

Inter-country Adoption:

A Brief Background and Case Study

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Inter-country adoption (ICA) is a practice that has gained popularity over the years, and there is every reason to believe this trend will continue. For couples (or individuals) whose country of residence has few healthy babies available for adoption, going outside the country for a child is a desirable option. It is also desirable from the perspective of the child, who usually comes from a country with more available children than potential adoptive parents. Right away, these seem to be two very compelling reasons to support the idea of inter-country adoption, and work toward its best model.

The purpose of this paper is to give an overview of inter-country adoption using Israel as a case study. The paper will give a brief background of ICA and the main problems it both addresses and raises, then look at the case of Israel in particular, and, finally, provide some directions for policy and further research.

Background on ICA

ICA began in earnest as a response by North American countries to the post-WWII devastation. At that point, it was a humanitarian reaction to the needs of the newly-orphaned children in Europe. Since that time, ICA has shifted its focus to become a means for individuals in the developed world to have children. In most Western nations, the number of healthy infants available for adoption has been steadily decreasing, due to a number of social and economic factors including widespread use of birth control, an increased number of abortions, and more options available to unwed mothers who want to keep their children. Because of this, ICA is on an upward trend.

Who Benefits?

This paper approaches ICA with the belief that it is a beneficial and essential practice for serving the needs of the world today, given the unequal geographic distribution of orphaned children and adoptive homes. But this is not a universally held belief. To better understand ICA, it is important to look at its criticisms in order to point out areas that good policy around ICA must address.

Child Trafficking

Critics of ICA say it promotes the illegal buying and selling of children. The claim is that the high demand in the developed world for children in the developing world creates a “black market in kidnapped babies.”¹ While at first ICA was a type of humanitarian response to the needs of *the child*, now the focus has shifted to potential parents unable to have children. In other words, the right to be a parent – not the right of a child to have a family – is the primary motivating force behind ICA in “receiving” countries. While there is no necessary connection between this shift and a decrease in benefits for the child, it does, unfortunately, have the capability of leading to practices that promote the good of the potential parents to the detriment of the adopted child – and his biological parents. The accusation that ICA promotes child trafficking seems to have this type of argument in mind. Catering to the desire of Western couples to have children may encourage use of hurried and illegal means to get them.

¹ John Triseliotis. “Inter-country Adoption: In whose best interest?” Inter-country Adoption: Practical Experiences. Ed. Michael Humphrey and Heather Humphrey. New York: Routledge, 1993. p.123.

Exploitation

In a certain, crude, sense, the developing world has become a provider of healthy infants for developed nations. For developing countries feeling at the economic mercy of the developed world, ICA may seem like being taken advantage of – this time for their children – yet further. The line between receiving and sending countries is the same line that is between rich and poor, developed and developing. By “exporting” children – clearly an unappealing designation of ICA – some feel that the developing world is allowing itself to be stripped of yet another natural resource. So the question to be asked is: would this cost to the developing countries – if indeed it is a cost – be made up for by the benefit to the individual children?

Culture

Another claim that ICA is focused on parents in the developed world is based on the fact that placing a child in a foreign country strips her of her culture and heritage. Despite any attempts by the adoptive parents to incorporate their child’s native culture into the home, removing a child from his country of origin makes inaccessible to him an integral part of who he is. The international community acknowledges that cultural identity is very important, and international standards always favor placing adoptable children – whenever possible – within those children’s home countries for that reason. But the question then becomes: when a home in the child’s country of origin is impossible, is it more valuable to have culture, or a family? The international community – as represented by UN decisions – certainly seems to favor the latter.

International Standards

Despite its critics, inter-country adoption has been accepted by the international community as an effective option for children who otherwise would not have homes in their countries of origin. In 1989, the United Nations drafted the Convention on the Rights of Child, in which it laid out several principles according to which children have a right to be treated. Article 21 states that, in regard to adoption, “the best interests of the child shall be the paramount consideration.” Included in Article 21 is the recognition of ICA as an appropriate means, under certain circumstances, of reaching this goal. It says that states shall

“recognize that inter-country adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin.”²

In 1993 the specifications of ICA – and its acceptance by the international community – became more explicit with the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. This convention demonstrated the international community’s acknowledgment of ICA as a necessary result of a commitment to the rights of the child. The Hague Convention had three goals:

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

² “Convention on the Rights of the Child 1989.” International Documents on Children: Second Edition. Ed. Geraldine Van Bueren. The Hague: Martinus Nijhoff Publishers, 1998. p.13.

As parts (a) and (b) above show, the Hague Convention recognized and explicitly addressed the aforementioned concerns of the child's (as opposed to the parent's) best interest, as well as child trafficking. Clearly the belief was that these problems are not inherent to ICA, but rather unfortunate consequences that must be purposefully combated.

66 countries were present at the drafting of the Convention, including typical "sending" countries such as Argentina, Chile, China, Romania, Brazil, and Korea, and typical "receiving" countries such as the United States, Western European countries, and Israel.³

Israel

Israel is an interesting case study in ICA for many reasons. It has followed the trend of other developed countries in that there are very few healthy infants within Israel available for adoption each year. But, while other developed countries like the United States have been arranging ICA through private organizations since the post-WWII period, until 1998 the Israeli government handled all adoptions itself and no official means to foreign adoption existed. The results of this will be explored below.

Israel also finds itself in a unique position regarding ICA because of the implications of its status as a Jewish state. Article 5 of Israel's Adoption of Children Law (1981) specifies that "the adopter shall be of the same religion as the adoptee."⁴ This, of course, is a problem for ICA. Eliezar Jaffe, a professor at Hebrew University's Baerwald School of Social Work and long-time advocate of ICA in Israel, speculates that the problem of bringing non-Jewish babies into Israel

³ Text of the Hague Convention, from http://www.adoptionscentrum.se/english/hague_convention_english.htm

might possibly have been, historically, the motivation behind the Israeli government's resistance to foreign adoption. Specifically, the religious factions may not have liked the idea of bringing non-Jewish babies into Israel.⁵

On the flip side, anti-Jewish and anti-Israel sentiment among certain sending countries affects ICA as well.

Looking at Israel as a bit of an atypical example of a "receiving" country hopefully will shed some light on the question of inter-country adoption in general.

Past Policies

Until 1996, the Adoption Service of Israel's Ministry of Labor and Social Affairs handled all adoptions. While at one time there were many children in need of homes, as with other Western nations, the number of babies available for adoption each year gradually decreased. For some time, there have been only 70-80 healthy Israeli infants available for adoption each year. Because of the small number of available infants, there are harsh restrictions on who can adopt, and a long waiting list to do so. The average wait is six years, and combined with the law dictating that a couple must be under 40 years old to adopt, unless the couple decides at 34 they want a child, they will be too old to adopt by the time they receive one. As the number of couples wanting to adopt increased, so did the stringency of the screening procedures of potential adoptive parents. Jaffe has complained that "over the years, the criteria for eligibility for adoption have been influenced by supply and demand."⁶ Restriction on potential adopters was seemingly unrelated to their parenting potential and simply a way to cut down on the numbers.

⁴ "Adoption of Children Law 1981." Selected Israeli Laws Concerning Children and Youth. Jerusalem: State Ministry of Labor and Social Affairs Department of International Relations, 1991. p.54.

⁵ Allison Kaplan Sommer. "A Family Affair." The Jerusalem Post. 8 March 1996.

⁶ Sommer

Israel's focus was clearly on the child, and not on the Israeli couples desperate to adopt. While on the one hand this seems to be the preferable angle, it was misguided in that it only focused on *Israeli* children, for whom there were plenty of waiting parents. This was highlighted when the Adoption Service of the Ministry of Labor and Social Affairs changed its name to the Service for the (obviously Israeli) Child.⁷ In only focusing on the Israeli child, not only did Israel disadvantage the many citizens eager to have children, but it also disadvantaged the many children around the world who could potentially find loving homes with those Israeli citizens.

The combination of a lengthy waiting period and restrictive screening procedures led many Israeli couples desperate for children to look elsewhere. Unfortunately, the Israeli government (the only institution authorized to carry out adoptions) was not involved in inter-country adoptions. The Adoption of Children Law of 1981, which lays out the standards for adoption in Israel, nowhere mentions foreign adoptions. And Section 33 of the Law, which makes it illegal to adopt by any other means than through the government, clearly disallows (foreign) adoption through a private agency. In fact, the penalty for breaking this law can be a year in prison.⁸ But as the difficulty of adopting at home increased, and without an official means to adopting abroad, Israeli couples turned to foreign adoption – illegal as it may have been – as their only hope of securing a child.

Unofficial ICA in Israel

Without an official avenue to foreign adoptions, Israeli couples went through any avenue they could find. This led to many horror stories. Often they were scammed: their money was stolen and they remained childless. Or, if they did receive a child, they could not confirm where

⁷Eliezar Jaffe. "A New Era for Adoptions." [The Jerusalem Post](#). 25 September 1998.

⁸"Adoption of Children Law 1981," p.63.

it came from. Adoptions often occurred without the sending country's authorization, and there were cases of Israelis stopped at the airport and forced to hand over their children. Without legal procedures and protections, Israelis were subject to the luck of the draw where foreign adoptions were concerned. Jaffe cites unofficial figures pointing to over 10,000 private foreign adoptions during this time.⁹ Often it worked out fine (at least from the adoptive parents' perspective); sometimes it did not.

Two particularly notable cases received world-wide attention and are consistently cited as support for legal ICA in Israel. The first is the case of Caroline Bruna, a Brazilian girl adopted by the Turgeman family in Israel in 1988. It was later discovered that Caroline had been kidnapped from her biological parents and the Turgemans were forced to return her to Brazil. Understandably, this greatly distressed other Israeli couples that had adopted children from Brazil under questionable circumstances. Would they be next? While no other Israeli couples had to give up their adopted children,¹⁰ it does not seem unlikely that if it happened to the Brunas, other parents in Brazil are also wondering what happened to their children. This is a devastating picture for the parents on both ends of the process – biological and adoptive.

The other case is of the ex-model Saparit Friedman. This Israeli celebrity went to Brazil in 1993 to adopt a child and ended up in prison, accused of illegal adoption and being part of a kidnapping ring that brought children to Israel to use their organs for transplants.

Both of these cases can be viewed from two sides. The Israeli perspective obviously stresses the victimization and powerlessness of Israelis attempting to adopt abroad pre-1996. But, of course, it was not just Israelis whom Israel's policies hurt. In forcing – in effect – Israeli couples to sneak around the law in order to adopt a child overseas, it encouraged the operation of

⁹ Jaffe, "A New Era for Adoption."

unscrupulous agents in the sending countries, increasing the possibility of child trafficking and other abuses. Obviously, creating an open and legal means to ICA would benefit all involved parties.

New Law

In 1996, new legislation was introduced pertaining to inter-country adoption, which would allow private, licensed, non-profit agencies to handle foreign adoptions. The new legislation came after three years of discussions, prompted by the Friedman case, and also the Hague Convention. By signing a document in which it pledged to cooperate in ICA, the Israeli government could no longer avoid the issue. Lengthy debate ensued over the details of the legislation, and the Ministry of Labor and Social Affairs was reticent to give up its monopoly on adoption. Debate also arose over issues of religion and conversion. Eventually, in 1998, the new law went into effect. The law gave the Ministry responsibility for licensing the non-profit agencies, but once an agency was licensed, it would handle every aspect of ICA. Along with the new law, legislators passed an amendment to the Adoption Law, allowing Israelis to adopt a foreign child who is of another religion. And the new law says nothing about conversion, allowing the Israeli adopters to decide what to do post-adoption.¹¹

The new law set a fee cap for the agencies at \$20,000. (Though the cap was intended to prevent unnecessary fees for parents, Jaffe believes this limits Israeli agencies' ability to perform, and that the fee should instead be allowed to vary based on the cost of adoptions in each country¹²). The criteria for who can adopt internationally are based on the requirements of the

¹⁰ Eliezar Jaffe. "Foreign Adoptions in Israel: Private Paths to Parenthood." Intercountry Adoption: A Multinational Perspective. Ed. Howard Altstein and Rita J. Simon. New York: Praeger, 1991. p.171.

¹¹ Maia Ridberg. "Adoption Parley Focuses on Results of New Law." The Jerusalem Post. 7 May 2001.

¹² Eliezar Jaffe, personal correspondence

sending countries and not of Israel's Ministry of Labor. Sending countries vary in their policies, so while some (like Chile) set an age maximum for adoptive parents, others (like Argentina and Peru) set just an age minimum,¹³ allowing individuals too old to adopt in Israel the possibility of having a child. Finally, the law included a "grandfather clause" which would legally recognize all foreign adoptions performed up until that point;¹⁴ no longer would those adoptive parents be criminals in the eyes of Israeli law.

There are now 12 agencies in Israel licensed to facilitate and perform foreign adoptions.¹⁵ Each has its own general method and set of countries with which it has agreements. Since the new law was passed, there have been about 400 foreign adoptions in Israel, with no (publicized) cases of disaster.¹⁶

Anti-Semitism

While the new law solved the problem of bringing non-Jewish babies into Israel, the problem of sending countries' attitudes toward Judaism and Israel remains. In an interview with the Jerusalem Post, Dr Gary Diamond – a pediatrician who contracts with Israeli adoption agencies to travel to foreign countries and evaluate the adoptable children – expressed his experiences of anti-semitism from foreign doctors who "don't like what they view as condescension by Israeli adoption organizations and medical personnel."¹⁷

While undesirable, these sentiments are difficult to measure and do not necessarily seriously affect ICA. It is a problem, however, when they are manifested politically. Since the

¹³ Intercountry Adoption: Laws and Perspectives of "Sending" Countries. Ed. Eliezar Jaffe. Dordrecht: Martinus Nijhoff Publishers, 1995. pp.152, 178, 195.

¹⁴ Sommer

¹⁵ Gail Lichtman. "Adopting Hope." The Jerusalem Post. 29 October 1999.

¹⁶ Jaffe, personal correspondence

¹⁷ Eric Moss. "The Pediatrician with Two Lives." The Jerusalem Post. 11 January 2002.

current escalation of the Israeli-Palestinian conflict, Russia and the Ukraine have put embargos on ICA with Israel. The extent of the damage of the embargo – both from the perspective of Israel and of the sending countries – is difficult to pin down right now, but according to Jaffe, it has severely affected ICA in Israel,¹⁸ and most likely a number of babies as well, who otherwise would have had homes. While it is unavoidable that countries’ politics will affect ICA, the more intertwined the two become, the harder it is to assert that the best interest of the child is the primary consideration.

Comparisons with the United States

In pushing for the new law, Jaffe compared Israel with the United States and accused Israel of falling 15-20 years behind.¹⁹ While other Western nations were expanding access to ICA, Israel was tightening its criteria for adoption in general and avoiding involvement in foreign adoption. As a result of Israel’s late entrance on the inter-country adoption scene, some agencies in Israel licensed to perform ICA work with and through US agencies. For example, Tikvah – the only English-speaking agency in Jerusalem licensed for ICA – has a partnership with the US-based adoption agency Cradle of Hope.²⁰ Shelly Rothschild, the founder of Tikvah, in an interview with the Jerusalem Post explained that “Cradle of Hope has years of experience and has its own full-time workers on location. Tikvah is building upon the Cradle of Hope network.” Rothschild insists that this method provides the best security for her Israeli clients, as Cradle of Hope has on-sight agencies in many foreign countries, a network which would be difficult – and unnecessary – for Tikvah to imitate.²¹

¹⁸ Jaffe, personal correspondence

¹⁹ Lichtman

²⁰ Coincidentally, *tikvah* means “hope” in Hebrew.

²¹ Lichtman

The primary difference between ICA in Israel and in the US is the scale. While 12 Israeli agencies have performed about 400 foreign adoptions since the new law in 1998, the US, by contrast, adopted 19,237 children from abroad just last year.²² Each adoption in the US is performed by one of over 200 licensed private (both non-profit and for-profit) agencies. While some Israelis wish there were more agencies in Israel licensed to perform ICA, it is not clear that more means better. In the US, newspaper articles have cited abuses of Americans wanting to adopt by the US agencies with which they contract. Problems such as exorbitant last-minute fees and dishonesty regarding the health of available infants have been reported.²³ This paper has not been a study of ICA in the US, and no claims are being made as to whether this problem stems simply from the large number of agencies involved, or from inadequate monitoring by the government (or a combination of both). It does seem, however, that the more agencies that are involved, the more difficult and therefore rigorous accountability must be.

Analysis

This paper stands in agreement with the Hague Convention that inter-country adoption is fundamentally a practice that serves the best interests of the child because of its goal of providing that child a home – wherever that home may be. The Israeli case particularly demonstrates the need for legal, regulated ICA. While there exist so many needy children and ready parents, the lack of legal ICA simply encourages illegal adoptions by parents desperate for children, parents who otherwise would have gone through legal avenues. Certainly, there are problems with the way ICA is practiced, but that shows that it needs to be improved, not abandoned.

²² Office of Children's Issues, Department of State: http://www.travel.state.gov/orphan_numbers.html

Preventing Child Trafficking and Associated Abuses

The purpose of ICA is to place needy children in loving homes, not take babies in developing countries away from their biological parents in order to provide children for Western couples. Unfortunately, the combination of impatient parents in receiving countries, with ineffective monitoring methods in sending countries makes it possible to obtain a child more quickly through questionable avenues. The desire of parents to get children quickly is, unfortunately, a factor incompatible with safe, mutually beneficial ICA.

Combating this requires work on the part of both the sending and the receiving countries. Obviously, any parent would like her child as quickly as possible, but this is a case where parent-focused attitudes can hurt the child. Legal, secure foreign adoption takes time. In Eliezar Jaffe's book, Intercountry Adoptions: Laws and Perspectives of "Sending" Countries, contributing authors from Brazil, Costa Rica, Chile, and Peru all cite the length of time required to complete a foreign adoption as a reason parents go through extra-legal avenues. Though the wait is unappealing, these authors say it is necessary to the safety and security of the adoption process.²⁴

Does Good Policy Exist?

This paper has aired many criticisms of ICA and examples of where it has gone wrong. But the reality of the situation is that ICA goes on regularly and with much success. So the question to be asked is: how is successful ICA carried out? There is no single answer to this question, as every country has its own laws, and every agency its own policies. But an example of one agency may provide some hints.

²³ Marilyn Elias. "International-adoption reform may not help parents." USA Today. 12 July 2001.

²⁴ Intercountry Adoptions: Laws and Perspectives of "Sending" Countries. pp.133, 149, 176, 194.

Cradle of Hope is the US-based adoption agency through which Tikvah operates. Cradle is licensed through the state of Maryland, and also fulfills other licensing requirements to become accredited by the sending countries with which they work. Cradle adopts babies from Guatemala, China, and Russia, and practices in each country depend on that country's requirements. In Guatemala, adoptions are arranged through two or three private attorneys with whom Cradle has worked for many years and who operate under Guatemalan law, which mandates DNA testing for the mother and child to ensure that it is actually the biological mother who is giving up her baby for adoption. In China and Russia, Cradle works through governmental agencies. In China it is the Chinese Center for Adoption Affairs that selects children available for ICA. In Russia, available children in orphanages are identified, after which Cradle presents a case to a Russian court, which determines whether the child can be placed with the American family.²⁵

In all cases, the process takes time. Each sending country requires a dossier of documents on the prospective parents prepared by Cradle of Hope, which usually takes three months. Then, the sending country requires anywhere from four to eight months (depending upon country and circumstances) to process the information. Once an application is accepted, China and Russia require at least one visit by the prospective parents to their respective country. In Guatemala, an escort can travel in lieu of the adoptive parents, but it adds an extra month or two onto the process.²⁶ As stated in the previous section, the procedure is lengthy, but the time is necessary to ensure security, and parents must be willing to wait.

Cradle of Hope provides just one example of how ICA is being carried out legally and successfully. The necessary components to legal, successful, adoption exist in many countries,

²⁵ Cradle of Hope, personal correspondence

²⁶ <http://www.cradlehope.org>

and countries – like Israel – that did not always have legal avenues to foreign adoption are realizing that ICA is a (positive) reality, which it is necessary to actively condone and participate in so it can be monitored to the advantage of all parties involved.

Future Research

The purpose of this paper has been to highlight some important points about inter-country adoption, and make a case for its continued and expanded use, using Israel as one case study. While the paper presents one example of successful policy, more research needs to be done on each country's practices in order to construct the best model, from the perspectives of both supporting legal ICA, and preventing people from operating outside the legal framework. Hopefully with continued multi-country cooperation on this task, ICA will improve in its role as a fundamental means to serving the world's eager parents and, particularly, needy children.

Sources

Any information not directly footnoted was found in at least three of the sources below and thus considered to be common (uncontroversial) knowledge.

“Adoption of Children Law 1981.” Selected Israeli Laws Concerning Children and Youth. Jerusalem: State of Israel Ministry of Labour and Social Affairs Department of International Relations, 1991. 53-65.

“Convention on the Rights of the Child 1989.” International Documents on Children: Second Edition. Ed. Geraldine Van Bueren. The Hague: Martinus Nijhoff Publishers, 1998. 7-24.

Elias, Marilyn. “International-adoption reform may not help parents.” USA Today 12 July 2001: 1D.

“Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption 1993.” International Documents on Children: Second Edition. Ed. Geraldine Van Bueren. The Hague: Martinus Nijhoff Publishers, 1998. 213-224.

Hecht, Esther. “Legal International Adoptions Begin Next Month.” The Jerusalem Post 21 December 1997: News p.4.

Intercountry Adoptions: Laws and Perspectives of “Sending” Countries. Ed. Eliezar Jaffe. Dordrecht: Martinus Nijhoff Publishers, 1995.

Jaffe, Eliezar. “Foreign Adoptions in Israel: Private Paths to Parenthood.” Intercountry Adoption: A Multinational Perspective. Ed. Howard Altstein and Rita J. Simon. New York: Praeger, 1991.

Jaffe, Eliezar: “A New Era for Adoptions.” The Jerusalem Post 25 September 1998: Opinion p.9.

Lichtman, Gail. “Adopting Hope.” The Jerusalem Post 29 October 1999: Features p.13.

Moss, Eric. “The Pediatrician with Two Lives.” The Jerusalem Post 11 January 2002: Features p.6.

Ridberg, Maia. “Adoption Parley Focuses on Results of New Law.” The Jerusalem Post 7 May 2001: News p.4.

Shifman, Pinhas. “International Adoptions.” Israeli Reports to the XIII International Congress of Comparative Law. Ed. Celia Wasserstein Fassberg. Jerusalem: The Harry Sacher Institute for Legislative Research and Comparative Law, 1990. 35-43.

Sommer, Allison Kaplan. “A Family Affair.” The Jerusalem Post 8 March 1996: Features p.16.

Triseliotis, John. "Inter-country Adoption: In whose best interest?" Inter-country Adoption: Practical Experiences. Ed. Michael Humphrey and Heather Humphrey. New York: Routledge, 1993. 119-137.