so as to suit the diverse circumstances.⁴⁶ Flexibility can only be provided to an extent, as excessive leeway would be counterintuitive to ensuring uniformity in the intercountry adoption standards.⁴⁷ International adoptions must be regulated at a level offering more global consistency while avoiding national-level uncertainty.⁴⁸

Additionally, criticism has also been meted out to the choice of words.⁴⁹ The need for the use of prohibitory language has also been emphasised in relation to curtailing illegal activities.⁵⁰ This has particularly been noted in the use of the word ‘prevent’ instead of ‘prohibit’.⁵¹ The use of the latter decreases the gravity of the objective.⁵² The term ‘prevent’ has been used thrice in the convention and speaks about the prevention of abduction, sale, trafficking in children and any improper financial gain.⁵³ While the prohibitory language may be used more in Public International Law (‘PIL’),⁵⁴ the use of prohibitory language here will be appropriate. The boundaries between them blur in the case of inter-country adoption, as the same may lead to trafficking, which falls primarily within the ambit of PIL. The models given by the HCCH will help in the proper implementation of the Convention by laying down a guidebook.⁵⁵ However, a certain and limited degree of flexibility has to be given to the stakeholders owing to the high diversity of situations by adopting a middle path between a restrictive definition and uncertain terminology.

More significantly, the meaning of adoption is defined in terms of uncertain phrases, giving each individual state the liberty to devise its own interpretations.⁵⁶ Similarly, the slightest misinterpretation of the word ‘adoptable’ by the contracting states may lead to exploitation and abuse like the determination of age eligibility, coerced surrender of legal custody, etc.⁵⁷ One of the most used phrases in the convention, ‘best interests of the child’,⁵⁸ may create some loopholes even though the same conveys the intention of upholding the

⁴⁴ *Id.*

⁴⁵ Holly C. Kennard, *Curtailing the Sale and Trafficking of Children: A Discussion of the Hague Conference Convention in Respect to Intercountry Adoptions*, Vol. 14(4), U. PA. J. INT’L L., 623–649 (1994) (‘Kennard’).

⁴⁶ Thompson, *supra* note 43.

⁴⁷ See Thompson, *supra* note 43.

⁴⁸ Bridget M. Hubing, *International Child Adoptions: Who Should Decide What Is in the Best Interests of the Family*, Vol. 15(2), NOTRE DAME J.L. ETHICS & PUB. POL’Y, 655 (2001).

⁴⁹ Kennard, *supra* note 45.

⁵⁰ *Id.*

⁵¹ Hague Convention, Arts. 1, 8.

⁵² Kennard, *supra* note 45.

⁵³ Hague Convention, Arts. 1, 8.

⁵⁴ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106(XX) (adopted on December 21, 1965) Art. 4; Convention Relating to the Status of Refugees, G.A. Res. 429(V) (adopted on July 28, 1951) Art. 3.

⁵⁵ HCCH PERMANENT BUREAU, *Recommended Model Forms for Use Under the 1993 Adoption Convention*, available at <https://www.hcch.net/en/publications-and-studies/details4/?pid=9010&dtid=65> (Last visited on March 16, 2025).

⁵⁶ Thompson, *supra* note 43.

⁵⁷ *Id.*

⁵⁸ Hague Convention, Arts. 1, 4, 16, 21, 24.

supremacy of children's welfare. The responsibility for determining the best interests of the child has been explicitly laid down for the countries of origin.⁵⁹ The phrase 'best interests' in itself is a wide one. Examples of misuse of this term may be seen in the form of immigration of children to other countries by the United Kingdom under the pretext of best interests, or the forced adoptions in Australia and removal of the children from parental care by deeming the same not to be in their best interests.⁶⁰ Article 16 of the Convention empowers the Central Authority to determine what will be considered as the 'best interest of the child' in view of a particular adoption.⁶¹ This leaves the phrase subject to varying interpretations across the contracting states.⁶²

The concept of 'best interest of the child' may vary greatly as it may be shaped by the cultural and religious beliefs of a sending country as well.⁶³ For instance, a country which has an unfavourable attitude towards adoption may favour institutionalisation rather than inter-country adoption. Due to challenges in countries of origin for best interests determination, it is recommended that the number of inter-country adoption are limited to a level which can be dealt with as in the case of Madagascar.⁶⁴ Considering that this can lead to a decrease in the number of inter-country adoptions, this level should steadily increase with constant developments in the area, or it should be implemented only for a short while in dire and extraordinary circumstances until the situation returns to normalcy. The upside of this will be the prevention of child trafficking and *mala fide* adoption practices.

Other recommendations include a more proactive role of the receiving countries in the determination of their best interests.⁶⁵ An active role in this context can include conducting background checks on both the adopted child and the prospective parents to ensure a valid adoptability and reduce the risks of trafficking. These checks will help determine if the adoption was truly in the best interests of the child. It is impossible to lay down an exhaustive definition of what may constitute the best interests, considering the enormous diversity of cases and circumstances that ensue in adoption. However, it may be helpful to include a few terms to create some criteria.

Another uncertain term appears in the first Article, which asks the states to establish safeguards to ensure that inter-country adoptions take place with respect for the child's 'fundamental rights as recognised in international law'.⁶⁶ While this term was left open-ended to avoid limiting the scope of the rights and to allow for their expansion on the international plane, greater clarity might have been achieved had the suggestion to replace it with 'as recognised by international law in the instruments mentioned in the Preamble' been accepted.⁶⁷ This is because the Preamble lists down certain specific conventions for a reason,

⁵⁹ *Id.*, Arts. 4, 16, 21.

⁶⁰ Nigel Cantwell, *The Best Interests of the Child in Intercountry Adoption*, UNICEF OFFICE OF RESEARCH (2014), available at <https://www.unicef.nl/files/UNICEF%20REPORT%20-%20The%20best%20interests%20of%20the%20child%20in%20intercountry%20adoption.pdf> (Last visited on December 24, 2024) ('Cantwell').

⁶¹ Hague Convention, Art. 16.

⁶² Erica Briscoe, *Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption: Are Its Benefits Overshadowed by Its Shortcomings*, Vol. 22, J. AM. ACAD. MATRIMONIAL L., 437 (2009) ('Briscoe').

⁶³ Thompson, *supra* note 43.

⁶⁴ Cantwell, *supra* note 60.

⁶⁵ *Id.*

⁶⁶ Hague Convention, Art. 1.

⁶⁷ G. Parra-Aranguren, *Explanatory Report on the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, HCCH PERMANENT BUREAU, 51, available at <https://assets.hcch.net/docs/78e18c87-fdc7-4d86-b58c-c8fdd5795c1a.pdf> (Last visited on March 16, 2025).

and compliance with these particular instruments would lay down a more definitive list of child rights. Ambiguity may arise in situations where, between two contracting states, one is party to a multilateral convention relating to child rights in any way while the other is not, essentially setting different standards for inter-country adoption.

Nevertheless, this ambiguity is inevitable as the same arises even in the absence of such an inclusion. This underpins the inter-dependency of the mentioned international conventions with inter-country adoption. Therefore, it is imperative for the states to ratify conventions relating to child rights to ensure a more uniform application of inter-country adoption.

Concern has also been raised on the terms relating to the financial aspect of inter-country adoption,⁶⁸ namely, ‘improper financial or other gain’⁶⁹ and ‘reasonable professional fees’.⁷⁰ What qualifies as ‘improper’ remains the discretion of the Central Authority, which should ensure that adoption agencies do not charge fees exceeding the required amount.⁷¹ Similarly, the addition of the term ‘reasonable professional fees’ was acknowledged during the framing of the Convention as potentially resulting in different outcomes and interpretations for similar cases.⁷²

Furthermore, Article 8 leaves it to the contracting states to consider what is to be interpreted as practices against the Convention.⁷³ While the preparatory notes behind the Convention provide that such a question can be examined during a meeting convened by the Special Commission,⁷⁴ it might not be possible to convene such meetings with respect to every individual case where such a question arises. Therefore, the casting of such general duties without any specifications can lead to delays in adoption processes till the clarification is made. The Convention does not use the term ‘parent’ anywhere in the document;⁷⁵ it consistently mentions ‘parents’,⁷⁶ except in the phrase ‘parent-child relationship’.⁷⁷ While this may not pose an issue in practicality, since the allowance of adoption by single parent is often a prerogative of the states which decide their own policies,⁷⁸ such adoptions may still face obstacles. In particular, the adoption by single parents may be hindered by the exception clause of ‘public policy’,⁷⁹ as the same could be invoked for the refusal of recognition of the adoption.

However, usage of the term ‘parents’ is not taken in a strict literary sense so as to include only the adoptions by couples, as evidenced by the single-parent inter-country adoption happening in signatory countries.⁸⁰ All the same, for the purpose of avoiding any

⁶⁸ Elisabeth J. Ryan, *For the Best Interests of the Children: Why the Hague Convention of Intercountry Adoption Needs to Go Farther, as Evidenced by Implementation in Romania and the United States*, Vol. 29(2), B.C. INT’L & COMP. L. REV., 353–383 (2006) (‘Ryan’).

⁶⁹ Hague Convention, Arts. 8, 32.

⁷⁰ *Id.*, Art. 32 (2).

⁷¹ Ryan, *supra* note 68.

⁷² G. Parra-Aranguren, *Explanatory Report on the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, HCCH PERMANENT BUREAU, 139, available at <https://assets.hcch.net/docs/78e18c87-fdc7-4d86-b58c-c8fdd5795c1a.pdf> (Last visited on March 16, 2025)

⁷³ Hague Convention, Art. 8.

⁷⁴ *Id.*, 140.

⁷⁵ Hague Convention.

⁷⁶ *Id.*, Arts. 5, 9, 16, 17, 19, 21, 26, 29, 30, 34.

⁷⁷ *Id.*, Art. 2(2).

⁷⁸ Abigail Lindner, *Single Parent Adoption: The Process and Experience of Adopting Unpartnered*, NATIONAL COUNCIL FOR ADOPTION, August 31, 2021, available at <https://adoptioncouncil.org/publications/single-parent-adoption-the-process-and-experience-of-adopting-unpartnered/> (Last visited on June 26, 2024).

⁷⁹ Hague Convention, Art. 24.

⁸⁰ See Central Adoption Resource Authority Regulations, 2022, Reg. 5.

ambiguity or preventing the introduction of loopholes, the term ‘parent(s)’ may be used to indicate the full inclusivity and acknowledgement of adoption by single parents in the language as well.

B. INCLUSIONS FOR REMEDYING UNCERTAINTY

Definitions are essential to ensure uniformity and clarity, and a section of introductory definitions can be included for this purpose.⁸¹ However, it has been pointed out that if a single definition were to entail a very restrictive and narrow scope, then there must be a system in place to document the various definitions and interpretations.⁸² While this does not resolve the issue of non-uniformity, it might still provide a viable solution to ensure a considerable degree of certainty. It might also be helpful to interpret the terminologies in consonance with other international treaties which have been taken into consideration while the formulation of the convention as mentioned in the preamble i.e.,⁸³ the United Nations Convention on Rights of the Child,⁸⁴ 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.⁸⁵ These conventions command a greater force due to them being United Nations (‘UN’) sanctioned and include a multilateral approach focusing on an array of child rights stretching from family and social rights to freedom of expression and privacy.⁸⁶

Therefore, such conventions can help make the inter-country adoption more inclusive and beneficial. For instance, Article 21 of the Convention on Rights of the Child addresses adoption,⁸⁷ and its provisions must be taken into consideration by the contracting states while dealing under the Convention. Best interests of the child may be decided by social (whether the receiving home is set in a social setting conducive for the growth of child etc.), economic (whether the prospective parents have adequate financial resources for healthy upbringing of child etc.), psychological (whether the child would have any negative psychological impact upon adoption, if so the degree of such impacts and whether they can be easily coped with etc.), medical (physiology and health considerations etc.), cultural (whether the child can stay connected to their cultural roots etc.), and educational factors (whether enough educational opportunities will be available to the child for academic growth etc). Setting up of a minimum standard has been suggested, which must be mandatorily complied with and can further be raised by the contracting states at their will.⁸⁸ For the purposes of enforcement, contracting states may issue guidelines aligned with these parameters to reflect their specific socio-economic contexts. While complete standardisation may not be feasible, the scope of misuse can be considerably limited by offering a uniform guideline of operation.

IV. HOW FAR DO DOMESTIC LEGAL FRAMEWORKS ALIGN?

⁸¹ Thompson, *supra* note 43.

⁸² Briscoe, *supra* note 62.

⁸³ Hague Convention, Preamble.

⁸⁴ Convention on Rights of the Child, G.A. Res. 44/25 (adopted on November 20, 1989, entered into force on September 2, 1990) (‘Rights of Child Convention’).

⁸⁵ 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, G.A. Res. A/RES/41/85 (adopted on December 3, 1986).

⁸⁶ See Rights of Child Convention.

⁸⁷ *Id.*, Art. 21.

⁸⁸ Lisa M. Katz, *A Modest Proposal? The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, Vol. 9, EMORY INT’L L. REV., 325 (1995).

Another concerning facet of the Convention is the inclusion of such terms and rules which, by reason of varying interpretations and different positions in states, lead to unfavourable outcomes on inter-country adoption by same-sex couples.⁸⁹ Most of the countries in Asia do not permit same-sex adoption, while many European countries have made the same legal.⁹⁰ The validity of the adoption can be questioned if the receiving state happens to be one where the same is not permissible on grounds of public policy or legality.⁹¹ Two different approaches have been mentioned: *first*, positive interpretations of the existing provisions, and *second*, a more active approach suggesting the inclusion of explicit facilitatory provisions.⁹² The national legal frameworks determine how far the objectives of the Convention can be achieved in the contracting state. The second section of this part speaks about the unfavourable attitudes states harbour towards adoption. Developing states often harbour an unfavourable attitude towards inter-country adoption as they see it as an instrument of exploitation by developed nations.⁹³ While some states have adopted a restrictive attitude that has undermined the possible advantages of inter-country adoption, others opt for blanket bans altogether. The last section of this part examines why blanket bans may not be the solution to the issues posed by inter-country adoption and instead worsen the circumstances by increasing the institutionalisation of children.

A. INTER-COUNTRY ADOPTION BY SAME-SEX COUPLES

Adoption by homosexual couples remains a subject of considerable debate, as exemplified by the fact that the joint adoption by same-sex couples is only permitted in thirty-six out of the 193 UN member states.⁹⁴ A brief published by the American Psychological Association mentioned that there is no substantial disadvantage to the children raised by homosexual parents in relation to children raised by heterosexual parents.⁹⁵ These studies support a shift to a liberal mindset of equivalent parental rights regardless of sexual orientation. Interestingly, it has also been noted in a study that homosexual couples and single individuals have a higher possibility and acceptance for adopting across race.⁹⁶ The Convention nowhere mentions that the prospective parents need to be a heterosexual couple in order to be eligible for inter-country adoption.⁹⁷ However, the ambiguity in the language of the Convention limits potential homes for these vulnerable children.⁹⁸ The major challenge to inter-country adoption by same-sex couples lies in the fact that a blanket exception has been provided under Article 24 to adoption of a child, i.e., ‘manifestly contrary to public policy’. If adoption by same-sex couples is not acceptable in a state, the same may as well be considered as being against public policy. This may lead to not only the closing of options for same-sex couples to adopt from that particular state, but also lead to questioning the validity of such adoption if such a state is the receiving state. While this provision seems to have been made in order to mitigate any attempt

⁸⁹ Hague Convention, Art. 23.

⁹⁰ EQUALDEX, *Same Sex Adoption*, available at <https://www.equaldex.com/issue/adoption> (Last visited on May 23, 2025).

⁹¹ Hague Convention, Art. 24.

⁹² See *supra* Part IV.A.2 on “Workability of Enabling Interpretations and Explicit Inclusions”.

⁹³ Crystal J. Gates, *China’s Newly Enacted Intercountry Adoption Law: Friend or Foe?*, Vol. 7(1), INDIANA J. GLOBAL LEG. STUD., 391 (1999) (‘Gates’).

⁹⁴ ILGA DATABASE, *Legal Framework | Adoption by Same Sex Couples*, available at <https://database.ilga.org/adoption-same-sex-couples> (Last visited on June 25, 2024).

⁹⁵ AMERICAN PSYCHOLOGICAL ASSOCIATION, *Lesbian and Gay Parenting* (2005), available at <http://www.apa.org/pi/lgbt/resources/parenting-full.pdf> (Last visited on June 26, 2024).

⁹⁶ Elizabeth Raleigh, *Are Same-Sex and Single Adoptive Parents More Likely to Adopt Transracially? A National Analysis of Race, Family Structure, and the Adoption Marketplace*, Vol. 55 (3), SOCIO. PERSPECT., 449–71 (2012).

⁹⁷ See Hague Convention.

⁹⁸ Schupp-Star, *supra* note 38.

towards intervention in the domestic legal set-up of a country, it may hinder inter-country adoption by same-sex couples, as explained further in the next section.

1. DETERRENTS AND ADVERSE OUTLOOKS

Public policy is broadly interpreted, extending beyond statutory provisions to encompass ordinances, rules, and even the informal and unwritten actions of the officials.⁹⁹ A U.S. Court held that public policy, when considering repugnancy of adoption, means,¹⁰⁰ “There must be something which offends by shocking moral standards, or is injurious or pernicious to the public welfare”.¹⁰¹ In view of this, a considerable liberty is given to the states in determining what may constitute public policy in their territory. This liberty is accompanied by the prerogative of refusing the recognition of the adoption.

During the framing of the Convention, concerns were raised that the public policy clause exception would hinder the recognition of inter-country adoption.¹⁰² However, the same was opposed by the majority, and ultimately, the clause ended up being in the Convention.¹⁰³ It was acknowledged that while situations may arise where an adoption is in the best interests of the child, it may still not be undertaken on public policy grounds; however, such instances are rare.¹⁰⁴ Probably the decision to include the phrase ‘taking into account best interests of the child’ was believed to serve as a safety valve in case the provision becomes unfavourable to *bona fide* inter-country adoptions. However, this may open up another Pandora’s box, considering that the term ‘best interest of the child’ is again subject to varying interpretation, as has been discussed before in section A of this part.

This multifaceted nature of ‘best interests’ may provide a loophole to a state harbouring prejudice towards same-sex couples to prevent adoption by them under the pretext of public policy.¹⁰⁵ The ‘best interests’ include social and cultural interpretations of the adopting state. ‘Best interests of the child’ may inevitably come to be linked with the public policy. Here, the link has to be broken by setting up minimum standards of ‘best interests’ and resolving the ambiguity surrounding the term.¹⁰⁶ It is unlikely that what a state considers its public policy would be different from its interpretation of ‘best interests of the child’, even if such interpretation is hindering inter-country adoption. In this respect, it is urged that the ‘best interests of the child’ be seen independently of public policy as far as the alignment of the same works arbitrarily against intercountry adoption is concerned. For example, while it may be a nation’s public policy not to allow adoption by same-sex couples, a child’s best interests may differ, particularly in cases where the couple provides a suitable and caring home for the child in economic, social, psychological, and physical aspects. In cases where the public policy and

⁹⁹ Richard Simon, *Studying Public Policy*, Vol. 9(4), CAN. J. POL. SC., 548–580 (1976).

¹⁰⁰ Malinda L. Seymore, *International Adoption & International Comity: When Is Adoption “Repugnant”?*, Vol. 10, TEX. WESLEYAN L. REV., 381, 392, 393 (2004).

¹⁰¹ *In Re Schultz Estate*, 348 P.2d 22, 28 (Or. 1959).

¹⁰² G. Parra-Aranguren, *Explanatory Report on the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, HCCH PERMANENT BUREAU, 422, available at <https://assets.hcch.net/docs/78e18c87-fdc7-4d86-b58c-c8fdd5795c1a.pdf> (Last visited on March 16, 2025).

¹⁰³ *Id.*

¹⁰⁴ G. Parra-Aranguren, *Explanatory Report on the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, HCCH PERMANENT BUREAU, 119, available at <https://assets.hcch.net/docs/78e18c87-fdc7-4d86-b58c-c8fdd5795c1a.pdf> (Last visited on March 16, 2025).

¹⁰⁵ Lisa Hills, *Intercountry Adoption Under the Hague Convention: Still an Attractive Option for Homosexuals Seeking to Adopt?*, Vol. 6(1), INDIANA J. GLOBAL L. STUD., 237–256 (1998) (‘Hills’).

¹⁰⁶ For details on the issues posed by the term, *see supra* Part III.A on “Hazy Terminologies and Varying Interpretations”.

the ‘best interests of the child’ are at odds, the state should make an exception in favour of the latter by giving importance to the conducive conditions in which the child will grow up.

The consideration of a ‘normal and desirable’ family is different in different societal set-ups, with some societies raising serious concerns towards the upbringing of children by homosexual couples.¹⁰⁷ In China, same-sex couples can neither marry nor adopt, and the best way for same-sex couples to acquire certain rights is by acquiring each other’s guardianship.¹⁰⁸ Adoption by same-sex couples is also not in practice in Sri-Lanka, though not expressly prohibited.¹⁰⁹ Therefore, the public policy clause may hinder same-sex inter-country adoptions in countries where such a practice is not allowed.¹¹⁰ The public policy clause also puts at risk the recognition of the relationship between the adoptive parent and child, as the territory where the family is residing may refuse the recognition on grounds of public policy.¹¹¹ Even if the state of origin is conducive for adoption by same-sex couples, this issue may arise in the receiving state where the family lives. Certainly, undefined boundaries of public policy provide a lot of scope for discrimination.

Another potentially restrictive provision is the requirement that the ‘suitability’ of adoption be determined by the Central Authorities.¹¹² This determination may be shaped by biased views or prevalent orthodox stances that can hinder otherwise suitable prospective parents from adopting. Suitability of adoptive parents may include the sexual orientation of the prospective adoptive parents in a state where such an adoption by same sex couples is not allowed. It may be noted here that while this is a necessary provision for the purpose of ensuring that the adoption is *bona fide*, the criteria for the determination of such suitability must not be tainted with discriminatory stances.

2. WORKABILITY OF ENABLING INTERPRETATIONS AND EXPLICIT INCLUSIONS

While ambiguity of certain terms may give rise to uncertainties, it also leaves scope for interpreting the provisions as enabling and beneficial rather than restrictive. This may be particularly helpful in the present case. For instance, the provision, ‘as far as possible, eliminate any obstacles to its application’ may be used to challenge the refusal of adoption on the grounds of the homosexuality of the prospective parent, if such refusal is seen as an obstacle.¹¹³ For this solution to work, the determining factor is the extent to which adoption by same-sex couples is considered against public policy, and whether such a stance can be overridden through the exercise of the above interpretation. Currently, the ‘public policy’ exception mentions, “taking into account the best interests...”.¹¹⁴ The preparatory work behind the convention suggests that one of the versions of the proposed Article suggests that adoption can be refused if it is manifestly contrary to the public policy and to the best interests,

¹⁰⁷ Schupp-Star, *supra* note 38.

¹⁰⁸ Mandy Zuo, *Gay Couple in Beijing Become First to Take Advantage of New Legal Rights*, SOUTH CHINA MORNING POST, August 9, 2019, available at <https://www.scmp.com/news/china/society/article/3022181/same-sex-couple-beijing-become-first-take-advantage-new-legal> (Last visited on June 26, 2024).

¹⁰⁹ U.S. DEPARTMENT OF STATE – BUREAU OF CONSULAR AFFAIRS, *Sri Lanka Intercountry Adoption Information*, available at <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/SriLanka.html#:~:text=THE%20PROCESS-,Because%20Sri%20Lanka%20is%20party%20to%20The%20Hague%20Adoption%20Convention,adoption%20process%20is%20given%20below> (Last visited on June 26, 2024).

¹¹⁰ See Hills, *supra* note 105.

¹¹¹ *Id.*

¹¹² Hague Convention, Art. 15(1); Schupp-Star, *supra* note 38.

¹¹³ Schupp-Star, *supra* note 38.

¹¹⁴ Hague Convention, Art. 24.

suggesting a cumulative working of both the grounds for refusal. Such an inclusion ensures that public policy has to work in line with the best interests of the child. At the same time, a better option is to give precedence to the best interests of the child in case of any ambiguity.¹¹⁵ While the discretion still rests with the states, such a modified provision can be useful in curbing the misuse of the public policy exception. This can help question the decision of the state authorities in case their discriminatory or hindering perspectives become the reason for the refusal of adoptions under the guise of public policy. Such a condition might also empower the judicial bodies and provide extra support to overrule such unjust refusal of adoptions, since ‘public policy’ may be too broad and ambiguous to challenge at times.

Furthermore, the obligations imposed on Central Authorities can be interpreted in an enabling manner. For instance, the obligation to expedite and facilitate the process of inter-country adoption so as to ensure a permanent and suitable home for the child can be interpreted positively to make sure that, if the same is being offered by a same-sex couple, the sexuality of the parents must not function as a deterrent.¹¹⁶ However, this solution is overly optimistic. It must not be overlooked that the Central Authority operates for the nation, and it is unlikely that its views differ from the outlooks of the government on public policies in action within the state. Ultimately, the issue is rooted in the broader social outlook of the individual societies.

However, the need for positively interpreting these terms, with the aim of removing hindrances from inter-country adoption by same-sex couples, may be incorporated as agendas in the commissions regularly convened in line with Article 42.¹¹⁷ These special commissions, which will look into the practical application of the Convention, can measure the same by analysing to what extent inter-country adoption is hindered due to discriminatory stances. Furthermore, recommendations may be issued to facilitate neutral and anti-discriminatory outlooks so that a more liberal environment may be created for same-sex couples who turn to inter-country adoption. A better recourse can be to include a provision for the prohibition of discrimination in the Convention, giving effect to the provisions, which will also ensure a fair measurement of the ‘suitability’ criteria.

A potential solution can be to make the provision subject to the exclusion of discriminatory stances such as these. However, no attempt at facilitating or promoting adoption by same-sex couples has been made in the convention.¹¹⁸ Although the inclusion of an explicit anti-discrimination provision has been proposed to facilitate inter-country adoption and establish a uniform eligibility framework for adoptive parents, its practical implementation remains contested due to cultural differences and social policies in different nations.¹¹⁹ Legal reforms often follow as a consequence of a shift in social mindset. With an evolved outlook and an increased acceptability of joint adoption by same-sex couples, this solution may prove to be feasible. The global mindset needs to be tilted towards this outlook in order to achieve an anti-discriminatory approach to inter-country adoption.

B. LEGAL OUTLOOKS ON INTER-COUNTRY ADOPTION

¹¹⁵ G. Parra-Aranguren, *Explanatory Report on the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, HCCCH PERMANENT BUREAU, 119, available at <https://assets.hcch.net/docs/78e18c87-fdc7-4d86-b58c-c8fdd5795c1a.pdf> (Last visited on March 16, 2025).

¹¹⁶ Schupp-Star, *supra* note 38.

¹¹⁷ Hague Convention, Art. 42.

¹¹⁸ *See* Hague Convention.

¹¹⁹ Hills, *supra* note 105.

Unfavourable attitudes towards inter-country adoption may spring from a myriad of factors apart from ideological reasons. A clashing of obligations also hinders the implementation of the Convention. The case of Romania is notable in this regard.¹²⁰ The policies of inter-country adoption in Romania have been strongly influenced by the European Union (EU).¹²¹ The EU has changed its position from being anti-inter-country adoption to being a supporter of the same since 2007.¹²² EU membership obligations concerning child welfare included ensuring better conditions for institutionalised children.¹²³ This meant redirecting all its funds towards the fulfilment of these objectives, when a portion of them could also have been used in the procedures of inter-country adoption.¹²⁴ This initiative of the EU, thus, ignored the positive side of inter-country adoption and overlooked the goal of having as few children in these institutions as possible.¹²⁵

While having a child grow up in the country of origin may carry less radical changes to the social framework, even the best of institutional or foster care cannot compare to permanent adoptive families.¹²⁶ In a European survey, it was found that institutional care is adverse to cognitive, behavioural, emotional and social development of children, whereas noticeable improvement is observed when these children are placed in a family setting.¹²⁷ Institutionalising children has been known to cause detrimental effects to their well-being and long-term development.¹²⁸ The public declarations made by member states for the realisation of the Convention may be seen as a demonstration of their solidarity, reflecting a collective effort of the members of the Convention who are obliged to rectify this situation.¹²⁹

However, this situation is more complex than the European Union's seemingly unfavourable attitude towards inter-country adoption in Romania before it joined the EU. This stance of the EU was due to the possible risks of inter-country adoption.¹³⁰ It approved of a Romanian moratorium on intercountry adoption in 2001 as it sought to protect the best interests of the child.¹³¹ This situation exemplifies the interlinking of interests between a nation and an international organisation, which influenced their attitudes towards legal policy. It demonstrates why unified global efforts are necessary for the successful implementation of inter-country adoption and how the absence of the same can lead to unfavourable outcomes.

The gravity of a contracting state's attitude towards the Convention defines the degree of adherence. When a state becomes a signatory to a convention, it cannot engage in practices that go against the objects and purpose of the convention. However, ratification is imperative for the convention to assume full effect in a contracting state. The laws of many countries entail a limiting approach towards inter-country adoption, thereby shutting down

¹²⁰ Ryan, *supra* note 68.

¹²¹ Ingi Iusmen, *The EU and International Adoption from Romania*, Vol. 27(1), INT'L J. L. POL'Y & FAM., 1 (2013).

¹²² *Id.*

¹²³ Ryan, *supra* note 68.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Elizabeth Bartholet, *International Adoption: Propriety, Prospects and Pragmatics*, Vol. 13(2), J. AM. ACAD. MATRIMONIAL L., 181 (1996).

¹²⁷ Kevin Browne et al., *Overuse of Institutional Care for Children in Europe?*, Vol. 32(4), BMJ, 485–487 (2006).

¹²⁸ BETTER CARE NETWORK, *Effects of Institutional Care*, available at <https://bettercarenetwork.org/library/particular-threats-to-childrens-care-and-protection/effects-of-institutional-care> (Last visited on March 16, 2025).

¹²⁹ Ryan, *supra* note 68.

¹³⁰ COMMISSION OF THE EUROPEAN COMMUNITIES, *2001 Regular Report On Romania's Progress Towards Accession*, November 13, 2001, SEC (2001) 1753, 24, available at https://aei.pitt.edu/44603/1/romania_2001.pdf (Last visited on June 26, 2024) ('Report on Romania').

¹³¹ *Id.*, 24.

several options which may have proven to be beneficial. In 2012, Romania enacted a new adoption law that allowed inter-country adoption under two circumstances: the person adopting must be within the fourth degree of kinship to the child or a Romanian Citizen.¹³² Though now abolished, China's one-child policy has also been said to be at odds with the Convention.¹³³ China permits inter-country adoption only to married couples and single women.¹³⁴ Similar situations can occur when a state's national interests start differing from the Convention's obligations. This brings out a deeper issue of the lack of willingness of the states to fulfil the obligations of the Convention despite being a signatory. Permitting the contracting states a substantial discretion in interpretation complicates the interface between party willingness and interpretative discretion. Sanctions can be particularly helpful in these situations by offering less space for discretion that can hinder the adoption processes or obstruct their successful fruition. Lack of sanctions and other enforcement measures gives these states the liberty to deviate from these obligations. The issues in adherence to the Convention are discussed in detail in the next part.

C. WHY BLANKET BANS ARE NOT THE SOLUTION?

Due to the risks associated with inter-country adoption, including child trafficking and exploitation, many states choose to avoid this initiative altogether.¹³⁵ As seen earlier, Romania suspended inter-country adoption in 2000 due to concerns of child trafficking. This decision also came in furtherance of ending practices that were infringing on United Nations Convention on the Rights of the Child obligations; a decision supported by the EU's 2001 Regular Report of Romania's progress towards accession.¹³⁶ Inter-country adoption becomes a very complicated terrain to navigate, as despite having been made for facilitating the adoption of children into nurturing homes abroad, in practice, it results in the infringement of other international child welfare treaties. This paradoxical nature of inter-country adoption is the biggest constraint to its successful employment.

These blanket bans on inter-country adoption may, however, not prove to be the best solution to child-trafficking and other concerns surrounding such adoptions. These bans may also foster illegal means of acquiring infants from other countries since no legal mechanism is providing this opportunity.¹³⁷ Sometimes, bans are imposed on inter-country adoption to encourage domestic adoption. However, this may not give the desired result. For instance, in view of nationalism and economics as well as to encourage domestic adoption,¹³⁸ South Korea enacted strict rules towards inter-country adoptions a few decades ago. However, due to reservations among the South Korean citizens regarding adoption, a sufficient increase in domestic adoption did not happen, while also removing the alternative of inter-country

¹³² U.S. DEPARTMENT OF STATE – BUREAU OF CONSULAR AFFAIRS, *Romania Intercountry Adoption Information*, available at <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Romania.html> (Last visited on June 23, 2024).

¹³³ Jennifer A. Ratcliff, *International Adoption: Improving on the 1993 Hague Convention*, Vol. 25(1), MARYLAND J. OF INT'L L., 349–353 (2010).

¹³⁴ U.S. DEPARTMENT OF STATE – BUREAU OF CONSULAR AFFAIRS, *China Intercountry Adoption Information*, available at <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/China.html#:~:text=Married%20couples%20must%20adopt%20jointly,to%20be%20eligible%20to%20adopt.> (Last visited on June 23, 2024).

¹³⁵ Report on Romania, *supra* note 129, SEC (2001) 1753.

¹³⁶ *Id.*

¹³⁷ Gates, *supra* note 93, 392.

¹³⁸ Kimball, *supra* note 8.

adoption for these children.¹³⁹ These situations led to an increase in the number of children living in institutions, since domestic adoption was not preferred and inter-country adoptions were restricted.¹⁴⁰

In this light, it can be said that banning inter-country adoption may not be the best way to encourage domestic adoption; rather, a change in ideology and mindset towards adoption precedes such a change. Furthermore, as previously discussed in the article, a hierarchy already exists in adoption practices, with inter-country adoption positioned as secondary to domestic adoption; in this sense, it does not function as an impediment to domestic adoption.¹⁴¹ In the context of South Korea, it is relevant to discuss the latest report by the Truth Commission, which revealed a concerning number of problematic adoptions, which was followed by a period of strict laws towards inter-country adoptions.¹⁴² Both situations represent opposite policies with their own set of problems. In cases where domestic adoption is not suitable for the child and a compatible home cannot be found within the national borders, inter-country adoption becomes relevant. Instead of negating it completely, the priority must remain to ensure protected and bona fide adoptions while curbing the menace of child trafficking. Another detrimental effect of these blanket bans includes pipeline adoptions. These happen when the paperwork of inter-country adoption has been completed and an acquaintance between the prospective parents has been established. However, due to imposed bans, such as Romania's prohibition on international adoptions, the adoption of these kids gets stuck in a limbo.¹⁴³ The most viable solution is to combat the problems and resolve these issues, rather than shutting down inter-country adoption altogether.¹⁴⁴ Some of the suggestions made under the next Part can be implemented to enhance the effectiveness of the Convention, which would help reduce the impediments to inter-country adoption.

V. INCREASING ADHERENCE TO THE CONVENTION

The issue of non-adherence to the Convention may result from two major reasons: *first*, the absence of accountability and stringent measures; and *second*, the unfavourable attitude of making undue restrictions in inter-country adoption, which unfairly limit the alternatives to the orphaned or abandoned child and diminish the possibility of being provided a nurturing home. However, the states which have signed and ratified the convention still lack the requisite legal framework for real and practical application.¹⁴⁵ This may be attributed to the absence of stringent measures and a lackadaisical attitude towards adherence to the Convention. The root of states' unfavourable attitude towards inter-country adoption seems to originate from two seeds: the social outlooks of the populace and other problems associated with inter-country adoption like the danger of child trafficking, time-consuming

¹³⁹ See Stephen Evans, *Taking on South Korea's Adoption Taboo*, BBC, January 6, 2015, available at <https://www.bbc.com/news/world-asia-30692127> (Last visited June 18, 2025).

¹⁴⁰ See Gates, *supra* note 93, 392.

¹⁴¹ See *supra* Part I on "Introduction".

¹⁴² Kim Tong-Hyung, *South Korea's Truth Commission Says Government Responsible for Fraud and Abuse in Foreign Adoptions*, FRONTLINE, March 26, 2025, available at <https://www.pbs.org/wgbh/frontline/article/south-korea-foreign-adoptions-government-fraud-abuse/> (Last visited June 25, 2025)

¹⁴³ Meghan Collins Sullivan, *Painful Lessons from Romania's Decade-Old Adoption Ban*, TIME, March 15, 2013, available at <https://world.time.com/2013/03/15/painful-lessons-from-romanias-decade-old-adoption-ban/> (Last visited on March 16, 2025).

¹⁴⁴ See *supra* Part V on "Increasing Adherence to the Convention".

¹⁴⁵ Karen Smith Rotabi & Carmen Mónico, *Legal and Policy Issues Affecting Intercountry Adoption Practices in TRANSRACIAL AND INTERCOUNTRY ADOPTIONS: CULTURAL GUIDANCE FOR PROFESSIONALS*, 38–68 (Rowena Fong & Ruth McRoy eds., Columbia University Press, 2016).

procedures, ambiguous terminology of the convention etc.¹⁴⁶ While the former would remain majorly unaffected by statutory provisions, the latter must be fought through stringent measures. The significance of increasing accountability for enhanced adherence has also been discussed. The workability of these measures has been explored in the second part of this section, which further explains how some of these suggestions can prove to be viable recourses when it comes to increasing adherence towards the Convention.

A. ASSUMING ACCOUNTABILITY

International accountability of the states in their handling of offenders committing child trafficking under the pretext of inter-country adoption may actuate them to exhibit a strict attitude towards child trafficking. Central Authorities may not be enough to deter corruption and irregularities.¹⁴⁷ The Central Authority, being a self-governing body, is unlikely to acknowledge its own faults and may provide justifications by taking advantage of the terminology of the convention.¹⁴⁸ In such scenarios, international accountability may work for two reasons. *First*, inter-country adoption does not affect a singular state. *Second*, though the stringency of domestic laws for issues like child trafficking is under the veil of inter-country adoption, it is ultimately the sovereign prerogative of the state to determine its laws.

Several reports, including one by UNICEF in 2014, have revealed that global adoption can take the shape of illegal movement across borders, drawing similarities between the global adoption movement and child trafficking.¹⁴⁹ Keeping in mind the associated danger of child trafficking, guides introduced by the HCCH for Good Adoption Practices gave a number of suggestions.¹⁵⁰ It is in the best interest of inter-country adoption that these guidelines be integrated into the national frameworks. The “Emergency Measures” listed in one of the guides are of particular significance,¹⁵¹ especially in cases of internal disturbances, as discussed in Part II of this paper. The same can include DNA verification of parents’ identity, independent investigations of abandoned children, etc.¹⁵² Therefore, international accountability may be imposed through the Convention.

A review committee may be established, consisting of state representatives and adoption experts. Accountability shall include submission of regular reports to the review committee on the cases of child trafficking under the guise of inter-country adoption and how the state has dealt with these offenders. Recommendations may be given by the committee on what a particular state may do to increase deterrence against the offence. There must be collaborative efforts between the contracting states for dealing with the cases of child trafficking. Identification of patterns of such offenders must be made, and guidelines must be issued to the Central Authorities to keep the adoption processes in check. This information must be relayed to other states, especially to and from which the children are being trafficked.

¹⁴⁶ For details on the problems associated with intercountry adoption, *see supra* Part IV.B on “Legal Outlooks on Inter-Country Adoption” and Part IV.C on “Why Blanket Bans are not the Solution”.

¹⁴⁷ K.E. Cheney, *Why The Hague Convention Is Not Enough: Addressing Enabling Environments for Criminality in Intercountry Adoption* in ORGANIZED CRIME IN THE 21ST CENTURY, 191–206 (Springer, 2023).

¹⁴⁸ Thompson, *supra* note 43.

¹⁴⁹ Zeina Allouche, *Similarities between Child Trafficking and the Risks of Adoption*, UNDP, December 2018, available at <https://www.undp.org/sites/g/files/zskgke326/files/migration/lb/Peace-Building-EN--20H-P10-11.pdf> (Last visited on March 16, 2025).

¹⁵⁰ HCCH, *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention, Guide to Good Practices*, available at <https://www.hcch.net/en/instruments/conventions/specialised-sections/intercountry-adoption> (Last visited on June 18, 2025).

¹⁵¹ *Id.*

¹⁵² *Id.*

Another alternative to these review committees can be the analysis of the reports by special commissions, which are convened at regular intervals in pursuance of Article 42.¹⁵³ The reports must not be limited to just child trafficking, but can also be extended to other issues arising in the way of successful inter-country adoption. These reports may be submitted by the Central Authorities of the states. The impact of these reports may be reflected in the form of filling up of loopholes, the extent of recidivism, greater vigilance, and identification of vulnerable sections. These reports will help assess inter-country adoption practices by providing compiled data relating to them. When special commissions convene meetings to check the practical application, these will be significant. Subsequently, the commission may propose that the state engage with the Inter-country Adoption Technical Assistance Programme—an initiative of the Hague Conference, which helps in the proper implementation of the Convention.¹⁵⁴

B. INCREASING COMPLIANCE

An absence of penalties and a system of self-regulation creates opportunities for corrupt practices and the neglect of offences, unless a vigilant system of monitoring and compliance is set up.¹⁵⁵ However, the question remains how such sanctions may be imposed. The realm of private international law is voluntary, and the implementation of sanctions is rather difficult.¹⁵⁶ The Convention does not prohibit signatory states from entering into inter-country adoption with non-signatory states, thereby reducing the incentive of being a part of the Convention.¹⁵⁷ Inclusion of sanctions would exacerbate the lack of willingness of states to be a party to the Convention.

The Central Authority should exhibit high vigilance in looking into cases where illegal activities are being committed under the pretext of inter-country adoption. This can also include imposing sanctions and penalties on agencies that infringe on their ‘non-profit’ status.¹⁵⁸ This will increase deterrence and will lead to curbing of illegal activities. To ensure that the Central Authority maintains a required degree of autonomy and remains uninfluenced by government outlooks, it can appoint people like social workers as part of teams apart from government officials. After all, the social workers play a big role in the adoption process.¹⁵⁹ One drawback which might accrue is the misuse of sanctions due to political factors. This is where reliance can be placed on international accountability, as discussed in the previous section. The imposition of sanctions will warrant greater vigilance. However, to avoid potential ill effects, sanctions must not be levied as a general recourse; they should come into play only in cases of flagrant abuse of the Convention that result in highly detrimental repercussions.

The aim must be to expedite the process of adoption. Time is of the essence when the child is in an institution waiting for the procedural requirements to be met. A provision may be inserted in the Convention for the review of pending cases of adoption going on for an unusually long time. The Central Authority of the state of origin can be tasked with the same. However, if there is an issue with the recognition of adoption, the Central Authority of the receiving state must look into it. The grounds of non-recognition of inter-country adoption may

¹⁵³ Gates, *supra* note 93.

¹⁵⁴ HCCH, *Introduction to the Intercountry Adoption Technical Assistance Programme (ICATAP)*, available at <https://assets.hcch.net/docs/7b91aa3c-a005-4703-bce0-3427101eb896.pdf> (Last visited on March 16, 2025).

¹⁵⁵ Kimball, *supra* note 8.

¹⁵⁶ Thompson, *supra* note 43.

¹⁵⁷ Kimball, *supra* note 8.

¹⁵⁸ Kennard, *supra* note 45.

¹⁵⁹ Hills, *supra* note 105.

be examined on the basis of whether such has been done in the best interests of the child or is the same affected by prejudices. This might help in increasing adherence to the Convention, which has been criticised by some for contributing to the decline in inter-country adoption through the imposition of an increasingly bureaucratic process.¹⁶⁰ While there is a possibility that this might increase the bureaucratic character, a review process is still better than an extended period of uncertainty.

At a deeper and more significant level, the lack of adherence to the Convention is due to the ideological reservations people harbour towards adoption. An enabling provision can be inserted in the Convention urging the states to combat such misconceptions. It can place an obligation on the contracting states that mandates the encouragement of inter-country adoption as a solution when a suitable home cannot be found in the country of origin. Herein, considerable leeway can be granted to the contracting states to determine the process through which such awareness may be made. It can manifest in the issuance of guidelines to the Central Authorities to inform the adoption agencies of the viability of inter-country adoption. Suggestions for changing the negative outlook of inter-country adoption may be discussed in the commissions convened at regular intervals by the Permanent Bureau.¹⁶¹ Awareness campaigns will help in mitigating the situation. The Happy Yuriago Project by the Nippon Foundation has helped provide financial aid and organise seminars, including those for training foster parents.¹⁶² Similar campaigns and projects related to inter-country adoption can be launched in the signatory states. Emphasis has also been laid on the incorporation of rules in federal laws in consonance with the Articles of the Convention.¹⁶³ Alignment of the domestic framework with the Convention remains a direct method of ensuring compliance.

The Convention goes far in establishing a procedural framework comprising legal modalities and authorities.¹⁶⁴ It certainly takes time to establish such a system,¹⁶⁵ and enact effective domestic laws in order to ratify the Convention.¹⁶⁶ For instance, even though South Korea became a signatory to the Convention in 2013, it ratified the Convention in 2025.¹⁶⁷ These are commendable efforts as they reflect the willingness of the contracting states to utilise the potential of inter-country adoption and curtail the illegal activities associated with it. This also makes delayed adherence possible as it requires time and effort to establish such systems, especially in less-developed countries. While the establishment of a compliant framework is imperative for adherence, the contracting states must exercise greater caution in dealing with inter-country adoptions in states where the framework has not been established.

VI. CONCLUSION

¹⁶⁰ Peter Selman, *Adoption across Borders Declines*, Vol. 73(1), THE WORLD TODAY, 45 (2017).

¹⁶¹ Hague Convention, Art. 42.

¹⁶² THE NIPPON FOUNDATION, *Happy Yurikago Project*, available at https://en.nippon-foundation.or.jp/what/projects/youth/happy_yurikago (Last visited on April 27, 2025).

¹⁶³ Peter H. Pfund, *Intercountry Adoption: The 1993 Hague Convention: Its Purpose, Implementation, and Promise*, Vol. 28(1), FAM. L. QUARTERLY, 53–88 (1994).

¹⁶⁴ See Hague Convention.

¹⁶⁵ See generally J. Miaz et al., *ENGAGING WITH HUMAN RIGHTS*, 47–66 (Palgrave MacMillan, 2024).

¹⁶⁶ For the process of ratification granting states the necessary time-frame to seek the required domestic approval for the treaty and enacting the necessary legislation to give domestic effect to that treaty, see UNITED NATIONS TREATY COLLECTION, *Glossary*, available at https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml (Last visited June 25, 2025).

¹⁶⁷ HCCH, *Republic of Korea Ratifies the 1993 Adoption Convention*, available at <https://www.hcch.net/de/news-archive/details/?varevent=1080> (Last visited June 18, 2025).

International adoption is subservient to domestic adoption. Even the Hague Convention establishes this hierarchy, and it must always be followed. The ties with the community are significant in one's life, which may often be lost on account of making a foreign land their home. In view of all the issues that come with inter-country adoption, it should still be considered as a fall-back option in case no possibility of adoption exists in the country of origin. Concern has been raised that the Convention does not restrict inter-country adoption to the parties of the treaty. This, thereby, offers no incentive to the non-parties and parties to ratify or accede to the Convention.¹⁶⁸ International conventions are rather voluntary in nature, and such a liberty is further enhanced in the present convention. The willingness of the stakeholders matters more than ever. The challenges attached to inter-country adoption are rather grave in nature, involving crimes of a horrendous nature like child trafficking. These conundrums get further exacerbated in catastrophic events. In light of the same, the author has mentioned potential recourses which can be called into action in such circumstances.

Extraordinary times call for special measures. This is especially true in cases of disaster, where the process of intercountry adoption becomes more susceptible to malpractices. It has been argued that a greater responsibility is acknowledged, and international support is given to contracting states when they face a crisis to avoid these conundrums after determining the possibility of inter-country adoptions. The language of the Convention introduces several loopholes which make the adoption process susceptible to misuse. Modifications can be made in the Convention for inclusion of special provisions that deal with increased vulnerability in extraordinary situations, as well as to the Convention's language for enhancing legal certainties and promoting a more equitable and fair landscape for inter-country adoption. Adherence to the Convention is imperative to ensure its effective functioning and to utilise the potential of inter-country adoption after eliminating the serious impediments that surround the same. Increased international accountability will help in ensuring greater compliance. A non-discriminatory outlook of inter-country adoption, both in social and legal spheres, would help in creating a fair and equitable landscape. As a realm of private international law bearing profound implications, it is imperative that the states realise the significance of preserving the efficacious nature of inter-country adoption, particularly when a suitable home cannot be secured domestically, and to prevent it from turning into a conundrum, inviting blanket bans or red tape mechanisms.

¹⁶⁸ Kimball, *supra* note 8, 583.