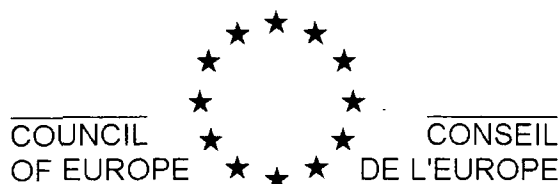




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Abuses of intercountry adoption

Social, Health and Family Affairs Committee

Presentation by Mr Nigel Cantwell at the joint meeting of the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe and UNICEF ICDC, Florence, 12 June 1998*

UNICEF and child rights protection in intercountry adoptions

To date, UNICEF has not been involved on a corporate level with children's rights issues arising from the practice of intercountry adoption. During the Nineties in particular, however, certain country offices of the organisation have felt obliged to react, or to support reaction, in the face of situations where malpractice and violations of international standards have been alleged or proven. The first major instance of this kind was Romania in 1991; the latest is the current situation in Guatemala where there is great resistance to proposed amendments to the law that would regulate intercountry adoption more strictly, and where UNICEF has aligned itself with the call for change. Indeed, four years ago already, UNICEF Guatemala commissioned a report on the illegal international adoption of children from that country whose findings were unequivocal in terms of the need for far tighter control.

In view of such examples of the ad hoc implication of UNICEF at national level, ICDC has been examining how it can best contribute to efforts in this sphere. Last year's MONEE report on children at risk in Central and Eastern Europe contained disturbing information on how intercountry adoption had developed during the Nineties in that region. This year, ICDC will be issuing a publication in its Innocenti Digest series on the protection of children's rights in intercountry adoption. In the context of our capacity building programme, we also intend organising in mid-September a workshop for UNICEF staff designed to enable them to respond appropriately to alleged or proven instances of illegal adoptions in countries where they are working. The meeting

* The opinions expressed in this paper are those of the presenter and not necessarily of UNICEF.

should also provide input to corporate policy on “safeguarding the safeguards” that the international community has felt it necessary to set out in order to maintain respect for children’s rights in the adoption process. We intend taking these initiatives further both within UNICEF and with other partners.

The Hague Convention

International standards are clear and detailed, both in the Convention on the Rights of the Child (CRC) and in the 1993 Hague Convention on Protection of Children and Cooperation in Intercountry Adoption, as well as in non-binding texts. The Hague Convention builds on the substantive provisions of the CRC - not only on CRC article 21 dealing specifically with adoption but on a range of other pertinent articles including 7 and 8 (identity and its protection), 20 (substitute care) and 35 (trafficking and sale). It sets out the circumstances and processes that can be considered as acceptable for intercountry adoption to take place, stipulates safeguards in these respects, and requires the establishment of a system of international cooperation among Contracting States to ensure implementation.

As the report of your rapporteur Mr About points out, in the five years since it was opened for ratification, the Hague Convention has to date attracted hardly more than 20 Contracting States - though on all continents - and some 14 additional signatories. Clearly, as Mr About proposes, all member States of the Council of Europe should be strongly urged to ratify the Hague Convention: the Committee on the Rights of the Child itself consistently requests States Parties to proceed with ratification, given the Hague Convention’s importance for the implementation of the Convention on the Rights of the Child. Some reticence indeed persists in certain quarters. At the same time, this apparently low number of ratifications should not be seen too negatively.

First and foremost, the great majority of States significantly involved in intercountry adoption, whether as receiving countries or countries of origin, took part in drawing up the content of the Hague Convention, and the treaty can therefore be said to correspond overall to the outlook of all concerned. These States in fact number no more than 60 to 70 and exclude, for example, virtually all Islamic countries as well as most of Sub-Saharan Africa. So the proportion of current ratifications and signatures compared with the potential number is in fact considerably higher than it seems at first sight - in the region of 50 per cent, in fact.

Secondly, the Hague Convention requires the establishment of a cooperating mechanism founded on the designation of a “central authority” - a kind of official focal point - in each Contracting State, whether a country of origin or a receiving country. Each central authority takes responsibility for all matters concerning an intercountry adoption to or from its country and deals with its counterpart authority in the other country concerned. It of course takes time for such structures to be put in place as a pre-condition to ratifying. In this regard, one can highlight the need for assistance on the part of the industrialised countries to those countries of origin that are less endowed financially, in order to enable the latter to set up a central authority with the staff and means to carry out its responsibilities effectively - on which the successful operation of the Convention of course depends. Perhaps such assistance could be fostered by and within the Council of Europe, inspired by your Committee.

Abuses: the "country of origin" perspective

A large number of "countries of origin" throughout the world, including several members of the Council of Europe, have regrettably found themselves faced with illicit and criminal acts connected with intercountry adoption on such a scale that they have been forced to take drastic measures in response, such as imposing a moratorium - usually temporary - on adoptions by foreigners (e.g. Romania, Ukraine). This has led many to attempt a realistic assessment of intercountry adoption needs as opposed to opportunities or potential for domestic adoption or other forms of family-based care - Albania is a case in point. Many have subsequently taken active measures to develop adoption by their own citizens. And almost all have attempted both to tighten - sometimes severely - controls on intercountry adoption, the latest being Russia where, two days ago (10 June) the Federation Council ratified amendments to the Adoption Law imposing far stricter controls.

These reactions are sometimes perceived negatively by foreigners, who attribute them to over-sensitive nationalism and often doubt the country's ability to provide appropriate care within its borders for children who might have otherwise found suitable adoptive parents abroad. Experience has tended to prove the contrary on both counts, however: authorities have reacted in the first instance simply because the rights of children were being seriously violated; and raising awareness about domestic adoption invariably generates a rapid and very substantial increase in offers to adopt on the part of the local population.

Tackling abuses

Mr About's report focuses on the need to combat unscrupulous intermediaries and organised criminal networks active in what has become, as he rightly terms it, the "international adoption market". Clearly, such an approach is necessary - but not, I would submit, sufficient. The very fact that we are in a "market" situation means that there is both a demand and a supply side: tackling supply (through intermediaries and networks) will have no incidence on demand. This particular market, moreover, is very much demand-driven. It is not the result of an attempt by these criminal suppliers to create demand, but uniquely a consequence of their responding to a pre-existing, effective demand.

It is therefore necessary to examine the demand side of the coin. To do so honestly, it is unavoidable that some rather brutal terms and concepts be used in relation to the motivations and actions of potential adopters "in the market". I want to make it clear at the outset that my considerations in this section do not apply to adopters who have fully respected the law, procedures and regulations when adopting a child from abroad. Unfortunately, though, it would seem that they are not just a minority, but a continually declining one at that.

For the majority of prospective adopters today, intercountry adoption is no longer making an offer to care for a child who is without a family - as it was in the immediate post-war period - but virtually the only possibility of obtaining a child. Many prospective adopters are prepared to perpetrate, accept, or at best overlook, illegal practices that constitute violations of the human rights of the children involved. They are prepared to pay "honoraria" that clearly bear no relation to the kind of sums that might be reasonably charged in the case of an adoption process respectful of rights, standards of practice and the law. They are

prepared to make false declarations, to falsify documents, and knowingly to flout the law in other ways.

But in the receiving countries, there tends to be a dangerously ambiguous attitude towards prospective adopters who take matters into their own hands in such ways. Whilst their willingness to become parties to crime may be frowned upon in principle, too often there is a readiness in practice to ignore the means because of the apparently laudable end being pursued and because "red tape forces prospective adopters to break the law". A graphic illustration of this ambiguity was the case of the British couple who, in the mid-Nineties, were convicted of trying to smuggle a baby girl out of Romania in their car, in order to "adopt" her. They were sentenced to imprisonment by a Romanian court, but their sentence was quashed by the President of Romania during a State visit to London, when he pardoned them on the grounds that they were "not fundamentally guilty" because of the humanitarian aims of their act. In this case, a representative of the country of origin had even been persuaded to express that ambiguity on the receiving country's behalf...

One problem is that the term "humanitarian" here is used as was too often the concept of "the best interests of the child" before the Convention on the Rights of the Child came about: as justification for acts involving violation of rights. In fact, these are not humanitarian gestures, but acts born of frustration and desperation. In the above-mentioned UK-Romania case, for example, the baby was secured directly from her parents. Within a few months of intercountry adoptions beginning from Albania in 1991, more children were being adopted directly from families than from the small number of institutions that existed - a sure sign that international standards and children's rights were being violated. It is precisely this kind of situation, moreover, that has led to understandable reticence - and in certain cases a moratorium - in many countries regarding the adoption of children abroad.

Acts such as these therefore cannot be considered to translate a willingness to provide a home for a child in need of a family - and Assessore Simone Siliani expressed his concern about this in his opening remarks this morning. On the contrary, they reflect a diametrically opposite motivation: "I would do anything to have a baby". And unfortunately, in many cases, "anything" means literally that: legal or illegal, respectful or not of rights, hiding behind the acceptability of "having a baby" and the superficial emotional appeal of terms such as "humanitarian act". Unless we are prepared to recognise this, we can never begin to tackle the demand-led abuses of intercountry adoption in an effective manner.

Regrettably, good practice is not automatically ensured by having systematic recourse to agencies specialising in adoption. The criteria for their recognition in the receiving countries and their accreditation in the sending countries are still very inadequate. In March last year, the Burundian Foreign Minister demanded to see personally each and every Belgian couple who were to adopt a number of children from his country, because of concerns about the activities of the representative of an accredited Belgian adoption agency there. In Romania, over 50 foreign adoption agencies were accredited in 1995, with no discernable common features in terms of quality, size, track record or approach. Some had secured accreditation by having pressure exerted on their behalf. Because there were too many to deal with the relatively few intercountry adoptions that were required, some chose to compete for "adoptable" children and/or to urge that more children be made available for adoption abroad.

Finally, and again reflecting the condoned ambiguity discussed above, it would be impossible not to mention political pressure to "free up" children for adoption internationally,

sometimes exerted both bilaterally and by multilateral bodies or their agents as a condition for securing material aid.

Proposals to the Committee

It is most encouraging to note that your Committee has taken up the issue of abuses in intercountry adoptions and that one of its members has been appointed rapporteur on the question. Through its work, your Committee is well-placed to spark off initiatives in Europe that can militate against abusive practices.

In addition to the recommendations made to date by Mr About, I would respectfully suggest that consideration be given to the following proposals at this stage:

- 1) Trafficking, sale and associated illegal acts carried out with a view to securing a child for adoption are founded on a very different motivation from that of similar acts perpetrated for the purposes of exploiting the child in some way. Adoption is probably the only legal objective for which trafficking is used as a means, and there is no evidence of organised exploitation of children once adopted abroad. To avoid the danger of unwarranted and counter-productive amalgams, abuses of intercountry adoption should therefore be dealt with separately from, for example, trafficking and sale for sexual exploitation or, as is sometimes alleged to occur, for illicit organ transplants.
- 2) Countries of origin should be assisted in setting up effective "central authorities" so that the Hague Convention can function optimally to prevent abuses.
- 3) In order to counter effective demand for children that spawns illegal and criminal activities linked to intercountry adoption, information campaigns should be launched warning prospective adopters of the dangers of becoming parties to, or perpetrators of, such activities, including awareness of the fact that, if they are asked to pay more than a given amount, they are surely implicated in an illicit process and become punishable by law.
- 4) Far tighter controls on agencies operating in the intercountry adoption field should be developed and applied.

In conclusion, ICDC is most ready, if requested, to contribute further to your efforts to combat abuses in intercountry adoption practice.