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Transnational Adoption from Periphery to Center Countries.

Imperialist Violence behind
Children's Rights Protection

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*To the 'diaspora' of adoptees,
To all those oppressed by colonialist and imperialist structures.*

PREAMBLE

To provide more legitimacy to my analysis, I thought it necessary to start situating my discourse. Indeed, as demonstrated by Donna Haraway¹, situated knowledge requires questioning and understanding the position of the author and the power relations in which they are embedded. It goes in the sense of a greater objectivity to become aware of the place from which the author speaks.

I thus provide a critical analysis of the system of transnational adoption through theoretical and academic frames, while having my own empirical experience as being a transnational adoptee. However, while this analysis could be delegitimized under the ground it is simply mainly driven by anger and emotions, I wanted to precise that I fully enjoy the happiness of the life I am living. But this happiness does not prevent me from challenging dominant and oppressive structures. I could make a parallel with the right to abort. For instance, some persons are born after a rape and live a happy life while the mother would have wanted an abortion, which however does not justify the ban of the right to abort. In this sense, it is not because adoptees could find happiness in their new country that this unequal system should exist without being questioned. Indeed, it is based on the assumption the adoptee's life would be better in a developed country rather than their country of birth, but who could certify it? Moreover, this assumption is mostly based on a material conception of happiness. In any case, it is deeply unfair that some children cannot enjoy their rights to be raised by their own family because of poverty fostered by asymmetric economic relationships between states. Indeed, as we will see in the course of this analysis, most of the children adopted are not orphans in the sense that their parents are dead, but are relinquished mostly due to poverty.

While being surrounded by a loving family, and while living in a country I enjoy living in, I find it necessary to denounce the unfair and flawed system of transnational adoption of which I also face some of the negative consequences. This denunciation is part of a broader critique of the inequalities between Center and Periphery countries caused by the capitalist system. I thus ultimately advocate for the end of transnational adoption. I encourage states to investigate the irregularities of this practice, to make reparations and apologies and to finally ban it. However, still this system exists, adoptee-centered reforms should be implemented to mitigate its negative effects.

Finally, working on this topic brought me so much, and allowed me to know more about myself. I had this idea to treat transnational adoption for my third year thesis a few years ago, and it is such an achievement to have finalized it. At first, I did not know I would adopt a critical standing. Hence, the path to think of this topic was very enriching and allowed me to make myself an opinion on the matter. I thus think it is important to be aware of the dominant structures that oppress us to challenge them instead of taking them as granted. I thus hope this analysis could shed light on the topic of transnational adoption which is not very well known, and mainly told through dominant gazes.

¹ Haraway, D. (1988). *Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective*. *Feminist Studies*, 14(3), 575–599. <https://doi.org/10.2307/3178066>.

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I obviously deeply wanted to thank my father for having listened to the insights I found during my research path. For having taken them into consideration. For having been so supportive. For having been so tuned. I also thank all the members of my adoptive family for their affection.

I would like to make a specific mention to my grand-father, who is probably the main family member who raised my awareness for the causes I defend thanks to his engagement. To some extent, I would like to sent a thought to my biological mother, whoever she is and whatever the situation she faced. This thesis is also dedicated to women across the world facing the impacts of the system this thesis denounces.

I am also profoundly grateful for Mrs. Alauzet, my highschool professor. Her adoptee’s experience did not merely have been a support in life, but deeply shaped my vision of transnational adoption. This work carries the traces of our meaningful discussions. It is in part thanks to her I was able to bypass the challenges of adoption and seize this personal experience as a strength to produce this academic analysis.

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My work carries the traces of all those.

Finally, to any reader of my thesis who is contributing to shed light on this topic which is still too invisibilized, thank you.

ABSTRACT – KEYWORDS

Abstract :

This analysis seeks to evidence the imperialist violence within the transnational adoption system yet intended to protect children's rights. We thus apply the Neo-Marxist theory in International Relations to the case of transnational adoption to question this practice based on inequalities between sending and receiving countries. To assess the limits of the intended purpose of transnational adoption to be 'in the best interests of the child', we delve into the international legal framework covering children's rights protection in intercountry adoption to point out its legal gaps and inconsistencies. Yet, the legal apparatus does not avoid structural power asymmetries.

The aim of this analysis is thus to deconstruct the portrayal of the idealized humanitarian and solidaristic act of transnational adoption through a pluridisciplinary approach. It firstly explains the unequal mechanisms on which this system relies (Chapter 1), before analyzing the international legal framework governing children's rights protection in intercountry adoption (Chapter 2), to finally assess how the system continues to be driven by Western adoptive parents demand, and how it conveys a structural violence upon periphery actors, e.g birth parents and adoptees (Chapter 3). This analysis aims at challenging the dominant narratives by taking more into account adoptees' standing point.

Keywords :

Transnational/intercountry/international adoption ; adoptee ; orphans ; children's rights protection ; best interests of the child ; development/underdevelopment ; inequalities ; Neo-Marxism ; imperialism ; structural violence ; colonialism.

INTRODUCTION

Adoption is an old practice in History, while transnational adoption is a quite recent form of adoption which mainly emerged after the Second World War. Does the internationalization of this practice would tend toward a sense of *universalism*? Or, would it instead reveal an *orientalist* tendency, as defined by Edward Said²? Through his work, Said criticized literacy and scientific productions made by the West to think and represent the East as an eternal *Other* whose existence is constantly commented on, analyzed, defined, fixed without ever being given a voice. Orientalism shaped the imaginary around the orientalized subject, justifying its domination and serving a discourse of power for imperialist and colonialist interests. Orientalism has an historical - and thus material - dimension since his system of thought has a continuity. Through his critical analysis of dominant cultures, Said provides an incentive to provide non-essentialist epistemological alternatives. This analysis is part of this broader need of deconstruction of universalist narratives disguising imperialist domination. Indeed, transnational adoption is supposed to be a way to protect children's rights worldwide in a surge of international cooperation, while dynamics of domination underlie this practice.

To approach this phenomenon, it first seems necessary to define the terms and the history of transnational adoption. It creates an artificial - in the sense of non-biological - link of filiation between the adoptee and the adoptive parents through a judicial decision, but its particularity is to constitute it between individuals from different countries, nationalities or ethnicities. Indeed, the terminology 'transnational adoption' captures this broader dimension of the difference of races and ethnicities between adoptees and adoptive parents; while the terminologies 'international' or 'intercountry' adoptions tend to focus more on the state-scale of the dynamic involving nationals from different countries. However, the 'transnational' adjective permits better to seize the impact of this phenomenon, mobilizing several actors at different scales and embracing the individual ethnic characteristic which matters to understand all the aspects of transnational adoptions. We will thus prefer the use of 'transnational adoption' in general, while also referring to intercountry and international adoptions in the course of this analysis.

While adoption became a transnational phenomenon in the post-world-wars period, adoption is an ancient practice in history. The role and the legal functions of this social construct evolved across the time, but it seems adoption has always been shaped by adopters' needs³. Adoption was firstly related with concerns regarding property inheritance. At the Roman Empire times, a Roman, aged at least sixty, who did not have an heir could resort to adoption, and adopt a person who was no longer a minor⁴. This practice lasted as evidenced by the French Civil Code of 1902 also requiring the adopter must be at least fifty and the adopted person must have reached his majority. Adoption had a utilitarian purpose, at the time of the British colonial empire, adopted children were exported to British

² Said, E. (1978) *Orientalism*

³ O'Halloran, K. (2009). *The politics of adoption: International perspectives on law, policy & practice*. Springer., p.10.

⁴ Benet, M.K.. (1976). *The Character of Adoption*, Johnathan Cape, London. As Benet explains: "Full adoption, adrogatio, was only possible for a person who was himself sui iuris—that is, a member of no family but his own. A minor could not be adrogated because a minor sui iuris had tutores or guardians ...The adopter "must be 60 or from some cause unlikely to have children" p. 30, in O'Halloran, K. (2009) p.10.

colonies to work there⁵. Then, due to the growing importance assigned to child considered as a subject of rights and affection since a cultural shift operated around the XVIIIth and the XIXth centuries in Western societies⁶, the philanthropic dimension of adoption to aid orphans started to emerge progressively. Yet, the recognition of children's rights in international law only came with the adoption of the Convention on the Rights of the Child⁷ in 1989, and from the end of WW2 to the 90s, transnational adoption expanded in a legal vacuum without international conventions specifically designed to protect the rights of children adopted internationally. Moreover, those philanthropic motives had always had difficulties to operate out of the childless couples' interests. Across the time, adoption was then not only seen as a way to find an heir to transmit its legacy, but also as a way of parenting. It is notably due to the changes in family conceptions and the purposes assigned to the child across History. It is the reason explaining the shift in the age of the adoptee when the adoption is realized. Mainly adoptions of minors occur nowadays while it used to be the contrary in the past. For instance, France authorized the adoption of minors, French or foreigners, in 1923.

Nowadays, a vast majority of countries estimated to 170⁸ among the recognized countries by the United-Nations, authorizes both domestic and international adoptions. However, some countries prohibit international adoption, notably states under Islamic law because of the interpretation of Verses 4 and 5 of Sura 33 of the Quran considering children who will be raised by other adults than their biological parents must not change filiation as far. Those countries instead practice another form of legal guardianship named '*kafala*'. Recently, in 2024, both Netherlands – a receiving country - and China – a sending country - stopped international adoptions. However, China still authorizes domestic adoptions, which is also the case of other countries solely allowing domestic adoptions or imposing very strict conditions to international adoptions such as Nigeria, Namibia, Tanzania, or Bangladesh. Indeed, the conditions of the practice depend on the States' decisions authorizing, prohibiting, restricting, controlling, regulating or developing it.

Transnational adoption became a new form of adoption that emerged within a context of intensifying globalization. The political scientist David Held⁹ defined the phenomenon of globalization as the widening, deepening, and speeding up of worldwide interconnectedness in all aspects of contemporary social life, from the culture to the criminal, the financial to the spiritual. Globalization reshapes many aspects of our lives, generating changes in many spheres such as traditions, family, democracy, etc, as highlighted by the sociologist Anthony Giddens¹⁰. Hence, globalization while intensifying international migrations, increasing telecommunications and the spread of global news, reshaping the conception of family, contributed to the emergence of transnational adoptions. Indeed, transnational adoption can be considered as a particular form of international migration as pointed out by Richard H. Weil. Indeed, he stated transnational adoption as received fewer attention in studies examining international migrations mainly focusing on movements of either adults or

⁵ O'Halloran, K. (2009), p.12

⁶ Ariès, P. (2014). *L'enfant et la Vie Familiale Sous L'Ancien Régime*. Le Seuil.

⁷ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25).

⁸ Mignot, J.-F. (2015). *Why Is Intercountry Adoption Declining Worldwide?* Population & Societies, No 519(2), p.1.

⁹ Held, D. (2014). *Globalizations*, 11(4), 491–502. <https://doi.org/10.1080/14747731.2014.951211>.

¹⁰ Giddens, A. (2003). *Runaway world : how globalization is reshaping our lives*, Routledge.

groups¹¹. However, transnational adoptions fit the definition of migration given by the United-Nations considering an international migrant as any person who has changed his or her country of residence. This includes all migrants, regardless of their legal status, or the nature, or motive of their movement¹². However, this type of migration should deserve even more attention due to the very particularity of the migrants, e.g minors in the vast majority. Hence, in the case of transnational adoption, migrants are not at the origin of the decision of their displacement. Their displacement is decided and organized by external actors. This lack of agentivity featuring transnational adoptees' migrations hence raises concern while not permitting children's consent to be displaced. Nigel Cantwell questions this aspect for intercountry adoptions occurring in contexts of humanitarian crises and interrogate the 'forced' character of those migrations¹³. The ethics around the humanitarian motives driving adoption will notably be a matter of discussion in this analysis.

As part of a broader context of globalization, transnational adoptions mobilize a wide range of actors at different scales. Transnational adoption seems to be a private affair taking place in the family circle, however, other actors than adoptive parents and adoptees come into play such as the States, adoptive agencies, associations, orphanages, NGOs, intermediaries, etc. It is in this sense that transnational adoptions can be characterized as such, as part of transnational relations defined as regular interactions across national boundaries when at least one actor is a non-state agent or does not operate on behalf of a national government or an intergovernmental organization, according to Thomas Risse¹⁴. Some features of the Transnationalism theory within the discipline of International Relations are in some way relevant to analyze the phenomenon of transnational adoption. Transnationalists emphasize the role of non-state or societal actors (NGOs, multinational firms, networks, skillful individuals) and study complex interdependence among societies. The roles of such non-states actors and their interactions are essential to analyze and understand transnational adoptions. Keohane and Nye, while abandoning progressively this approach, are prominent scholars of Transnationalism, through their theory of 'Complex Interdependence'¹⁵. Their concept is based on the assumption that three types of actors - e.g state-actors, sub-state actors (i.e agencies within national administration) and non-state actors - initiate three types of interactions - e.g inter-state relations, trans-governmental relations and transnational relations. This conceptualization could help us to describe the interactions occurring within the system of transnational adoption. However, our analysis will not retain their conceptualization as such. Keohane and Nye theorized those relations as drivers of interdependence viewed as a way to obtain peaceful relationships; we will however consider the interactions within transnational adoptions as conflictual. While acknowledging the role of globalization, transnational relations, and the emergence of what Transnationalists consider as a 'global governance', we will position this analysis within the debate of (inter)dependence and non-state centric approaches retaining the Neo-marxist view. Indeed, in the early 1960s, a triangular debate emerged within the discipline of International Relations; the state-centric realist approach has been challenged by non-state centric

¹¹ Weil, H.R. (1984) *International Adoptions: The Quiet Migration*, The International Migration Review, Vol. 18, N°2, p. 276.

¹² Ibid.

¹³ Cantwell, N. (2018) *Intercountry adoption in humanitarian situations: a form of forced migration?*, IRC-ISS, p.2.

¹⁴ Risse, T. (1995) *Bringing Transnational Relations Back In*, Cambridge University Press, <https://doi.org/10.1017/CBO9780511598760>

¹⁵ Keohane, Robert O., and Joseph S. Nye. (1998) *Power and Interdependence in the Information Age*. Foreign Affairs 77, no. 5, p.81–94.

approaches, i.e Transnationalism and Neo-Marxism. However, while Transnationalists viewed the growing interdependence driven by those non-state centric actors as a step toward more peaceful relations, Neo-marxists acknowledged globalization as a wide spread of the capitalist system fostering dependency and domination by capitalist eras to non-capitalist eras.

Neo-marxists thus retain a non-state centric approach, focusing on social classes as the major actors of international relations. They conceptualize those relations as conflictual. Such as Marxists, they posit economic determinism, but they analyze economic international relations among political units at the world political scale as much as economic relations among social classes at the domestic level. The classic Marxist view of class struggle is thus transposed into the field of International Relations, attributing an importance to social classes and the social structures of States when assessing intra- and international dynamics of inequality and domination. This theory emerged at the end of the 1960s and the beginning of the 1970s to understand the relationships between Northern countries and Third World nations emerging. The notion of Third World has been conceptualized in 1952 by the French sociologist and economist Alfred Sauvy, making reference to the Third Estate, to designate those formerly colonized and developing countries who remained outside the two-power blocs during the Cold War. Hence, the Neo-marxist theory focused on the development of the Third World states which is hindered by the world capitalist and imperialist structure perpetuating on the one hand the development of some regions - the Center - and the underdevelopment of others - the Periphery - on the other hand. It is within this framework the transnational adoption relations take place. Indeed, due to the economic inequalities between Center nations and Periphery nations, transnational adoption is characterized by a one-way dynamic from underdeveloped sending countries to developed receiving countries. This one-way dynamic therefore evidences the conflictual character of the relationships entertained in transnational adoption. This unique sense of exchange reveals that it relies on structural and systemic inequalities. Transnational adoption is thus not a global phenomenon occurring equally everywhere, embracing a blurring of boundaries.

However, some scholars such Elizabeth Bartholet persist to claim transnational adoption is an adequate manner to protect children's rights that goes in the sense of globalization in which borders and ethnic differences do not matter anymore, and could easily bypass differences to build families. Such idealized perception of globalization avoids the inequalities of this phenomenon. She argues "the trend is in the direction of more international trade and commerce, of more emigration and immigration, and of more intermarriage between people from different racial, ethnic, and national groups."¹⁶ Such economic exchanges nonetheless do not equally profit all countries, while migrations are in the vast majority triggered by inequalities and transnational adoptions also fit this framework. Moreover, mixed couples is not an indicator of the end of racism, while racism could also interfere in those interpersonal relationships, as denounced by the Afro-feminist activist Rebecca Chaillon in her theatrical play *Carte Noire nommée (Désir)*. She refers to cases of fetishization of Black women, as an object of exotic desire. Such fetishization can be found in transnational adoption, notably with the 'Chinese doll syndrome'. Hence, intra-

¹⁶ Bartholet, E. (2010) *Permanency Is Not Enough: Children Need the Nurturing Parents Found in International Adoption*, NYLS Law Review, Vol 55, Issue 3, p.783.

familial racism can also occur through transnational adoption, as testimonies collected¹⁷ by Roux reveal it. Hence, the universalist discourse proves to be deficient while transnational adoption only occurs from developing countries to developed countries.

The universalist dimension of transnational adoption could only be true if this practice was equally globalized, while this unique sense of the dynamic reveals inequalities between countries. Some still interpret the emergence of transnational adoption and legal text framing its practice as the reflection of a universal commitment to cooperate for human rights and children's rights protection. In order to critic intercountry adoption as a mean for children's care, this analysis will explore the international legal instruments governing children's rights protection in intercountry adoption and points out their limits. In Transnationalist lenses, the rise of such international regulations could be perceived as the emergence of a global governance. However, from a Neo-marxist perspective, those international institutions are merely neo-imperialist domination used to impose values and norms under the guise of humanitarian concern. The statement of principles and values which are intended to be universal in scope seem to only enlight the differences in approach between the countries of the North and those of the South. Indeed, the one-way dynamic of transnational adoption seems to reveal dominant countries shape the institutions according to their interests and their values. It is this power dynamic behind the solidaristic guise, and the *symbolic violence*¹⁸ that arises from it, we seek to analyse. This concept is borrowed from Johan Galtung (1930-2024), a Norwegian scholar and one of the most prominent scholars of the Neo-Marxist theory in International Relations. The symbolic violence refers to a structural and indirect violence resulting in a *social injustice*. Galtung demonstrates this structural violence is fueled by the interaction of the five types of imperialism combined. Indeed, imperialism can take different forms - economic, political, military, communication, cultural – depending on the type of exchange between the Center and the Periphery. We will see in the course of this analysis structural violence penetrates different eras within transnational adoption. While this symbolic violence reaches several spheres, this analysis relies on studies from various disciplines, e.g international relations, political science, sociology, economy, international law, history, etc. It will apply the International Relations theory of Neo-Marxism to the case of transnational adoption to assess the imperialist violence of the practice behind its intended protection of children's rights. For this purpose, we will analyze the international legal framework governing children's rights in intercountry adoption from a legal perspective. We will focus on its legal flaws limiting its effectiveness to protect children's rights, before demonstrating those legal tools legitimate the practice of intercountry adoption, which cannot be a proper way to protect children's rights if inequalities persist. Thus, interdisciplinarity is necessary to seize all the aspects of our topic, but also intersectionality.

Transnational adoption needs to be thought through the lenses of *intersectionality* to embrace all the factors that interact structuring this system. Intersectionality has been conceptualized by the feminist jurist Kimberlé W. Crenshaw¹⁹, it refers to the "compoundness" of subordination due to multiple factors (race, gender, age, sexuality, etc)

¹⁷ Roux, S. (2021) *Sang d'Encre, Enquête sur la fin de l'adoption internationale*, Vendémiaire, p.95-96.

¹⁸ Galtung, J. (1969). *Violence, Peace, and Peace Research*. *Journal of Peace Research*, 6(3), 167-191

¹⁹ Crenshaw, K. (1989) "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," University of Chicago Legal Forum: Vol. 1989: Iss. 1, Article 8. p139-167. Available at: <http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>

and helps to seize how those various aspects interact to create unique experiences of privilege or oppression. While she firstly uses this concept at a more individual scale, we could enlarge its purpose for a systemic global phenomenon such as transnational adoption. Indeed, transnational adoption is a dynamic which involves the perverse effects of capitalism, implying the search for profits for developed countries by maintaining the underdevelopment of other countries; but also of colonialism, neocolonialism, imperialism, conveying the idea of Western superiority. It is therefore important to bring a decolonial gaze to the dynamic of transnational adoption. Feminist lenses are also useful to analyze it, notably the Marxist and socialist feminism to capture the fact that gender oppression is fundamentally linked to class exploitation generating class based disparities and gender hierarchies. However, since not all women face the same oppression, Postcolonial feminism is useful to capture how gender oppression is intertwined with class, race and indeed the colonialist legacy. In the case of transnational adoption, women from Northern countries benefit from this system, able to adopt to raise a family, while this possibility is based on the inequality with women from Southern countries who are constrained to renounce their parenthood. Moreover, climate change also has an impact on this issue, increasing the phenomenon of infertility, and causing natural disasters engendering humanitarian crises, both driving adoptions.

It is in this perspective we will seek to analyze the imperialist violence imposed behind the intended protection of children's rights within the system of transnational adoption. We will firstly explain the mechanisms driving this one-way dynamic such as children are adopted from underdeveloped countries to developed countries (Chapter 1). For this purpose, we will use the Neo-Marxist theory to apply it to the case of transnational adoption to understand the impact of economic inequalities creating this need to resort to transnational adoption for underdeveloped countries (Section 1). Then, we will adopt an historical gaze stressing the colonial legacy rooted in transnational adoption (Section 2). We will see the historical emergence of transnational adoption in the context of humanitarian crises. This will lead us to discuss how the White Savior complex contributed to vehiculate an imaginary of orphans needed to be rescued by Western figures (Section 3).

After having analyzed the mechanisms establishing and perpetuating the system of transnational adoption, the second part of this analysis will dive into the international legal framework covering children's rights protection in intercountry adoption (Chapter 2). Indeed, the practice was developed intending to protect children's welfare, but lacked a proper framework for a long time. Due to the increase in the number of intercountry adoptions, and the rise of illicit practices reported, a framework to specifically protect children's right in intercountry adoption was necessary. We will thus provide an overview of the rise of this legal framework (Section 1), particularly focusing on the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 1993. Since the best interests of the child principle is central within international adoption law, we will analyze the implications of this concept (Section 2). We will also focus on legal inconsistencies and remedies for human rights violations in intercountry adoption (Section 3).

Finally, we will demonstrate how the system of transnational adoption is a power dynamic disguised in an international solidarity dimension (Chapter 3). We will firstly focus on the prevalent role of adoptive parents' whose desire of parenting drives the system,

undermining the philanthropic purpose of transnational adoption (Section 1). Then, we will analyze the violence conveyed by the *harmony* and *dis harmony of interests* between the actors of transnational adoption (Section 2). We will ultimately assess the transnational adoption system from the adoptees' gaze, challenging the dominant narratives and advocating for their empowerment (Section 3).

CHAPTER 1: THE ONE-WAY DYNAMIC OF TRANSNATIONAL ADOPTIONS FROM PERIPHERY TO CENTER COUNTRIES: THE RESULT OF AN IMPERIALIST AND COLONIALIST SYSTEM OF DOMINATION

There is an undeniable trend showing that transnational adoption occurs such as children from developing countries are adopted by families in developed countries²⁰. The aim of this chapter is to answer why transnational adoption is a one-way dynamic, and what the roots of this system are.

It is mainly since the end of the Second World War that transnational adoption became a humanitarian response from developed countries to protect children's well-being considering it would not be ensured by underdeveloped countries due to poverty. At first, intercountry adoption arose as a humanitarian aid to rescue children from wars, such as the Korean (1950-1953) and Vietnamese (1955-1975) wars, or of natural disasters. There was an emergency context justifying this practice; but the practice of transnational adoption has not been limited to crisis contexts but it became a lasting response to the protection of children's rights in countries facing extreme poverty.

However, as poverty is a consequence of Western imperialism leading to economic domination - and thus economic inequalities between developed and underdeveloped countries - it seems transnational adoption emerged as a means of reparation for the imperialist violence committed. This is even evidenced by the fact that adoptions mainly occur between countries with past colonial ties. Hence, the dynamic of transnational adoption is rooted within the imperialist relationships entertained between Northern and Southern countries in two ways. First, it is a consequence of the historical imperialist and colonialist domination by Western countries. Moreover, the implementation of the system of transnational adoption as a lasting answer to poverty and children's rights protection perpetuates this imperialist domination. Indeed, Western countries' aim seems to be to mitigate the consequences of this unequal system but not to abolish it. Furthermore, transnational adoption becomes another form of imperialist domination, such as developed countries take advantage of this system, extracting a resource - children - from developing countries, for their interests. It would be in fact misleading to only consider the 'humanitarian' purpose and the desire to protect children's rights driving transnational adoption, whereas it also responds to a desire to start a family which almost only Western families can fulfill through international adoption.

Hence, the aim of this chapter is to explain the reasons driving the one-way dynamic of transnational adoption, such as children from developed countries are predominantly adopted in

²⁰ Selman, P. (2014). *Intercountry adoption of children from Asia in the twenty-first century*. Children's Geographies, 12(1), 1–14.

Western countries. We will demonstrate that transnational adoption became a solidaristic answer repairing the consequences of the imperialist and colonialist violence, while perpetuating this system of domination creating new forms of violence. The first section will provide a theoretical framework, analyzing transnational adoption through the lenses of the Neo-marxist theory in International Relations. We will demonstrate that the system of international adoption is based on economic inequalities between Center and Periphery nations, i.e an *economic imperialism*, conceptualized by Galtung. It will allow us to understand it is the economic dominance of developed countries that allows Northern families to adopt children of underdeveloped countries. Through Neo-Marxist theory and its concepts, we will be able to demonstrate that transnational adoption is embodied within asymmetric power dynamics that perpetuate themselves, thus, maintaining a system of domination. Then, we will use a more historical gaze to analyze transnational adoption, acknowledging the colonial legacy behind this dynamic (Section 2). This colonial approach will allow us to focus on the White Savior Complex playing an important role shaping the imaginary around transnational adoption (Section 3).

Section 1 : Transnational adoption dynamics through the Neo-marxist lenses

The Neo-Marxist theory permits to understand the economic inequalities between developed receiving countries and underdeveloped sending countries in transnational adoption. This unequal economic development helps to understand the one-way dynamic of transnational adoption. However, the Neo-Marxist theory also explains the mechanisms perpetuating development on the one hand and underdevelopment on the other hand, leading the system of transnational adoption to persist.

1. Neo-Marxist theory posits economic inequalities between developed countries and underdeveloped countries as the roots of transnational adoption dynamics

As the system of transnational adoption is based on inequalities, mainly economic, between countries, the Neo-Marxist theory in the discipline of International Relations seems to be a relevant framework to capture the roots of those inequalities and the mechanisms that perpetuate them. Neo-Marxism helps us to understand the roots of the dynamic of transnational adoption from underdeveloped countries, considered as the Periphery according to Galtung's conceptualization, to developed countries, the Center in Galtung's terminology. Indeed, this IR theory aims at showing how the world capitalist and imperialist structure seems to perpetuate the development of some regions and the underdevelopment of others, thus crystallizing a power dynamic in which there is a dependence of the latter - the periphery - towards the former - the center. For this purpose, Neo-marxists focus on economic international relations among political units on the global political scales. They transpose class struggle into the field of IR, attributing an unprecedented importance to social classes and the social structure of States when assessing intra and international dynamics of inequality and dominance.

While many scholars contributed at establishing Neo-Marxism, we will mainly use Galtung's work, *A Structural Theory of Imperialism*, and retain his terminology to provide an easiest understanding. His work explains to us how imperialism is based on capitalist interaction relations such as the Center exploits the Periphery and benefits from it. The Center sucks capital or economic surplus out of the Periphery, thus assuring itself economic wealth and domination. While the surplus-value is transferred from the Periphery to the Center, the Center ensures its development whereas the Periphery is prevented from developing its economy and remains underdeveloped. This process perpetuates the domination and inequality of the underdeveloped countries. Imperialism, driven by capitalist motivations, is at the roots of this system of domination and exploitation, fostering and crystallizing inequality to the extent of creating a situation of structural violence through a complex intertwining of different mechanisms. The concept of structural violence, also developed by Galtung²¹, refers to an indirect and symbolic violence which prevents some people - or countries - from achieving their potential; and in our case, the Periphery is prevented from ensuring its development because of its submission to the Center.

Hence, we can extend this idea of structural violence within our more specific situation of transnational adoption. Because of this structural violence maintaining Periphery's countries in poverty, many children in underdeveloped countries are relinquished for adoption. There is structural violence in the sense that underdeveloped countries are prevented from keeping their children. Northern countries perpetuate this system advantageous for them, establishing a dependency between Northern and Southern countries. They extract resources serving their interests, notably children from Southern countries to start families. They use the solidaristic claim to justify this system while not challenging it as a whole. By using a solidaristic and even a humanitarian rhetoric, developed countries demonstrate they provide an answer to underdevelopment through transnational adoption. However, it prevents from challenging the problem of underdevelopment in general, creating new forms of domination. In other words, the system of transnational adoption, established under a rhetoric of philanthropy, humanitarian aid and child protection, is the result of a system of domination, accompanied with imperialist violence. However, instituting this system as a long-term rather than a short-term response sustains domination.

We seek to analyze the mechanisms through which this system perpetuates itself. For this purpose, we will use the Neo-marxist concepts of harmony and disharmony (or conflict) of interests, and apply them to the context of transnational adoption.

2. Neo-marxist theory explains the perpetuation of this system of domination by the dialectics of harmony and disharmony of interest

Whereas transnational adoption is often presented as a humanitarian answer to an urgent crisis, it is not a sporadic, occasional event. It is clearly a system with repetitive linkages between governments and institutions in the developing and developed world²². Transnational adoption

²¹ Galtung, J. (1969) *Violence, Peace, and Peace Research*. Journal of Peace Research, 6(3), p.167-191

²² Smolin, D. (2007). *Intercountry adoption and poverty: A human rights analysis*. Samford University. https://works.bepress.com/david_smolin/2/ p.436

has been established to address the consequences of economic inequalities, also created mechanisms that perpetuate economic inequalities and the system of transnational adoption, finally serving Western countries' interests. Indeed, as we will see further (cf. Section 1, Chapter 3), transnational adoption is a demand-driven system responding mainly to Western interests. Transnational adoption became an answer to infertility, the decline in population growth rates, and thus the decrease of domestic adoptable children in developed countries. Those phenomena created a demand in Western countries to adopt children from Southern countries. Hence, the Neo-Marxist theory could also help us to understand how this system perpetuates itself. Indeed, Galtung demonstrates the imperialist domination maintaining inequalities lies in the fact that some entities entertain relations based on a *harmony of interests* whereas others entertain relations based on a *conflict of interests*. The *conflict of interests* designates a specific typology of social conflict consisting in a situation in which the parties are pursuing incompatible goals, whereas the *harmony of interests* consists in a situation in which the parties have aligned interests. Imperialism, driven by capitalist motivations and the pursuit of profit, generates harmony of interests within elite groups in the center of the Center (adoptive parents in Western countries) and the center of the Periphery (adoption agencies in developing countries), and increases more disharmony of interests with the actors within peripheral areas (parents of origin, mainly biological mothers). Galtung's conceptualization helps us to understand the intertwines and overlaps of interests of the different actors of transnational adoption, demonstrating that this system persists to the benefit of certain actors and to the detriment of others.

Hence, *Fig.1* represents the structure of imperialism conceptualized by Galtung²³, whereas *Fig.2* is adaptation of Galtung's scheme to the case of transnational adoption.

Fig.1: the structure of imperialism

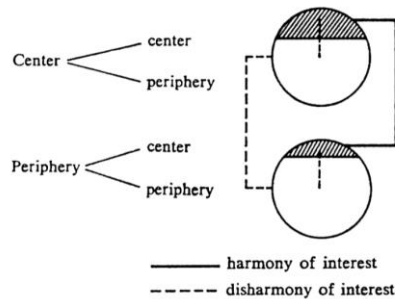
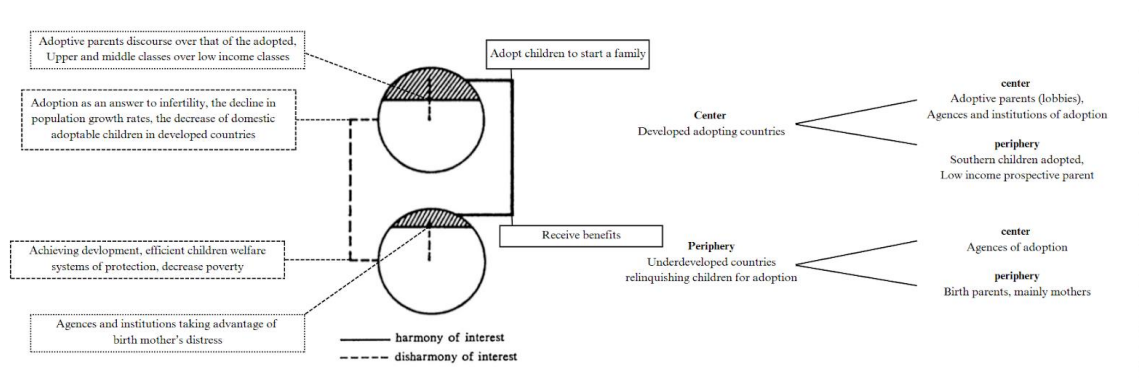


Fig. 2: the structure of imperialism in the system of transnational adoption



The Center is embodied by developed and receiving countries. Within Center countries, the center would refer to the dominant actors of the system, agencies and institutions of

²³ Galtung, J. (1971) "A Structural Theory of Imperialism." Journal of Peace Research 8, no. 2, p84

adoption and adoptive parents able to organize themselves in pressure groups. The Center's periphery would represent the adoptees coming from Southern countries, and it could also represent low income prospective parents who are less likely to see their adoption procedure succeeding.

The Periphery represents underdeveloped and sending countries. The Periphery's center is associated with agencies of adoption, and other intermediaries involved within the procedure of adoption. The Periphery of the periphery is embodied by birth parents, mainly mothers, and children to be adopted.

As in Galtung's conceptualization, there is a harmony of interest between the Center's center and the Periphery's center, such as the Center's center fulfill its desire to start a family through transnational adoption, while the Periphery's center benefits from it receiving profits. There is therefore an interest for both to perpetuate the system.

However, there is a disharmony of interest between the peripheries. Within the Center, there is a conflict of interest between the prevalent discourse of adoptive parents over the adoptees' one, and upper and middle classes are privileged over low income classes. Within the Periphery, agencies, institutions and intermediaries take advantage of birth mothers' distress. There is also a conflict of interest between the Center and the Periphery such as sending countries are prevented from achieving their development and decrease poverty, and from being independent to have efficient children welfare systems of protection; while transnational adoption serves receiving countries' interests facing infertility, a decline in population growth rates and a decrease of domestic adoptable children.

This conceptualization will then serve the rest of this analysis.

3. The development of underdevelopment prevents domestic solutions from being prioritized

The mechanisms of harmony of interests between the Center's center and the Periphery's center and of disharmony of interests between peripheries perpetuate the system of transnational adoption. Indeed, sending countries are not induced to develop domestic adoption and their welfare systems, because of the benefits transnational adoption brings to center actors. Nonetheless, the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) posits in Article 4 (b) transnational adoption should be a solution of last resort after having taken 'appropriate measures to enable the child to remain in the care of his or her family of origin'.

Article 4, Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption:

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin –

b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;

While the sending countries continue to supply the demand driven by Western countries, the dependency prevents Southern countries from achieving their development and improving their welfare systems, and finally reduce their resort to transnational adoption.

Indeed, as Neo-marxists demonstrate, capitalist linkages between Center countries and Periphery countries produce development for Center countries and underdevelopment for Periphery countries. Capitalism imposes a dependency on Periphery countries vis-à-vis Center countries, preventing them from developing themselves. Center exploits the Periphery and benefits from it; the exchange is based on a vertical division of labor according to the principle of comparative advantage²⁴ which triggers an asymmetric relation between the parties. Those relations are actually what perpetuate the underdevelopment. The Dependencia School, with Frank²⁵ being one of the most prominent scholars, developed the *Teoría de la Dependencia*, according to which Periphery countries are underdeveloped because of their relation of economic dependency towards the capitalist Center creating 'unequal exchanges'. There is indeed an unequal distribution of labor and capital between the Center and the Periphery; this transfer of surplus from the Periphery to the Center is the mechanism generating development on one hand and underdevelopment on the other hand.

Here lies the paradox of Western aid to mitigate the impacts of underdevelopment. On the one hand, developed countries perpetuate the underdevelopment of Periphery countries maintaining an asymmetric relation, on the other hand, they provide their aid to respond to the consequences of underdevelopment. Transnational adoption is part of these dynamics. As a part of children from Southern countries are prevented from being raised in their birth country due to the lack of favorable conditions triggered by underdevelopment, the adoption of those children by developed countries became an aid practice. However, since asymmetric relationships are maintained, Periphery countries would remain dependent on Center countries.

Neo-marxist scholars point out the only way to achieve an independent development for Periphery countries is to reduce their links with Center countries. The only way Periphery countries could avoid the need to resort to transnational adoption is to reduce links with Center countries that maintain them in a situation of dependency, triggering their underdevelopment and thus preventing them from improving domestic welfare systems. It is notably the case of South Korea lacking an efficient welfare system. Selman²⁶ points to this deficiency combined with the tough stigma on unmarried women having children, as the main reasons leading to child relinquishment. However, South Korea does not seem committed to developing an adequate child welfare program and aid to single mothers, due to the benefits intercountry adoption brings. Hence, intercountry adoption could produce a disincentive to improve domestic welfare systems. Reducing those links would permit Periphery countries to develop themselves and improve their economic conditions, diminishing the risk of child relinquishment. Neo-marxist scholars proposed suggestions for underdeveloped states to achieve independence. They stress the need for autonomous economic development (Frank, 1966) that can be achieved through a process of 'horizonlization'²⁷, e.g by reducing vertical interaction and exchange on more equal terms.

Hence, Dickens²⁸ argues the practice of intercountry adoption undermines the development of sustainable child welfare systems. While intercountry adoption brings immediate benefits for some children, the author argues ending intercountry adoption is necessary for long-term global

²⁴ David Ricardo's *Theory on Comparative Advantages*, Ricardo, D. (1817) *On the Principles of Political Economy and Taxation*.

²⁵ Frank, A. (1966) "The Development of Underdevelopment", *Monthly Review*, 18 (4), p. 17-31.

²⁶ Selman, P (2014) *Intercountry adoption of children from Asia in the twenty-first century*, *Children's Geographies*, p.5

²⁷ Galtung, J. "A Structural Theory of Imperialism", *Journal of Peace Research*, 8 (2), 1971, p.107

²⁸ Dickens, J. (2009) *Social policy approaches to intercountry adoption*, *International Social Work* ; 52; 595

child welfare improvements. Indeed, intercountry adoption weakens domestic services. Dickens states “the power of foreign money [...] has an impact on public commitment to domestic services”. Indeed, while seeding countries are poor countries, the benefits perceived by transnational adoptions discourage them from stopping this practice.

Indeed, families from developed countries often provide extra payments prospective domestic adopters will not be able to pay, or at least a lower amount lucrative for the agencies. This makes it likely that international adopters will be selected over in-country candidates, or over efforts to support birth families, undermining in practice the subsidiary character of intercountry adoption acknowledged in international law (cf. Chapter 2).

Intercountry adoption also represents an economic activity within developing countries which makes it difficult to stop it. For instance, in the 1990s in Romania, the revenues were higher for social jobs in the field of intercountry adoption than in the local authority services²⁹. To a certain extent, their economies are dependent on this system. Selman highlights China relies on the revenues generated from intercountry adoption to finance its domestic welfare system. For instance, China charges prospective parents at a flat rate fee of \$3,000 supposed to contribute to finance domestic children’s services³⁰. The monetary incentives to place children internationally can therefore distort domestic children welfare systems. Thus, the perpetuation of the dependency of underdeveloped countries to developed countries creates an incentive for Periphery countries to still resort to transnational adoption.

Section 2 : The colonial legacy behind the dynamic of transnational adoption

Imperialism is often accompanied with colonialism. Indeed, colonialism, as a specific form of imperialism, involves the physical occupation of a territory allowing the appropriation and exploitation of its resources. We will seek to demonstrate the extent to which the history of transnational adoption from Southern countries to Western countries has colonial roots, explaining the one way dynamic of adopted children from developing countries to developed countries. On one hand, colonialism, by exploiting resources, deepens the economic underdevelopment of dominated countries for the benefit of developed countries. That is why colonized countries are underdeveloped and relinquish children to be adopted. On the other hand, colonialism establishes relations between the local dominated populations and the population of the colonial Empire. Because of the past colonial ties, transnational adoptions are more likely to happen between the previous Empire nation and past colonies³¹.

²⁹ Ibid, p.601.

³⁰ Selman, P. (2009) *The Movement of Children for Intercountry Adoption: A Demographic Perspective*, paper presented at the Annual Conference of the British Society for Population Studies, Brighton, England p.17.

³¹ Denéchère, Y. (2021). *L'adoption transnationale entre idéologies, humanitaire et catharsis – fins de guerres, décolonisation et guerre froide en France et aux États-Unis (1945–1975)*. Annales de démographie historique, p.95–122.

1. The post-WW2 rise of transnational adoption as a humanitarian act

The history of transnational adoption is very linked with the end of the Second World War, the decolonization period and the beginning of the Cold War³². There is a development of the practice of transnational adoption as a humanitarian means of child protection, thought as a kind of reparation to the harms caused during the colonial times and the decolonial wars. The dynamic has been initiated with Asian countries, mainly South Korea and Vietnam after the wars. Indeed, due to the colonialist occupation, many children were born from consensual or forced relationships between Westerners (settlers, officials, military personnel, etc) and local women. Whereas there was an ongoing process of emancipation of past dominated societies, the integration of those children within those societies became an issue. As they neither fully belong to the Western colonizer group nor the Asian colonized group, they were often perceived as suspicious and a potential threat for the new indigenous rulers³³. It has been the case in Korea, where children born to American fathers were hardly accepted within the society. Hence, a ‘sense of duty’ arose in the United-States with the idea that the adoption of those children by American families seems to be the better welfare solution to insure their protection. The same phenomenon occurred in the Union Française countries where a large presence of expeditionary forces due to the Indochina war (1946-54) increased what we call the “fait eurasien” or “question eurasienne”³⁴. The French government delegated to the Fédération des Oeuvres de l’Enfance Française d’Indochine (FOEFI) the care of those children whose fathers have lost interest and whose mothers are unable to raise them. The FOEFI was in charge of repatriating those children in France, at first temporarily. We estimate 5,000 Eurasian children were sent to France between the 1940s and the 1960s³⁵. Those children obtained French nationality thanks to the décret of 1928 allowing a child, born to a legally unknown father presumed to be French, to become French. However, this legislation facilitated illicit practices; some French soldiers recognized some children, whereas they were not their fathers, to officially abandon them so they could be adopted³⁶. It notably happened in 1963, for many children living around the Seno air base, as the ex-commandant Jacques Suant recognized.

2. The perpetuation of a system of domination for Western interests behind the rhetoric of children’s protection

Hence, this post-war context after the wars in Korea (1950-1953) and in Vietnam (1955-1975) marked the rise of transnational adoption, presented as a humanitarian act in a reparation mindset toward former colonies, not devoid of abusive practices. However, this way of relieving consciences is merely another marker of the power exerted by Western countries over their past colonies. Indeed, Western countries began practicing transnational

³² Ibid.

³³ Rosen Jacobson, Liesbeth (2018), *“The Eurasian question” : The colonial position and postcolonial options of colonial mixed-ancestry groups from British India, Dutch East Indies and French Indochina compared*, Uitgeverij Verloren.

³⁴ Denéchère, Y. « Avant le « grand départ » pour la France : photos d’enfants eursasiens en Indochine », Encyclopédie d’histoire numérique de l’Europe, online, ISSN 2677-6588, mis en ligne le 21/05/21 , consulté le 20/03/2025. Permalien : <https://ehne.fr/fr/node/21564>.

³⁵ Ibid.

³⁶ Ibid, p.101.

adoption to serve their own interest, notably responding to demographic concerns linked with the end of the war. After WW2, the doctrine of populationism arose in France with the Haut comité consultatif de la Population et de la Famille ('High Advisory Committee on Population and Family') encouraging a policy in favor of natality and immigration, notably of children. Moreover, France was also facing the loss of its colonial empire and sought to redefine its relations with its former colonies; adopted children were thus intended to serve as a bridge. Transnational adoption has also been pushed by ideological motivations. The United-States, as the leader of the Western bloc in the Cold War engaged in transnational adoption as a means of reinforcing its ideological struggle against communism. The idea was to 'save' children from the grips of communism. It is notably this discourse that motivated Harry and Bertha Holt's project who founded the first adoption agency, Holt International Children's Services, in 1956, driven by the idea of carrying out a divine and patriotic mission, and convinced they were saving Korean children by offering them a better life in the United-States. Adopting mixed-race or foreign children was also a symbol of fraternity between people, embodying the ideal of universalism that was very prevalent at the end of the Second World War. Moreover, there was a certain pressure on couples without children in the United-States, while parenthood was associated with a patriotic duty, leading those couples to adopt³⁷.

3. Post-colonial relationships, neocolonial links?

First, it seems important to clarify the concepts *post-colonial*³⁸ and *neocolonial*. Post-colonial refers to a situation posterior to the colonial period while the colonial legacy still has an impact on it. It is important to distinguish it from postcolonial, which is not necessarily posterior to colonialism, but refers to a way of thinking bypassing eurocentrism and colonial gaze. On the other hand, neocolonial links would refer to the prolongation of colonial links after the colonial period through other forms of domination.

While transnational adoption has therefore become a lasting practice historical colonial links are reflected in these child migrations. Hence, transnational adoptions are very likely to take place between countries with past colonial ties³⁹ due to the historical continuity of this dynamic. It can be explained by the fact that some ties remain between the former colony and the former metropole, even if the colonial relations ended, facilitating those exchanges. These cultural, economic, and administrative connections can simplify adoptions, by reducing the costs of adopting, making the access to information about the country easier for prospective parents⁴⁰. Indeed, some scholars such as Selman Peter⁴¹ observed those tendencies. He evidenced major trends between sending and receiving countries lying in their historical relations; indeed a majority of children from South Korea and Taiwan have always been sent to the United-States, while Thailand have mainly sent children to European countries or Australia, and Vietnam mainly to France and the United-States. Indeed, we see on *Tab. 1* the two first receiving countries of

³⁷ Carp, E. Wayne, Leon-Guerrero, Anna (2002), *When in doubt, count World War II as a watershed in the history of adoption*, 181-217, in E. Wayne Carp (dir.), *Adoption in America. Historical perspectives*, University of Michigan Press.

³⁸ Cahen, M. (2024) *Colonialité. Plaidoyer pour la précision d'un concept* Karthala, Coll. Disputation.

³⁹ Asif Efrat, David Leblang, Steven Liao, Sonal S. Pandya, (2015) *Babies across Borders: The Political Economy of International Child Adoption*, *International Studies Quarterly*, Volume 59, Issue 3, Pages 615–628, <https://doi.org/10.1111/isqu.12206>

⁴⁰ Ibid.

⁴¹ Selman, P. (2014). *Intercountry adoption of children from Asia in the twenty-first century*, *Children's Geographies*.

adoption from Vietnam from 1998 to 2012 are the United-States and France. Adoptions from Vietnam realized in the United-States represented 34% of the total of adoptions that occurred from 1998 to 2012, while in France, they represented 32%.

Tab. 1

Table 4. Adoption from Vietnam 1998 to 2012. Nine countries receiving more than 500 children during the period; peak year in bold.

Country	1998	2001	2004	2005	2008	2010	2011	1998–2011	% of All	2012
USA (FY)	603	737	21	7	751 ^a	9	0	6181	34%	0
France	1343 ^b	44	363	790	284	469	264	5904	32%	76
Italy	0	36	6	140	313	251	142	1769	10%	41
Canada	79	131	6	3	111	171	90	1159	6%	43
Sweden	186	78	16	92	50	7	0	1009	5%	0
Ireland	0	10	16	92	182	10	0	773	4%	0
Denmark	58	62	13	72	39	34	23	634	3%	3
Spain	0	9	0	0	65	320	178	606	3%	41
Germany	51	120	13	9	6	8	2	582	3%	3
TOTAL ^c	2471	1300	488	1198	1739	1279	704	19,204		214

Source: Numbers are calculated from data on countries of origin in statistics provided by those states, which received children from Vietnam between 1998 and 2012.

^aThe highest annual total for the USA was 828 in 2007.

^bIn 1998 54% of adoptions were to France.

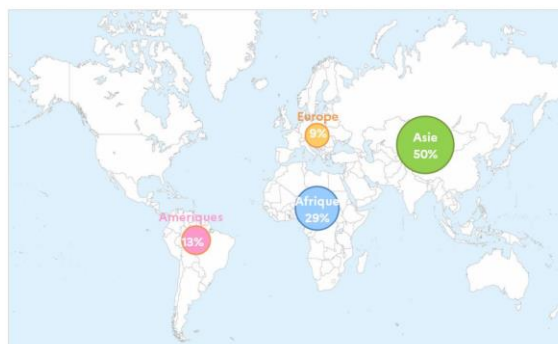
^cTotal includes adoptions to Belgium (279) and Switzerland (250) with smaller numbers going to the UK, New Zealand and the Netherlands.

Source: Selman, P. (2014) *Intercountry adoption of children from Asia in the twenty-first century*, Children's Geographies, p.8

Moreover, the 2024 Report of the Mission de l'Adoption Internationale, the French central authority attached to the Ministry of Europe and Foreign Affairs informs us on the repartition of intercountry adoptions realized in France in 2024. Tab.1 indicates 50% of the international adoptions realized in France in 2024 are from Asia. Map.1 lists the ten first sending countries for intercountry adoptions realized in France in 2024 which are Vietnam, Thailand, Colombia, Madagascar, India, Cameroun, Bulgaria, Tunisia, Hungria and Togo. We can notice a significant part of those countries used to be part of the French colonial Empire; Vietnam was part of the French Indochina (1854-1954), Madagascar was colonized from 1896 to 1960; Cameroun used to be under a French mandate after WW1; Tunisia was a French protectorate from 1881 to 1956 and Togo also used to be under a French mandate after WW1.

Map.1 : Geographic repartition of intercountry adoptions realized in France in 2024

RÉPARTITION GÉOGRAPHIQUE DES ADOPTIONS INTERNATIONALES
RÉALISÉES EN FRANCE EN 2024



Source: MAI (Mission de l'Adoption Internationale) Annual Report, 2024. 'Statistiques de l'adoption internationale en 2024', p.2 see: <https://www.diplomatie.gouv.fr/fr/adoption-a-l-etranger/la-mission-de-l-adoption-internationale/les-chiffres-de-l-adoption-internationale/>

Tab.2 : 10 first sending countries for intercountry adoptions realized in France in 2024

10 PREMIERS PAYS D'ORIGINE DES ADOPTIONS INTERNATIONALES RÉALISÉES EN FRANCE EN 2024	TOTAL adoptions 2024	103
VIETNAM	21	
THAÏLANDE	20	
COLOMBIE	11	
MADAGASCAR	9	
INDE	7	
CAMEROUN	6	
BULGARIE	5	
TUNISIE	4	
HONGRIE	3	
TOGO	3	
TOTAL 10 premiers pays d'origine	89	
		86%

Source: International Adoption Statistics in 2024. Directorate for French Nationals Abroad and Consular Administration

International Adoption Mission (MAI). p.2.

see: <https://www.diplomatie.gouv.fr/fr/adopter-a-l-etranger/la-mission-de-l-adoption-internationale/les-chiffres-de-l-adoption-internationale/>

Section 3 : The White Savior Complex: helping or dominating?

Moreover, the practice of transnational adoption did not escape the White Savior Complex. This expression refers to the imperial practice and a means of exhibiting White moral exceptionality⁴². The White Savior myth stems from the colonial era and is very linked with the “civilizing mission”. This myth refers to the attitude of Whites involving themselves in humanitarian actions but considering their supremacy. Hence, this section aims to point out that while humanitarian aid, notably transnational adoption, is supposed to be a benevolent endeavor, it can also hide power dynamics, a will to dominate behind the will to help. My point is not to criticize the humanitarian aid as a whole but points out the possible derives of it, and the need to decolonize its approach to prevent its perverse effects and provide a genuinely benevolent action.

1. Humanitarian aid: a paternalistic relation?

Transnational adoption developed after World War II as a humanitarian response in these war contexts. However, it would seem that this humanitarian aid is oriented in a single direction, coming from developed countries to developing countries. There is hence this idea according to which humanitarian help is from North countries to Southern countries and not the opposite. It is in this sense that France refused after the Second World War to let French children be adopted by foreigners⁴³. It would have been an admission of weakness while transnational adoption was thought as a power marker and national pride. This dynamic raises some questions. Indeed, this policy of compassion aimed at helping the poorest is based on inequality between the actors, thus questioning the tensions between equality and solidarity⁴⁴. Is this a relationship of mutual support or domination?

Didier Fassin demonstrated advances in communication and moral imaginations in the late eighteenth century have created what he named the “humanitarian reason”. It refers to the belief that we can and we should do something when others are in danger, in need, and

⁴² Jefferess, D. (2023). *Humanitarianism and White Saviors*. In: Ravulo, J., Olcoñ, K., Dune, T., Workman, A., Liamputtong, P. (eds) Handbook of Critical Whiteness. Springer, Singapore. https://doi.org/10.1007/978-981-19-1612-0_61-1

⁴³ Denéchère, Y. (2009) *Vers une histoire de l'adoption internationale en France*, Vingtième Siècle, vol.2, n°102.

⁴⁴ Fassin, D. (2010) *La raison humanitaire, Une histoire morale du présent*, Seuil.

experiencing deprivation. However, the rise of concern for humanitarian help based on the idea of equality between humans could seem paradoxical while adoption as a humanitarian act is based on inequalities. Indeed, while humanitarian governance seems to have a reputation of “power free” zone, it does not escape the power dynamics⁴⁵. It includes a power to use ethics in the service of humanity and the power over the very individuals, societies and states that are the objects of concern. Hence, to capture the combining of care and control within the humanitarian act, Barnett refers to the concept of ‘paternalism’. Paternalism can be defined as the attempted or accomplished substitution of one’s person’s judgement for another’s on the grounds that it is in the latter’s best interests, for their welfare or happiness.

In our case, transnational adoptions are justified under the ground they are ‘in the best interests of the child’ as we will further discuss in Chapter 2. Paternalism is based on two elements, the belief of the inferiority of the would-be paternalizer who could harm itself while its rationality is deficient, and the belief of the paternalizer he is superior and he should intervene in the lives of another. Hence, the motivation of paternalism seems to be the desire to help those who are deemed unable to act in their own best interests. In our case, failure of child protection systems in countries of the South are often pointed out as a reason for transnational adoption to take place; while the young age of children facilitates the belief that the decision taken for them would be in their best interests. However, paternalism does not seem merely motivated by concern for others, and hides self-interest motivations. Those humanitarian concerns for children without family or who cannot be raised by their parents also seem motivated by the self-interest of Western families to have children. Humanitarian aid seems to involve a paternalistic domination over the ones who are helped.

2. Communication and cultural imperialism vehiculating the White Savior imaginary

The white saviour imaginary around adoption as a philanthropic act to rescue orphans has been strengthened by the media, with sensationalist documentaries, fictive movies narrations, and the mediatization of celebrities who adopted children.

Indeed, the way a distant phenomenon, such as wars or natural disasters, is portrayed shape the image spectators on the other side of the world have of it. With the media coverage of ‘distant suffering’⁴⁶, particularly with the spread of television in the 1960s and 1970s, the French sociologist Luc Boltanski examines the new challenges posed by this phenomenon. He questions the moral imperatives imposed on the spectator of this distant suffering, particularly the obligation to act. Hence, media coverage of large-scale disasters vehiculate a certain ‘iconography of emergencies’⁴⁷ justifying the significant humanitarian outpouring. As Burman states, ‘children are figured heavily in aid appeals: they plead, they suffer, and their apparent need calls forth help in the form of donations’. Those portrayals of children

⁴⁵ Barnett, M. (2017) *Paternalism beyond borders*, Cambridge University Press.

⁴⁶ Boltanski, L. (1993), *La souffrance à distance. Morale humanitaire, médias et politique*, Paris, Métailié.

⁴⁷ Burman, E. (1994) *Innocents abroad: Western fantasies of childhood and the iconography of emergencies*, *Disasters* 11 18, no. 3, p.245.

appearing alone gives the impression many orphans are waiting to be ‘rescued’⁴⁸. After the Boxing Day tsunami in 2004 in Thailand, a study in 2017 highlighted ‘the combination of a natural disaster in a developing country and media coverage has the potential to create a profound impression on individuals’⁴⁹. Indeed, the emergence of the television marked the entry into a new era, the ‘videosphere’ according to Régis Debray’s concept, characterized by the powerful impact of images⁵⁰.

Moreover, the virtuous image of transnational adoption has been reinforced by mediatic adoptions⁵¹ by some celebrities. In the 1950s and 1960s, the Franco-American singer Josephine Baker adopted twelve children from different countries and races, forming what she called her ‘Rainbow Tribe’. She contributed to popularizing intercountry adoption, embodying an ideal of universal brotherhood. In 1953, Baker celebrated this utopian universalism in her song *Dans mon village*⁵², singing:

“In my village / I tenderly raise / In my village / Five very small children / Five orphans, from here,
from there / Who were bored, alone, down here / And I wanted them to be pampered / In a home”.

Her lyrics convey a miserable image of orphans she ‘saved’. In 2004, Johnny and Laeticia Hallyday also decided to adopt in Vietnam. They would have benefited from an accelerated procedure impulsed by Bernadette Chirac, the first French lady at that time. Indeed, while Jacques and Bernadette Chirac also adopted their daughter Anh Dao in Vietnam in 1979, Mrs Chirac would have interceded on behalf of the Hallyday couple with the Vietnamese government during an official trip. The Hallyday’s procedure to adopt Jade lasted six months while the minimum was supposed to be nine months. Then, in 2008, they also adopted Joy. On the occasion of Jade’s arrival, Johnny Hallyday interpreted the song *Mon plus beau Noël*⁵³, composed by Fred Blondin. The lyrics also raise concerns, representing the child adopted as a ‘gift’ fulfilling the dream of becoming father:

“You are my most beautiful Christmas / The one I didn’t expect / This wonderful gift fallen from the sky / The one all the fathers dream of”.

While this song became number one single sales in France, and its video clip incorporating glorifying images of the couple in Vietnam, and the arrival of Jade, it seems adoption is also serving the charitable image of the celebrity and its desire of parenthood. Between 2006 and 2017, Madonna also adopted four children in Malawi and founded in 2006 the humanitarian foundation Raising Malawi to build hospitals and help orphans. However, she

⁴⁸ Van Doore, Kathryn E. and Rebecca Nhep, (2021) *Providing Protection or Enabling Exploitation? Orphanages and Modern Slavery in Post-Disaster Contexts*, Journal of Modern Slavery, Volume 6, Issue 3.

⁴⁹ Proyrungroj, R. (2017) *Orphan Volunteer Tourism in Thailand: Volunteer Tourists’ Motivations and On-Site 15 Experiences*, Journal of Hospitality & Tourism Research 41, no. 5, p.580.

⁵⁰ Trouvé, M. (2017) *Le Poids des Mots, Le Choc des Photos : Le Lieutenant-Colonel Tejero Aux Cortès le 23 février 1981*. Parlement[s], Revue d’histoire politique, HS 12(3), 241-248. <https://doi.org/10.3917/parl2.hs12.0241>

⁵¹ Denéchère, Y. (2011) *Des enfants venus de loin*, Armand Colin.

⁵² Translation in English from French: “Dans mon village / J’élève tendrement / Dans mon village / Cinq tout petits enfants / Cinq orphelins, d’ici, de là / Qui s’ennuyaient, seuls, ici-bas / Et j’ai voulu qu’ils soient choyés / Dans un foyer”, Dans mon village, Joséphine Baker, 1953.

⁵³ Translation in English from French: “Tu es mon plus beau Noël, / Celui que je n’attendais pas, / Ce merveilleux cadeau tombé du ciel, / Celui dont rêvent tous les papas.” Mon plus beau Noël, composed by Fred Blondin, interpreted by Johnny Hallyday, 2005.

would have circumvented Malawi practice requiring adoptive parents to stay in Malawi for at least eighteen months⁵⁴.

Movies also contributed to diffuse this narrative of the white savior rescuing orphans in developing countries. For instance, the American movie *The Green Berets* (1968) of John Wayne, which takes place during an American intervention in South Vietnam during the war (1955-1975) depicts during the final scene a young orphan holding the ancient American soldier's hand, conferring a patriotic dimension to the movie. Baz Luhrmann's movie *Australia* (2008) gave this same impression, romanticizing a white couple saving an aboriginal orphan in a war context. On the contrary, Joachim Lafosse realized in 2015 the Belgian-French movie *The White Knights* parodying the figure of the white savior to denounce it. The movie tells the story of an NGO called "Move for Kids", carrying out a humanitarian operation funded by adoptive parents, in an African country in a civil war to evacuate three-hundred young orphans. At the beginning of the movie, one of the French volunteers gives a speech to the population to be helped; the white figure positions himself at a height, giving an impression of superiority over the local people and speaks in French. The film evidences some perverse effects of the humanitarian action in transnational adoption, only young children can be rescued to fit the adoptive parent's demand; the NGO pays some local intermediaries benefiting from this action opening the door to trafficking - we will dive more in depth on these aspects further; the NGO's members seem more determined by reaching the goal of finding three-hundred children to rescue than the cause in itself. This movie has been inspired by the real historical scandal of Zoe's Ark in 2007.

Hence, those ways of communication strongly contributed to vehiculate a positive imaginary around transnational adoption through the white savior narrative. This could be associated with a form of communication imperialism, combined with cultural imperialism. Indeed, Galtung emphasizes news communication is a tool for imperialist powers. The Center, dominating the means of communication, interprets Periphery events through a Center gaze, as it has been the case for humanitarian crises.

3. Cases of abuses within transnational adoption under the cover of humanitarian aid to protect children

The white savior complex marked by imperialist and colonialist tendencies combined with the lack of international jurisdiction that remained for a long time to protect children's rights in intercountry adoption (cf. Chapter 2) led to some cases of abuses under the cover of humanitarian aid. Indeed, as we will see later, the first international Convention particularly covering transnational adoption is the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993). As we mentioned just below, the media coverage of disaster situations depicts an emergency context justifying an urgent humanitarian aid. The aid deployed is supposed to protect children; but the evacuation of the supposed orphans out of their country of origin due to a perceived emergency often led to the displacement of children still having living parents. It has notably been the case in the Operation Babylift which has been the largest mass overseas

⁵⁴ Migiro, K. (2017) 'Malawi divided over impact of Madonna's adoption', Thomson Reuters Foundation.

evacuation of children⁵⁵. This operation has been launched by the American President Ford, on 3 April 1975 aiming at evacuating mixed-race children born from American soldiers and orphans. 2500–3000 children were evacuated⁵⁶. To facilitate the operation and make it faster, Ford ordered to the American representatives in Vietnam to have a light regard on formalities⁵⁷. On April 4, the first plane Galaxy C-5 of the US Air Force crashed, killing more than 150 of its passengers on roughly more than 310 passengers, mainly children⁵⁸. The number of children on board was uncertain; indeed this accident evidenced lack of reliable data on children. Many children's files also have been lost and children supposed to be evacuated in France did not have exit visas from Vietnam nor entry visas to France. Thus, the lack of verification of orphans' status raised concern. Some children revealed they still had living parents, for instance one year after her arrival in France, a young Vietnamese girl revealed she has been sent by her father, a Saigon police officer who wanted to save her⁵⁹. As an immediate response, on April 4th, professors of ethics and religion from the most prestigious American universities, like Berkeley and Stanford, signed a statement denouncing the Operation Babylift, the "Statement on the immorality of bringing South Vietnamese orphans to the United States":

"We, the undersigned professors of ethics and religion, strongly denounce the actions of President Ford and the private organizations, such as World Airways, for their planned airlifting of 2000 displaced Vietnamese children to the United States. Even though they may be motivated by good intentions, the airlift, we believe, is immoral, for the following reasons:

1. Many of the children are not orphans; their parents or relatives may still be alive, although displaced, in Vietnam. [...]"⁶⁰.

The fourth point of the statement also denounces the US motivations driving this operation as a propaganda effort to relieve its conscience and its prestige:

4. The only reason for bringing the children here is to salve our conscience, and children should not be used that way.

Indeed, Operation Babylift perfectly embodies abuses of humanitarian aid, not escaping power dynamics. This operation has been carried out under the banner of humanitarianism yet deeply rooted in military interests, Denéchère described it as a 'militaro-humanitarian operation'⁶¹. Moreover, to avoid adoptive families' concerns and controversies regarding Operation Babylift, the Quai d'Orsay asked for the destruction of children's documents related⁶².

⁵⁵ Bergquist, Kathleen J.S (2009) *Operation Babylift or Babyabduction? Implications of the Hague Convention on the humanitarian evacuation and 'rescue' of children*, International Social Work, 52(5), p.621–633, at p.622.

⁵⁶ Ibid.

⁵⁷ Denéchère, Y. (2021) *L'adoption transnationale entre idéologies, humanitaire et catharsis*, Annales de Démographie historique, p.95-122, at p.105.

⁵⁸ Ibid.

⁵⁹ Denéchère (2021), Témoignage de Denise Colin, responsable du secteur « Accueil à vie » de TDH-F, recueilli par l'auteur, février 2010. Le Figaro, « Évacuation des orphelins interrompue », 8 avril 1975

⁶⁰ Statement on the Immorality of Bringing South Vietnamese Orphans to the United States, April 4, 1975, Viola W. Bernard Papers, Box 62, Folder 8, Archives and Special Collections, Augustus C. Long Library, Columbia University

⁶¹ Denéchère, Y. (2013) *Babylift (avril 1975) : une opération militaro-humanitaire américaine pour finir la guerre du Vietnam*, Guerres mondiales et conflits contemporains, 2013/4 n° 252. p.131-143.

⁶² Minnie Galozzi's testimony collected in 2010. She was asked by the Quai d'Orsay to verify the conditions of transfer of certain children from the United States to France. In: Denéchère (2021) p.115.

Some judicial actions have been launched. Muoi McConnell, a former Vietnamese nurse, filed a class action lawsuit in the Federal District Court in San Francisco on April 29, 1975, to prohibit adoption proceedings until the children's adoptability was rigorously established through the consent of the biological parents or a proof of their death. In 1975, plaintiffs challenged the US government's actions in the class action lawsuit *Nguyen Da Yen et al. v. Kissinger* (1975) asserting that the children were being unconstitutionally detained. However, at that time, legal instruments addressing intercountry adoption were very limited, and children's rights were still not recognized (cf. Chapter 2). Hence, Operation Babylift reflected the need for international laws to protect children's rights in intercountry adoptions. After WW2, through the influence of the liberal institutionalist theory in International Relations, international organizations have been created, notably the United Nations with the San Francisco Treaty of 1945. It paved the way for the adoption of multilateral agreements covering a range of different matters, notably children's rights protection. In line with the Declaration on the Rights of the Child proclaimed by General Assembly resolution 1386(XIV) of 20 November 1959, the Convention on the Rights of the Child (CRC) has been adopted on the 20th of November 1989. Aside the 1965 Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions of the Hague Conference on Private International Law focusing more on conflict of laws and recognition rather than child welfare, the CRC (1989) is the first legally binding international treaty to include explicit provision on intercountry adoption. It is only in 1993 the Hague Conference on Private International Law adopted the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, representing the first comprehensive legal framework specifically dedicated to the protection of children in intercountry adoption.

However, the 1993 Hague Convention coming to frame transnational adoptions, symbolized in a way the institutionalization and the legitimation of the practice. This process of legitimation is both acknowledged by critics⁶³ and the defenders of this convention⁶⁴. Thus, after having analyzed the mechanisms at the roots of the one-way dynamic of transnational adoption, and the linkages perpetuating it, the next chapter will focus on the legal framework that has been developed to protect children's rights in intercountry adoption. We will provide an overview of the international legal instruments covering this matter, particularly focusing on the 1993 Hague Convention, before assessing the limits of those tools.

CHAPTER 2: A LEGAL FRAMEWORK ATTEMPTING TO PROTECT CHILDREN'S RIGHTS IN INTERCOUNTRY ADOPTION

Chapter 1 assessed how the practice of intercountry adoption was developed under the rhetoric of children's welfare. The initial humanitarian purpose (cf. Chapter 1, Section 2.1) finally hidden an imperialist violence, and abuses while the practice was not legally framed by international conventions and children's rights were not yet recognized. Hence,

⁶³ Bergquist, Kathleen J.S.(2009), *Operation Babylift or Babyabduction? Implications of the Hague Convention on the humanitarian evacuation and 'rescue' of children*, International Social Work, 52(5), p.621–633, at p.626.

⁶⁴ Bartholet E. (2010), *Permanency Is Not Enough: Children Need the Nurturing Parents Found in International Adoption*, NYLS Law Review, Vol 55, Issue 3, p.784.

Chapter 2 dives into the legal framework covering children's rights protection in intercountry adoption. It first mentions the rise of children's rights protection and the rise of the legal framework covering intercountry adoption in general. We will evidence some gaps and inconsistencies of this legal framework. We will stress out the lack of clear guidance for the implementation of some legal instruments and some inconsistencies between the legal tools. We will also assess the limits for enforceability and effectiveness of leaving too large room for interpretation on some core issues (e.g fees or consent) and too much ambiguity around core principles (e.g the best interests of the child).

Indeed, the increase of the practice of intercountry adoption at the end of the Second World War initiated the development of international legal tools to frame the practice, such as the Hague Adoption Convention of 1965⁶⁵ or the European Convention on the Adoption of Children⁶⁶ adopted by the Council of Europe in 1967. On the other hand, concerns about the children's rights and welfare spawned multilateral declarations and conventions to promote 'the best interests of children', such as the 1959 Declaration on the Rights of the Child⁶⁷, the 1986 UN Declaration on the Social and Legal Principles Relating to the Protection and the Welfare of Children⁶⁸, or the 1989 UN Convention on the Rights of the Child (CRC)⁶⁹. However, the 1959 Declaration on the Rights of the Child made no reference to adoption. Poland's initial draft of the CRC also did not mention adoption, before the 1979 revised draft which finally made mention of adoption. While the practice of transnational adoption was constantly growing after WW2, there was still no international treaty properly dealing with the protection of children's rights in intercountry adoption before the 1993 Hague Convention⁷⁰, despite the first attempt of the 1965 Hague Convention. Hence, it is only in 1993 the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption has been adopted to fill this gap. It notably emerged in response to a number of illicit practices reported, such as the Operation Babylift, to prevent them. This chapter will focus on the legal tools existing to struggle against such irregularities, while pointing out their limits.

This chapter also confronts the framework specifically addressing intercountry adoption, mainly the 1993 Hague Convention⁷¹, and broader legal tools dealing with children's rights protection, such as the CRC⁷². The aim is to evidence some paradoxes or deficiencies in the legal framework, with for instance, the relevant issue of the right to identity⁷³ settled in the CRC, which lacks of protection in the context of intercountry adoption.

We will also pay special attention to the 'best interest of the child' notion, which is a core principle within the framework of children's rights, and particularly in intercountry adoption. However, the incorporation in the legal framework of this notion, which was used before the rise of human rights, needs further precisions to avoid its paternalistic

⁶⁵ HCCH (1965). *Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions*.

⁶⁶ Council of Europe. (1967). *European Convention on the Adoption of Children* (ETS No. 058).

⁶⁷ UN. General Assembly. (14th session, 1959). *Declaration of the Rights of the Child*. (A/RES/1386(XIV))

⁶⁸ UN. General Assembly (41st session, 1986-1987). *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 : resolution / adopted by the General Assembly*. (A/RES/41/85)

⁶⁹ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25).

⁷⁰ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

⁷¹ Ibid.

⁷² UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25).

⁷³ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 8.

legacy⁷⁴ and achieve a clear human rights framework. Paternalism⁷⁵ can be defined as the attempted or accomplished substitution of one's person's judgement for another's on the grounds that it is in the latter's *best interests*, for their welfare or happiness (cf. Chapter 1, Section 3.1). Paternalism is based on two elements, the belief of the inferiority of the would-be paternalizer who could harm itself while its rationality is deficient, and the belief of the paternalizer he is superior and he should intervene in the lives of another. Hence, the best interests of the child notion emerged in this line to justify intercountry adoptions as we saw in Chapter 1 with the post-WW2 adoptions from South Korea and Vietnam to the United-States. It then has been incorporated as such in the international legal framework. However, this wording needs clarification to permit it to be an efficient children's rights protection tool, and to avoid too wide margins of interpretation conveying a risk of manipulation.

Therefore, this chapter will firstly provide an overview of the legal framework covering children's rights protection in intercountry adoption (Section 1) and the limits of this framework, with a special focus on the best interests of the child conception (Section 2). Then, we will assess how the legal framework addresses the issue of illicit practices and violation of human rights (Section 3).

Delving in the legal functioning of the framework addressing children's rights protection will then permit us to question its effectiveness from more practical aspects in Chapter 3.

Section 1 : The rise of an international framework covering children's rights in intercountry adoption

1. Overview of the legal instruments pre-dating the 1993 Hague Convention

Private Law Conventions concerning the adoption of children: The Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption 1965

In October 1964, the Tenth Session of the Hague Conference on Private International Law drew up the Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption, signed on 15 November 1965⁷⁶. It was the first convention to deal specifically and exclusively with the adoption of children. One of its main purposes was the protection of children, and to provide procedural provisions for co-operation between the courts and authorities of the habitual residence of the adopters and those of the child's habitual residence⁷⁷.

⁷⁴ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.1, p.9, p.13, p.20.

⁷⁵ ⁷⁵ Barnett, M. (2017) *Paternalism beyond borders*, Cambridge University Press.

⁷⁶ HCCH (1965). *Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions*.

⁷⁷ Van Loon, J. H. A. *International Co-operation and Protection of Children with Regard to Intercountry Adoption, Collected Courses of the Hague Academy of International Law*, 1993.VII (244) https://doi.org/10.1163/1875-8096_pplrhc_a9789041100870_02, p.305.

The Convention's basic principles are that adoptions granted are in the interests of the child⁷⁸, and it provides an embryonic system of mutual assistance between authorities in different states⁷⁹. Its scope only encompasses adoptions of unmarried children below the age of 18⁸⁰, and its application is restricted to adopters and adoptees all of whom are connected both by nationality and habitual residence to a Contracting State⁸¹. The authorities of the country of the habitual residence or nationality of the adopters are the only ones having power to grant an adoption⁸². Regarding recognition of an adoption, any adoption granted by a competent authority under the Convention shall be recognized by the other Contracting States⁸³. The 1965 Hague Convention also defines the grounds and bases for jurisdiction for the annulment or revocation of an adoption⁸⁴.

Despite its attempt to protect children's rights in intercountry adoption, the 1965 Hague Convention lacked success by never exercising much international regulatory influence. Indeed, it was only ever ratified by the United-Kingdom, Austria and Switzerland. No other State has become a Party to, or signed, the Convention since its entry into force on 23 October 1978. Moreover, the Convention ceased to have effect in 2008, in accordance with its Article 23⁸⁵, stating that it shall remain in force for five years from the date of its entry into force and be renewed every five years. Several factors may explain its lack of success, such as its restricted scope, its possibility to make many reservations which infringed the uniformity it attempted to create, its appeal was limited due to the fact that the Convention remained silent on the effects of the adoption. Ultimately, the Convention also did not go in depth enough on many aspects, notably on the provisions on international communication and co-operation among authorities and courts. Indeed, the provisions of Articles 5, 6 and 9, regarding international communication and co-operation among authorities and courts, remained impractical and embryonic, limiting the effectiveness of the Convention⁸⁶.

However, the 1965 Hague Convention began to shape policy and paved the way for the 1993 Hague Convention, which then, has overtaken the first one.

The European Adoption Convention of 1967

The Council of Europe drew up the European Adoption Convention⁸⁷, signed on 24 April 1967, aiming at identifying some common principles and standards of practice to serve as benchmarks for the parties involved in adoption⁸⁸. It sought to provide certain minimum

⁷⁸ HCCH (1965). *Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions*. Article 6.

⁷⁹ Van Loon, J. H. A. *International Co-operation and Protection of Children with Regard to Intercountry Adoption, Collected Courses of the Hague Academy of International Law*, 1993.VII (244) https://doi.org/10.1163/1875-8096_pplrdc_a9789041100870_02, p.306

⁸⁰ HCCH (1965). *Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions*. Art. 1, para. 2.

⁸¹ HCCH (1965). *Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions*. Art. 1, para. 1.

⁸² HCCH (1965). *Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions*. Art. 3.

⁸³ HCCH (1965). *Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions*. Art. 8

⁸⁴ HCCH (1965). *Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions*. Art. 7.

⁸⁵ HCCH (1965). *Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions*. Art. 23.

⁸⁶ Van Loon, J. H. A. *International Co-operation and Protection of Children with Regard to Intercountry Adoption, Collected Courses of the Hague Academy of International Law*, 1993.VII (244) https://doi.org/10.1163/1875-8096_pplrdc_a9789041100870_02, p.308.

⁸⁷ Council of Europe. (1967). *European Convention on the Adoption of Children* (ETS No. 058).

⁸⁸ O'Halloran, K. (2009). *The politics of adoption: International perspectives on law, policy & practice*. Springer., p.102.

rules in respect of the internal law of adoption of member states (e.g consent⁸⁹, age⁹⁰ enquiries⁹¹) and only exceptionally deals with international aspects⁹². For instance, it established the principle that adoption should be in the interests of the child in Article 8(1). It thus mainly has a harmonizing purpose on adoption of children practice existing in all Member States of the Council of Europe⁹³. Indeed, achieving a greater unity between Member States reduces the difficulties caused by such differences⁹⁴. Yet, by reducing disparities, the Convention also intends promoting the welfare of adopted children⁹⁵. It solely concerned Member States of the Council of Europe and therefore did not properly deal with relations with countries of origin, who are not Member States. After the rise of such regional legal sources, international legal sources also arised.

The United Nations Declaration and the United Nations Convention

a. 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 1986:

In 1986, the United Nations made the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally⁹⁶, which is not a treaty but a recommendation⁹⁷. It addresses the problems of adoption and foster placement nationally and internationally. Articles 1 to 9 deal with general family and child welfare; Articles 10 to 12 regard foster placement and Articles 13 to 24 is about national and intercountry adoption. It states that the primary aim of adoption should be to provide a permanent family for a child who cannot be cared for by its own parents (Article 13), and recognises that intercountry adoption is a childcare mechanism of last resort (Article 17).

b. UN Convention on the Rights of the Child of 1989 (CRC):

The UN Convention on the Rights of the Child of 1989⁹⁸ also addresses the problems of adoption in the broader context of the protection of human rights. Indeed, among the 42 substantive rights that comprehensively address the needs of children, Articles 18, 20, 21,

⁸⁹ Council of Europe. (1967). *European Convention on the Adoption of Children* (ETS No. 058). Article 5.

⁹⁰ Council of Europe. (1967). *European Convention on the Adoption of Children* (ETS No. 058). Article 7. Article 7(1): A child may be adopted only if the adopter has attained the minimum age prescribed for the purpose, this age being neither less than 21 nor more than 35 years.

⁹¹ Council of Europe. (1967). *European Convention on the Adoption of Children* (ETS No. 058). Article 9.

⁹² Van Loon, J. H. A. p.311.

⁹³ Council of Europe. (1967). *European Convention on the Adoption of Children* (ETS No. 058). Preamble, para. 2.

⁹⁴ Council of Europe. (1967). *European Convention on the Adoption of Children* (ETS No. 058). Preamble, para. 3.

⁹⁵ Council of Europe. (1967). *European Convention on the Adoption of Children* (ETS No. 058). Preamble, para. 3.

⁹⁶ UN. General Assembly (41st session, 1986-1987). *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 : resolution / adopted by the General Assembly. (A/RES/41/85).*

⁹⁷ The legal difference between a treaty and a recommendation lies primarily in their binding nature. The Vienna Convention on the Law of Treaties (1969) defines in Article 2.1(a) a 'treaty' as 'an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation'. It creates legal obligations for the parties that sign and ratify it. On the other hand, a recommendation is a non-binding instrument adopted by an international organization to guide or encourage member states toward certain behaviors or standards. Source: <https://ask.un.org/faq/331686>.

⁹⁸ UN. General Assembly. (1989). *Convention on the Rights of the Child. (Resolution 44/25).*

and 35 have a direct relevance to adoption. Article 18 settles the primary responsibility for the upbringing of a child rests with the parents, requiring the state to render appropriate assistance to parents to facilitate the upbringing and development of their children. Article 20 recognized the state duty to protect children without family through care which could include foster placement, Kafala of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. The provision also says the child's ethnic, religious, cultural and linguistic background should be taken into account when the decision of placement is settled (Article 20.3). Article 21 is of particular importance, stating adoption shall ensure that the best interests of the child shall be the paramount consideration. The Convention also deals with the prevention of trafficking in children with Article 35 requiring State Parties to take all appropriate measures to prevent the abduction, the sale of or traffic in children.

However, the importance of broader provisions are also to be taken into account within the context of intercountry adoption. For instance, Article 7 recognises the right of the child to know their identity which acknowledges the right for an adoptee to have their parents' identity recorded on his or her birth certificate and their right of access to information. Article 12 settles the right of the child to express an opinion in administrative and judicial proceedings, in our case in regard to their adoption. The right of the child to self-determination, dignity, respect, non-interference and the right to make informed decisions are recognized in Articles 13 and 14.

Hence, the CRC is a relevant framework, not specifically dealing with intercountry adoption, but is important to take into account. It has been ratified by all U.N member States, except for Somalia, and the United-States who solely signed it, which is concerning while it is the first receiving country of intercountry adoptions.

Hence, both of the United Nations Declaration⁹⁹ and the United Nations Convention¹⁰⁰ address a shared set of principles. The best interests of the child are recognized as the paramount principle which should govern placement of children outside their families, nationally and internationally, both in the 1986 Declaration (Article 5) and in the CRC (Article 21). They also both emphasize the priority for a child to be cared for by their own parents and the duty of the state to support the family (Declaration, Arts. 1-3; Convention, Art. 18). The subsidiary dimension of intercountry adoption in relation to other protection measures in the country of origin is also recognized in both legal texts (Declaration, Article 17; Convention, Article 21, sub-para. (b)). The Declaration and the Convention also both state the need to involve and inform the child and their biological parents (Declaration, Articles 15 and 22; Convention, Article 21, sub-para. (a)), and both recognize the importance of the child's identity and nationality (Declaration, Articles 8 and 9; Convention, Articles 7 and 8) and to pay due regard to its background (Declaration, Article 24; Convention, Article 20, para. 3). They also both require measures to combat child abduction and illicit placement of children (Declaration, Article 19; Convention, Articles 11 and 35); condemning placements resulting "in improper financial gain for those involved in it" (Declaration, Article 20; Convention, Article 21, sub-para. (d)).

⁹⁹ UN. General Assembly (41st session, 1986-1987). *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* : resolution / adopted by the General Assembly. (A/RES/41/85).

¹⁰⁰ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25).

Thus, while not specifically addressing the issue of intercountry adoption, the 1986 Declaration and the CRC were first steps toward an international legal framework covering children's rights protection in intercountry adoption. Both have been taken into account to design the 1993 Hague Convention which overtook the 1965 Hague Convention, which yet served as a starting point of international private law instrument. Hence, the 1993 Hague Convention has been drawn up to protect children's rights, birth parents and adoptive parents, stating objectives, establishing safeguards to ensure the best interests of the child, establishing a system of co-operation among contracting states and securing the recognition in contracting states of adoptions made in accordance with the Convention. We will then firstly pay attention to the preparation of the Convention and provide an overview of its substantive aspects, before assessing its impacts.

2. The 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

Preparation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993)

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption¹⁰¹ is the result of five years of work by the Hague Conference on Private International Law. Indeed, in October 1988, the Sixteenth Session of the Hague Conference decided to include in the Agenda for the Seventeenth Session the preparation of a convention on intercountry adoption of children¹⁰² after a proposal made in December 1987 in a note prepared by the Permanent Bureau of the Hague Conference¹⁰³. The Permanent Bureau of the international organization recognized the necessity to involve sending countries in the participation in the work. While sending countries were mainly not Member States of the organization, a special commission has been established to permit the participation of those ad hoc Members. This principle authorizing non-Member States to participate in the work of the Conference on an equal basis with Member States had been accepted by the Fourteenth Session of 1980, but was implemented for the first time on this occasion¹⁰⁴. Moreover, the participation of developing non-Member States was also conditioned by developed countries' financial aid. During the Sixteenth Session, the Permanent Bureau decided to raise special funds to enable the participation of representatives from developing countries¹⁰⁵. Hence, the Special Commission held three meetings at the Peace Palace in the Hague to prepare the Convention. Then, the final Diplomatic Session of the Convention took place from 10 to 29 May 1993 at the Hague. This Conference, also celebrating the 100th anniversary of the Conference, was chaired by Professor Jan C. Schultsz. The negotiations involved the participation of thirty-six Member States and thirty non-Member States, approximately half of those countries were sending countries. Eighteen international organizations, mainly nongovernmental, also participated

¹⁰¹ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

¹⁰² Hague Conference document, Sixteenth Session, Final Act (The Hague, 20 October 1988) at Bl; 28 I.L.M. 150, 154 (1989)

¹⁰³ Van Loon, J. H. A. *International Co-operation and Protection of Children with Regard to Intercountry Adoption*, Collected Courses of the Hague Academy of International Law, 1993.VII (244) https://doi.org/10.1163/1875-8096_pplrdc_a9789041100870_02 p.326.

¹⁰⁴ Ibid p.328, and Final Act of the Fourteenth Session, under D, para. 1, Hague Conference on Private International Law, Actes et documents de la quatorzième session, tome I, p. I-63.

¹⁰⁵ Ibid p.330.

as observers. This Seventeenth Session ended with the unanimous approval of the final Convention on May 29 1993.

Overview of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993)

The Hague Convention of 1993 came as a response to a context in which transnational adoptions increased significantly since the end of the Second World War (cf. Chapter 1, Section 2). A risk that intercountry adoption may be subverted into a process for satisfying the needs of adopting parents, rather than for finding families for children in need has been acknowledged due to a steady supply and a strong demand¹⁰⁶. Moreover, cases of abuses were more frequently reported¹⁰⁷, conveying the need for a proper framework to address the issue of children abduction and other illicit practices within the specific context of intercountry adoption. Hence, a new Convention was deemed necessary to address some needs the 1965 Convention did not sufficiently meet, such as substantive safeguards in intercountry adoption, a system of supervision to ensure the observance of these safeguards, and channels of communication between sending and receiving countries. This Convention was to settle a framework to promote cooperation between states to regulate the process of intercountry adoption.

The Preamble starts recognizing the importance of family to ensure the child's best development. Then, it posits intercountry adoption as a solution of last resort¹⁰⁸ after other possible methods of care for children without families have been tried to enable them to remain in their country of origin to comply with Article 21(b) of the U.N. Convention on the Rights of the Child. The order ranking the different methods of care are settled in Article 21(b) of the U.N. Convention on the Rights of the Child¹⁰⁹.

Article 21(b), CRC provides that States Parties which recognize and/or permit adoptions...:

"recognize that intercountry 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."

The fourth paragraph of the preamble enunciates the necessity to "ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her

¹⁰⁶ Duncan, W. (1993). *The Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption. Adoption & Fostering*, 17(3), 9-13. <https://doi.org/10.1177/030857599301700304> (Original work published 1993), p.9.

¹⁰⁷ Denéchère, Y., Macedo, F. *Étude historique sur les pratiques illicites dans l'adoption internationale en France*. Université d'Angers. 2023 ; Trillat, B. *L'adoption. Essai sur les institutions*, Presses universitaires de Lyon, 1995 ; Edwige, R.A., « *Familles et jeunes étrangers adoptés : lien de filiation et devenir* » rapport demandé par le Groupement d'Intérêt Public – Mission de recherche "Droit et justice" du ministère de la Justice et du Fonds d'Action sociale ; Edwige, R.A., *Adopter un enfant à l'étranger*, Paris, Odile Jacob, 1999.

¹⁰⁸ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Preamble, para. 2, "Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin, ".

Article 4: An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin – (b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;

¹⁰⁹ Article 21 provides that States Parties which recognize and/or permit adoptions "(b) recognize that intercountry 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

fundamental rights”. It notably takes into account the United Nations Convention on the Rights of the Child, of 20 November 1989 in which Articles 3; 9; 18; 20; 21 and 37 mention the ‘best interests of the child’. The fourth paragraph also mentions the need to take measures to “prevent the abduction, the sale of, or traffic in children”. Indeed, despite the adoption of the 1980 Convention on the Civil Aspects of International Child Abduction¹¹⁰, the 1993 Hague Convention also addressed this issue. Finally, the fifth paragraph makes a specific mention to some international instruments on which the 1993 Hague Convention relates on, e.g the United Nations Convention on the Rights of the Child (1989), 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 (General Assembly Resolution 41/85, of 3 December 1986).

Chapter I of the Convention settles the objects (Article 1) and the scope of application (Article 2). This Convention applies when a child habitually resident in one party State has been, is being or is to be moved to another such State after its adoption in its State of origin by spouses or a person habitually resident in the receiving State or for the purposes of such an adoption in the receiving State or in the State of origin¹¹¹. The Convention only covers adoption of children below eighteen (Article 3).

Chapter II enunciates the substantive requirements for intercountry adoptions, dividing the responsibility between sending country and receiving country (Article 4). It is the responsibility of the state of origin to ensure the ‘adoptability’ of the child, after having considered the other possibilities for placement in that state, and thus that intercountry adoption is in the child’s best interests. The state of origin also has to ensure free consents have been given. On the other hand, the receiving state is in charge of determining the eligibility of prospective adopters, and of ensuring the child will be authorised to enter and reside permanently in that state (Article 5).

Chapter III focuses on the role of central authorities and accredited bodies. Article 6 stipulates each Contracting State needs to designate a Central Authority whose function is mainly to ensure cooperation with the other Central Authorities (Article 7), but also to prevent ‘practices contrary to the objects of the Convention’, such as improper financial gain (Article 8). Some duties are also delegated to ‘accredited bodies’.

Chapter IV sets the procedures for intercountry adoption, notably mentioning the preparation of reports on the child and the prospective adopters, the placement process, the obtaining of consents, receiving permission for the child to enter the receiving state, the making of arrangements for the transfer of the child, etc.

Chapter V deals with the recognition and effects of the adoption. It states that automatic recognition in contracting states of adoptions made under the Convention (Article 23) except if it is contrary to the public policy of the recognising state (Article 24). Article 26

of origin.” Adopted by the U.N. General Assembly without vote on 20 November 1989, U.N. Doc. A/44/25; 28 I.L.M. 1448 (1989) with corrections at 29 I.L.M. 1340 (1990).

¹¹⁰ HCCH. (1980). *Convention on the Civil Aspects of International Child Abduction*.

¹¹¹ Duncan, W. (1993). *The Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption. Adoption & Fostering*, 17(3), 9-13. <https://doi.org/10.1177/030857599301700304> (Original work published 1993), p.57.

sets out the effects of recognition, e.g the legal parent-child relationship between the child and the child's adoptive parents implying the termination of pre-existing parent-child relationship and the parental responsibility of those parents for the child. In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, it also includes the guarantee for the child in the receiving state rights equivalent to those of a child adopted domestically.

Chapter VI is dedicated to general provisions. Restrictions on contact between prospective adopters and the child's parents in the early stages of the adoption process is mentioned in Article 29. Article 31 requires the preservation of all available information regarding the child's origins, their birth parents' identity, and medical history, while allowing the access to this information only if it is permitted by the laws of the state where the information is held. The prohibition of improper financial or other gains in connection with intercountry adoption is settled in Article 32, but also mentions that any remuneration or fees paid to persons involved should be reasonable.

Ultimately, Chapter VII provides final clauses. It states that the Convention is 'open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session' (Article 43) but any other State may accede after the entry into force of the Convention (Article 44).

3. An assessment of the 1993 Hague Convention

While the Convention was designed to guarantee observance of minimum standards, some substantive requirements are framed in broad terms. For instance, requirements related to consents or to the making of improper gains are to be determined by individual states who decide on how they will apply them in practice. Article 4¹¹² requires that an adoption can be possible only if the competent authorities of the State of origin had received the free consents of the persons, institutions and authorities necessary to pronounced the adoptability, e.g the mother, the child. However, the provision states that the child's consent depends on 'the age and the degree of maturity', this broad wording implies that states have discretion on those requirements. Moreover, the article also mentions that consents should not be induced by 'payment or compensation', yet, the provisions¹¹³ regarding improper gains are also broad (cf. Chapter 2, Section 3.2). This analysis will further develop more in depth those aspects. On the one hand, the flexibility of the Convention permits to respect the differences between states in their adoption procedures. On the other hand, such vagueness around such major issues as consents or improper gains does not seem to ensure in practice enough prevention against the abduction, the sale of, or traffic in children, while one of the main purposes of the Convention is to struggle against those drifts. Indeed, as we will see in Chapter 3 (Section 2.2), vulnerable mothers are targeted to incite or dupe them to relinquish their babies for adoption. This incentive is produced through different methods. Mothers can be incited to give up their babies in exchange of protection, such as free care, or help to be rehabilitated. It has been the case for many years in

¹¹² HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 4.

¹¹³ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 32.

Taiwan, mothers¹¹⁴ were encouraged to relinquish their child in return for receiving free maternity care. Moreover, misleading information can dupe biological mothers to obtain their consent for adoption. Mothers are often told they will maintain links with, or receive news of the child after adoption, whereas it is false, as Johanna Lamboley's testimony reveals it in the Arte documentary 'Adoption internationale, un scandale planétaire'¹¹⁵ (International adoption, a global scandal). She was adopted in France from Chile when she was five. After having investigated and found her biological mother, she discovered her adoption was a fraud. Her mother temporarily let her daughter in a pension and did not consent for adoption, when she returned, the structure told her that her daughter was not here anymore. Indeed, the illicit practices of the structure *Hotel Montecarlo* leading to roughly three hundred illicit adoptions have been discovered.

Moreover, while some of the most serious abuses of intercountry adoption are associated with the activities of independent operators¹¹⁶, the 1993 Hague Convention failed to outlaw 'independent' adoptions'. An independent adoption refers to any adoption that is not arranged by an agency but by the adoptive parents themselves, or by an intermediary other than an agency¹¹⁷. Outlawing independent adoptions was a matter of debate in the early discussions at the Hague. However, some States were opposed to prohibition, like the United-States who threatened not to ratify the Convention if independent adoptions were to be prohibited. Hence, a consensus was found to make possible the ratification of the United-States, responsible for receiving by far the largest number of children through intercountry adoption. However, although the prohibition of independent adoptions has not been included in the final text, the United-States still refused to ratify the 1993 Hague Convention until 2007.

Despite the unanimous approval of all participants on 28 May 1993¹¹⁸, the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption has been ratified by only two countries (Mexico and Romania) and signed by 16 others (Costa Rica, Brazil, Colombia, Uruguay, Israel, Netherlands, United Kingdom, United States, Canada, Finland, Burkina Faso, Ecuador, Sri Lanka, Peru and Cyprus), by 31 December 1994. Before the entry into force of the Convention, on 1 May 1995, Switzerland and Sri Lanka ratified it in January 1995¹¹⁹.

However, then, an increasing number of states became parties to the 1993 Hague Convention. Although an ever-growing number of countries of origin became parties and started to implement provisions to protect children's best interests and human rights, adoptions from these countries have decreased. Indeed, the Convention, aiming at providing transparency in intercountry adoption and reducing the risk of irregularities, reduced corrupted adoptions, and thus decreased the overall flows of adoptions. As providing a safer framework for adoption, the Hague Convention also raised costs and bureaucratic procedures. It thus led a considerable

¹¹⁴ Selman, P. (2014) *Intercountry adoption of children from Asia in the twenty-first century*, Children's Geographies, p.11.

¹¹⁵ Tournadre, C. and S. Gonzalez. (2024). 'Adoption internationale, un scandale planétaire' (International Adoption: A Global Scandal). Arte reportage.

¹¹⁶ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.78.

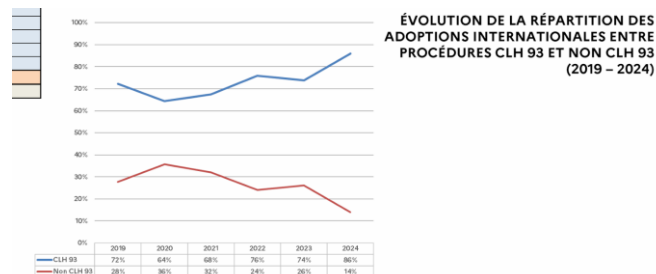
¹¹⁷ Van Loon, J. H. A., p.379. Annex B. Note on the meaning of the expressions 'independent adoption' or 'private adoption'.

¹¹⁸ Van Loon, J. H. A., p.371.

¹¹⁹ Van Loon, J. H. A., p.374.

number of prospective parents to favor adoption from a non-Hague-Convention¹²⁰ where adoption processes were often faster, less expensive, and subject to fewer safeguards. For instance, in France, in 2006, 68% of the intercountry adoptions were coming from non-Hague countries¹²¹. Then, this proportion decreased over time (cf. *Graph 1*) but still represented 14% of the intercountry adoptions in 2024¹²².

Graph 1: Evolution of the distribution of international adoptions between Hague Convention (1993) procedures and Non-Hague procedures (2019-2024)



Source: International Adoption Statistics in 2024. Directorate for French Nationals Abroad and Consular Administration International Adoption Mission (MAI). p.5.

see: <https://www.diplomatie.gouv.fr/fr/adopter-a-l-etranger/la-mission-de-l-adoption-internationale/les-chiffres-de-l-adoption-internationale/>

Adoptions from countries that are not bound by the standards set in the Hague Convention raise concerns from the standing point of children's rights protection. Indeed, fundamental standards and procedures designed to protect the rights settled in the Hague Convention could be endangered by adoptions from non-Hague countries not respecting Hague Convention standards. However, the Convention does not prohibit contracting states from continuing to adopt from non-Hague states. Yet, receiving countries putting in place adoption programmes from countries that are not Hague compliant is paradoxical and it undermines the purpose of the Convention. Indeed, it is possible for contracting states to maintain or to enter into bilateral agreements with non contracting states, as provided by Article 39 of the 1993 Hague Convention¹²³. Some of those bilateral agreements could be concerning, because they may put the rights and best interests of the child at risk by failing to address crucial questions such as fees or child's consent. Moreover, concluding such an agreement might undermine any motivation for the non-Hague state to ratify the treaty. Hence, contracting states should have a responsibility to grant children from non-Hague countries the same legal guarantees and protection offered to children from Hague States by applying Hague principles, including the best interests of the child in any bilateral agreement drawn up with a non-contracting state.

¹²⁰ Efrat, A. (2015). *Babies across borders: The political economy of international child adoption*. Oxford University Press. p.

¹²¹ Direction des Français à l'étranger et de l'administration consulaire Mission de l'Adoption Internationale. Statistiques de l'Adoption Internationale en 2006.

¹²² Direction des Français à l'étranger et de l'administration consulaire Mission de l'Adoption Internationale. Statistiques de l'Adoption Internationale en 2024.

¹²³ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 39.

Section 2 : The limits of the legal framework based on the ambiguities around the best interests of the child principle

This section will focus on the best interests of the child principle which is a core concept in the legal framework of children's rights in intercountry adoption. Indeed, this principle was designated as the 'paramount consideration'¹²⁴ for decision-making in intercountry adoption. The notion 'best interests' broadly refers to the well-being of a child¹²⁵, and it became a principle in international child law used to guide and justify decisions affecting children, taking into account the unique features of each individual case. However, this central role of the best interests of the child in the decision-making in intercountry adoption raises some concerns we will address in this section. First, as it is a notion that used to be used in the absence of human rights, its incorporation within international legal framework questions (Section 2.1). What raises deeper interrogations is the vagueness around the principle of the best interests of the child which remains not well defined and lacks clear criteria for application. From a legal perspective, this ambiguity presents a problem of enforceability and a risk of misuse due to a too large discretion in its interpretation. The main concern regards the manner in which the best interests of the child are supposed to interact with other child's rights (Section 2.2). Although the best interests of the child principle is both a flexible concept and designated as the 'paramount consideration' in intercountry adoption, it conveys the legal risk of conflicting with other children's rights under the pretext of serving their best interests. We will see that to avoid this risk, a consensus around a best interests determination (BID) process should be found to be implemented and binding (Section 2.3).

1. The best interests of the child: from their pre-human rights form to their incorporation within children's rights in intercountry adoption

The 'best interests of the child' concept was used before the incorporation of this wording in internationally accepted human rights¹²⁶. Before their legal incorporation, the best interests of the child used to be invoked to justify the removal of children from parental care or forced migration of children to other countries. For instance, in the late 1940s and the early 1980s in Australia, the best interests of the child were used to justify forced adoption of indigenous children by infertile couples on the ground that they would provide them a better social standing by 'civilizing' them¹²⁷. Moreover, post-WW2 adoptions, which developed the practice of transnational adoption were also claimed to ensure children's protection and better lives. After the Korean war and the Vietnam war,

¹²⁴ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 21.

¹²⁵ UNHCR. (2007). *Refugee children: Protection and care information sheet – Best interests of the child*. United Nations High Commissioner for Refugees.

¹²⁶ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.6.

¹²⁷ Ibid. p.7.

many children born to American fathers hardly accepted within the society were adopted by Americans, or French¹²⁸ (cf. Chapter 1, Section 2).

Those cases exemplify the way the wording ‘best interests’ can serve political discourses. Hence, the incorporation of the best interests in international law as a core principle for children’s rights protection is surprising and can raise concern. Indeed, the meaning of this principle is quite broad and thus can be easily manipulated if it is not well defined and framed. Our aim is thus to address the implications of such vagueness around the conception of the best interests for children’s rights protection in intercountry adoption.

The wording ‘best interests’ broadly refer to the well-being of a child¹²⁹. However, a general definition of what the best interests of the child is cannot be given while the ‘best interests’ of the child are examined for each unique individual case, taking into account its specific features¹³⁰. Despite some recent attempts to clarify the notion, the best interests of the child remained very unclear for a long time while being incorporated in several legal texts covering children’s rights. The ‘best interests of the child’ have been designated as one of the four General Principles of the CRC¹³¹. It is also a cornerstone within the intercountry adoption private international law framework as the 1993 Hague Convention¹³² Preamble sets it out in paragraph 4 “intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights”.

However, as pointed out by the 2014 UNICEF Report¹³³, a tension still lies in the fact that the ‘best interests of the child’ are an ancient notion pre-dating the international codification of human rights while having been incorporated as a core principle in children’s rights.

First, the notion of ‘best interests’ was used in a paternalistic manner to make decisions for people deemed incapable of making rational decisions for themselves, e.g colonized peoples considered as inferior, children or disabled persons, when their human rights were still not recognized. Particularly since the 1970s, human rights instruments started to be developed, which would have negated the need for using the best interests as a basis for decision-making¹³⁴. Indeed, human rights overrode the use of the best interests principle, except for children. In human rights law, but also in private international law, the term ‘best interests’ is rarely used, and is solely used relation to children in the CRC and in the 1993 Hague Convention on intercountry adoption, and also for persons with disabilities in the 2006 Convention on the Rights of Persons with Disabilities (CRPD)¹³⁵ mentioning the ‘best interests’ in Article 7.2. Thus, it raises the question of which decisions and actions

¹²⁸ Denéchère, Y. (2021). *L'adoption transnationale entre idéologies, humanitaire et catharsis – fins de guerres, décolonisation et guerre froide en France et aux États-Unis (1945–1975)*. Annales de démographie historique, p.95–122.

¹²⁹ UNHCR. (2007). *Refugee children: Protection and care information sheet – Best interests of the child*. United Nations High Commissioner for Refugees.

¹³⁰ Ibid.

¹³¹ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25).

¹³² HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

¹³³ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.4.

¹³⁴ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.9.

¹³⁵ UN. General Assembly. (61st session, 2006). *Convention on the Rights of Persons with Disabilities*.(A/RES/61/106)

concerning children require an assessment based on the best interests of the child, rather than relying on the general respect for their human rights. It raises an interrogation regarding their interaction in cases of overlaps that we will address in the next sub-section (Section 2.2). Those interrogations mainly lie in the fact that the best interests of the child notion is not clearly defined. The incorporation of such a vague principle in the legal framework concerning children's rights conveys a danger of paternalistic and simplistic approach¹³⁶, and is a breeding ground for manipulation and violations of the rights of the child. Moreover, such vagueness has an impact on the way the provisions referring to the best interests of the child in the 1993 Hague Convention need to be understood. Indeed, the fifth paragraph of the 1993 Hague Convention states that it "tak[es] into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989". Here lies the necessity to clarify the obligations implied by the best interests of the child. However, the wording of the best interests of the child has been deliberately left undefined.

Indeed, the flexibility of the notion of the best interests of the child was positively received to permit its adaptability to diverse socio-cultural contexts. During the drafting of the Convention on the Rights of the Child, there was an implicit consent to leave the notion of best interests undefined¹³⁷. Venezuela was the only one state which expressed serious concerns about this lack of clarity but finally aligned with the general agreement¹³⁸. However, this persistent lack of consensus on how those best interests are to be decided is contentious while international standards neither specify any criteria on how and by whom these interests should be determined, nor on who should be responsible for making the final decision. As a result, perceptions of what constitutes the best interests of the child are subject to various interpretations, which could enter in conflict with other children's rights¹³⁹, such as the child's right to be heard¹⁴⁰ as we will see in the next sub-section (Section 2.2). There is thus a need for clearer guidelines to avoid overlaps.

Yet, the deliberate flexibility of the concept presented a major challenge for implementation, especially because the best interests of the child are paradoxically at one and the same time, a deliberately vague concept in the CRC, and a guiding principle of that Convention¹⁴¹. Hence, the very first attempt to codify the issues for practical use of the best interests of the child at the international level arose very lately, in the 2000s, with the UNHCR Guidelines on Determining the Best Interests of the Child issued in 2008¹⁴² and the UNICEF Report, 'Best interests of the child in Inter-country Adoption' of 2014¹⁴³, specifically addressing the issue within the context of intercountry adoption. The 2014

¹³⁶ Cantwell, N. (2014). *The Best Interests of the Child in Inter-country Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.1.

¹³⁷ Cantwell, N. (2014). *The Best Interests of the Child in Inter-country Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.17.

¹³⁸ Ibid.

¹³⁹ Cantwell, N. (2014). *The Best Interests of the Child in Inter-country Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.18-19.

¹⁴⁰ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 12.

¹⁴¹ Ibid. p.17.

¹⁴² UN High Commissioner for Refugees. (2008). *UNHCR Guidelines on Determining the Best Interests of the Child*. <https://www.refworld.org/policy/legalguidance/unhcr/2008/en/58874>.

¹⁴³ Cantwell, N. (2014). *The Best Interests of the Child in Inter-country Adoption*. Innocenti Insight, Florence: UNICEF Office of Research.

UNICEF Report¹⁴⁴ demonstrates the need for consensus on, and rigorous appraisal of, best interests within a Human Rights framework. For this purpose, it proposes concrete responses to build consensus on policy development, on safeguards at all stages of the adoption process, and on determining whether or not intercountry adoption should be pursued for any given child. In 2013, the Committee on the Rights of the Child also tried to fill this gap through General Comment No. 14¹⁴⁵ to set how the best interests of the child should be taken into account in implementing the Convention. Those precisions, while not totally avoiding the unclarity, came twenty years after the adoption of the 1993 Hague Convention aiming at ensuring intercountry adoptions are in the best interests of the child and in respect to children's fundamental rights. More indications regarding the way the best interests of the child were supposed to practically interact with other children's rights should have been developed earlier for a better understanding and implementation.

2. Linkages between the best interests of the child and other child's rights

The best interests of the child notion was used as a basis to make decisions before the development of human rights. Thus, the existence of human rights instruments should have negated the use of the best interests as a notion for decision-making, to rely solely on the general respect for their human rights. However, on the one hand, children's rights have been recognized, while the best interests of the child were also incorporated in international law in concern of children and notably in the context of intercountry adoption. It raised the question about what decisions and actions about children would require a best interests basis rather than simple reliance on respecting the human rights of the children. Hence, the compliance of the best interests with other human rights provisions became a matter of interrogation. It also raised the question of how the best interests and human rights should interact.

While remaining deliberately undefined, the best interests of the child were qualified as 'a primary consideration' in Article 3.1 of the CRC¹⁴⁶ "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration", but are the 'paramount consideration' in the case of adoption. They were also designated as a General Principle of the CRC, alongside non-discrimination, the right to life, survival and development, and respect for the views of the child. However, this enhanced status triggered uncertainty regarding the linkages between the best interests of the child and other human rights, as pointed out by the 2014 UNICEF Report¹⁴⁷. It presented a major challenge for implementation, while the best interests principle is to be 'the paramount consideration' in decisions about intercountry adoption according to Article 21 of the CRC¹⁴⁸, those decisions may have to balance a range of inalienable human rights. As being recognised both as the 'paramount consideration' and a General principle, the understanding of the best interests of the child has an impact on how its relation with other human rights is approached. However, vagueness around

¹⁴⁴ Ibid.

¹⁴⁵ Committee on the Rights of the Child (2013). General Comment No. 14, The right of the child to have his or her best interests taken as a primary consideration (CRC/C/GC/14).

¹⁴⁶ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 3.1.

¹⁴⁷ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.11-24.

¹⁴⁸ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 21.

this linkage - how it should underpin or contribute to the fulfilment of the human rights of children in practical terms - remained for a long time.

Hence, the designation of the best interests of the child as a General Principle fostered the perception that it functions as a kind of ‘super right’¹⁴⁹, or a higher standard that can be invoked at will to override other children’s rights. The case of expedited adoptions of children from Haiti¹⁵⁰ after the 2010 earthquake demonstrates how the notion of ‘best interests’ was invoked to justify bypassing procedures¹⁵¹ intended to safeguard children’s rights. At first, there was no international jurisprudence or precedent on the interpretation of the concept in general or its implications in practice when it comes to human rights. The absence of global agreement on best interests criteria, on clear and exclusive responsibilities, or on what best interests might imply in a human rights context brought disparate views of what is acceptable practice— considering the best interests principle could bypass other children’s rights, or not -, having thus negative impacts for children. Moreover, the designation of the best interests of the child as a General Principle conveys a risk to be misused due to the fact it was not at first a human rights concept¹⁵², and its interpretation is still too broad. The risk is even greater in the case of intercountry adoption where the best interests of the child are to be the sole determining factor.

Then, CRC Committee’s statements clarified later that the best interests of the child were to be understood as the right for all children to have their best interests determined as a way of ensuring that all their other human rights are respected. The Committee on the Rights of the Child stated in General Comment No. 8 that “the interpretation of a child’s best interests must be consistent with the whole Convention”¹⁵³. Thus, the interpretation and application of the best interests of the child is not supposed to conflict with other children’s rights. Aside in explicit and well defined instances and on a case-by-case basis, the best interests of the child cannot be invoked to justify derogation to other child’s rights. However, the risk where the best interests of the child inform decisions balancing or prioritizing different rights is the restriction or the denial of the enjoyment of other rights.

The complex linkage between the best interests of the child and other rights could be exemplified with the question of compatibility¹⁵⁴ between the best interests of the child principle and the right to be heard in Article 12 of the CRC¹⁵⁵. The Committee on the Rights of the Child noted in 2013¹⁵⁶ that Article 3, paragraph 1¹⁵⁷, cannot be correctly applied if the requirements of Article 12¹⁵⁸ are not met.

¹⁴⁹ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.18.

¹⁵⁰ King S (2012) *Owning Laura Silsby’s Shame: how the Haitian child trafficking scheme embodies the Western disregard for the integrity of poor families*. Harvard Human Rights Journal 25: 1–47.

¹⁵¹ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.18.

¹⁵² Ibid.

¹⁵³ Committee on the Rights of the Child (2006a), para. 26.

¹⁵⁴ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.19.

¹⁵⁵ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 12.

¹⁵⁶ Committee on the Rights of the Child (2013), para. 43.

¹⁵⁷ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 3.1: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’.

¹⁵⁸ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 12.

Article 12, CRC:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

It emphasized the complementarity of both articles, the first aiming to realize the child's best interests and the second providing the methodology for hearing the views of the child and their inclusion in any matters affecting the child, including the assessment of his or her best interests. However, the absence of clear guidance regarding the weight attributed to children's views in best interests decisions raised concerns, as pointed out by Thomas and O'Kane¹⁵⁹.

The balance between Article 3.1 and Article 12 of the CRC is particularly complex in the case of intercountry adoption because the child adopted is often very young and, most of the time, may not be enabled to share an informed opinion. Article 4(d)¹⁶⁰ of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) mentions the child's consent to the adoption, related to the child's right to be heard, stating "consideration has been given to the child's wishes and opinions". This article however states if "the age and degree of maturity" is sufficient, while not fixing any threshold.

Article 4(d), Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption:

"have ensured, having regard to **the age and degree of maturity of the child**, that

- (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
- (2) consideration has been given to the child's wishes and opinions, the child's consent to the adoption, where such consent is required,
- (3) has been given freely, in the required legal form, and expressed or evidenced in writing, and
- (4) such consent has not been induced by payment or compensation of any kind."

It therefore falls under the jurisdiction of each state party, which leads to some disparities and arbitrary decisions. The age at which a child must be consulted about, or give their consent to, intercountry adoption, while varying from country to country, is rarely under ten¹⁶¹. For instance, France fixes this threshold to thirteen in the Article 349 of the Code Civil¹⁶², which is a quite advanced age. It is thus regrettable that the Convention or any other agreements do not inform on a minimum age recognized as sufficient based on some surveys and not arbitrarily decided.

As a result, in the case of intercountry adoption, the principle that the child's opinion should inform the process around a determination of best interests is particularly hard to apply. Archard and Skivenes¹⁶³ emphasized the difficulty of balancing the views of children with their best interests, while children's views might not tally with what is considered to be in their best interests. Ultimately, it is difficult to avoid the paternalistic dimension behind the best interests

¹⁵⁹ Thomas, N. and C. O'Kane (1998). *When children's wishes and feelings clash with their "best interests"*, International Journal of Children's Rights, 6(2): 137–54.

¹⁶⁰ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 4(d).

¹⁶¹ United Nations Population Division (2009). *Adoption, Trends and Policies*, Department of Economic and Social Affairs, pp. 43–44.

¹⁶² Code civil, art. 16-3. (n.d.). *Légifrance*. https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006426090/.

¹⁶³ Archard, D. and M. Skivenes (2009). *Balancing a child's best interests and a child's views*, International Journal of Children's Rights, 17(1): 1–21.

concept while it has been designed to make decisions for people deemed incapable of making decisions for themselves. Indeed, while a child's right to be heard¹⁶⁴ is recognized, it is mostly supplanted by the paramount consideration of the best interests of the child principle in the context of intercountry adoption. Adults and institutions have the final say despite the attempt to take into consideration children's views. It is in this sense it is concerning to leave a too large discretion regarding the age of maturity, which could result in fixing a too high threshold bypassing the voice of a child sufficiently aware to express his or her opinion.

3. The best interests of the child alongside the intercountry adoption process

While the best interests of the child are at the heart of the decision-making determining if intercountry adoption is the best option for a child, it seems crucial to create a consensus over the best interests in intercountry adoption. Indeed, due to the vagueness of the concept which leads it to be easily misconstrued, a best interests determination (BID) process was designed to determine how the best interests principle is to be applied practically in relation to intercountry adoption. This BID process could not fully eliminate diverse approaches, but would surely reduce divergences. Hence, the aim is to create a consensus on the way the best interests of the child are to be preserved alongside the intercountry adoption process. The rights of the child, including, the rights to an identity¹⁶⁵, to be raised by his or her parents wherever possible¹⁶⁶, and to be protected from all forms of exploitation,¹⁶⁷ need to be protected. Different interests¹⁶⁸ of the child are also involved in such process such as the cultural, religious and linguistic continuity, their interests according to their 'special needs'¹⁶⁹, etc. If the best interests are a requirement to decide on an intercountry adoption, their objective determination is necessary. For this purpose, the determination of best interests must be based on accepted criteria and assessed by qualified persons or bodies, with responsibility for a final decision in the hands of a clearly-designated authority.

The idea of a best interests determination process came lately after the incorporation of the best interests of the child in international law. It is only in 2008 the UNHCR issued the UNHCR Guidelines on Determining the Best Interests of the Child¹⁷⁰ which is the first attempt to codify the issues for practical use at the international level. The UNHCR Guidelines defined the BID as "the formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions affecting the child". Then, additional sources came to conceptualize the BID process, the 2008 Guide to Good Practice No. 1¹⁷¹, the handbook for

¹⁶⁴ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 12.

¹⁶⁵ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 8.

¹⁶⁶ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 7(1) and Article 9(1).

¹⁶⁷ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 19.

¹⁶⁸ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. Chapter 4 'Determining Children's Best Interests in Intercountry Adoption'. p.49-70.

¹⁶⁹ There is no universally recognized definition of 'special needs', but they generally refer to 'hard-to-place' children due to physical, emotional or mental disabilities, or because they are siblings. The meaning of the terminology varies from one country to another and thus, encompasses different situations.

¹⁷⁰ UN High Commissioner for Refugees. (2008). *UNHCR Guidelines on Determining the Best Interests of the Child*. <https://www.refworld.org/policy/legalguidance/unhcr/2008/en/58874>.

¹⁷¹ HCCH. (2008). *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention*. ISBN: 978 1 84661 144 5 (English). <https://www.hcch.net/en/publications-and-studies/details4/?pid=4388>.

implementing Guidelines for the Alternative Care of Children in 2013¹⁷², the CRC Committee's General Comment No. 14 in 2013¹⁷³.

Hence, the process established by the UNHCR Guidelines¹⁷⁴ includes the verification of existing and documented information about the child, several interviews with the child and persons within the child's network, background information on the conditions in each geographical location that is to be considered as a potential place of residence for the child and the view of experts¹⁷⁵. The Hague Guide to Good Practice¹⁷⁶ also includes the establishment of the child's legal and psychosocial adoptability, the child's consent to adoption and a comprehensive report on the child¹⁷⁷. The 2014 UNICEF Report combined both sources to issue a table (cf. *Appendix 5*)¹⁷⁸ summarizing a basic outline for a BID process related to children for whom intercountry adoption is proposed. Despite those attempts to clarify the BID process, an overall agreement still lacks. Until a BID process is not determined, it cannot be binding which would nevertheless be necessary to ensure children's rights protection.

Moreover, as we saw previously, the child's consent is complicated to take into account in intercountry adoption while it is supposed to inform the BID. Other difficulties to preserve the best interests of the child can be encountered along the intercountry adoption process. The determination of 'adoptability', which is the stage at which the child is diverted from alternative care and other care placement options to best meet his or her needs, could actually be misled. Indeed, the legal adoptability, determined on the basis of the child's potential legal status as adoptable, in view of the parent's death or abandonment or their appropriate consent to relinquish the child¹⁷⁹, could be misinformed due to actual pressures to relinquishment that exist, and corrupted practices. An assessment of prospective adoptive parents is also carried out in the receiving countries, but no agreement on the criteria exists. Each receiving country sets out its eligibility requirements for prospective parents and lets its competent authorities decide on the eligibility, as stated by Article 5¹⁸⁰ of the 1993 Hague Convention.

Article 5, Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption:

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State –

a) have determined that the prospective adoptive parents are eligible and suited to adopt;

¹⁷² Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2013). *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'*. UK: Centre for Excellence for Looked After Children in Scotland.

¹⁷³ UN. Committee on the Rights of the Child. (2013). *General comment no. 14 (2013) on the right of the child to have his or her best interests taken as primary consideration (art. 3, para. 1)*. CRC/C/GC/14.

¹⁷⁴ UN High Commissioner for Refugees. (2008). *UNHCR Guidelines on Determining the Best Interests of the Child*. <https://www.refworld.org/policy/legalguidance/unhcr/2008/en/58874>.

¹⁷⁵ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.56.

¹⁷⁶ HCCH. (2008). *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention*. ISBN: 978 1 84661 144 5 (English). <https://www.hcch.net/en/publications-and-studies/details4/?pid=4388>.

¹⁷⁷ Ibid.

¹⁷⁸ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.58.

¹⁷⁹ Lammerant, I. (2003). *Les Fondements Ethiques et Juridiques de l'Adoption des Enfants Délaissés*, Contribution to the colloquium 'Devenir adoptable, être adoptable', Paris, 14 November, p. 5; International Social Service (1999). *The rights of the child in internal and intercountry adoption: Ethics and principles – Guidelines for practice*. Geneva: ISS.

¹⁸⁰ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 5.

b) have ensured that the prospective adoptive parents have been counselled as may be necessary;
[...]

However, it would better protect children's rights to settle requirements that all receiving countries should apply. The same goes for the preparation of the prospective adoptive parents, accredited adoption bodies in the receiving countries are responsible for helping to prepare prospective adoptive parents. The Hague Guides to Good Practice¹⁸¹ mentions examples of areas in which adoptive families should receive training, such as the unique issues of identity in intercountry adoption, culture and ethnicity, etc¹⁸². However, there is no obligation for accredited adoption bodies to incorporate those elements in their training programmes, which would nevertheless be essential to ensure the best possible preparation of adoptive parents and guarantee the best interests of the child after adoption. Then, the matching process - consisting in assessing which prospective adopters would best meet the needs of a child for whom adoption is envisaged - aims to find the most appropriate family for the child rather than the most 'suitable' child for the family. However, this matching process could be biased because of false or missing information, notably regarding the child's health, which could cause major problems for the child, the family or both. After the matching process comes the bonding process which is the meeting between prospective adopters and the child with whom they have been matched, in the country of origin. Each country of origin has its own requirements, for instance, in Columbia¹⁸³, adoptive parents must stay in the country with the child for at least two weeks before an adoption decree is pronounced, and psychologists and social workers help to build the relationship between the child and the adoptive family. However, more informed guidelines should be provided to impose minimum standards.

Ensuring the best interests of the child along the intercountry adoption process also includes providing the appropriate post-adoption services¹⁸⁴, as pointed out by the 2014 UNICEF Report¹⁸⁵. Those services are to be provided by receiving countries and must meet multiple needs of adoptees and their adoptive families. Services can be formal, such as mental health support provided by professionals, or informal such as parent support groups¹⁸⁶. To ensure the best interests of the child are met after the adoption, post-placements reports can be asked by the country of origin. However, there is also no consensus around the criteria for those reports, each country of origin settles its own requirements.

Another key issue regarding post-adoption services is the access to information for adoptees. Most of the professionals recognize the psychological need for adoptees to have access to information for their search for origins, and consolidate their identity. This access would actually meet the right to identity recognized in Article 8 of the CRC¹⁸⁷, and the best interests of the child.

Article 8, CRC:

¹⁸¹ Ibid.

¹⁸² Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.65.

¹⁸³ Ibid. p.67.

¹⁸⁴ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.69.

¹⁸⁵ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research.

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

However, the CRC does not explicitly formulate such access to information as a right, and thus as an obligation for states to ensure it. The 1993 Hague Convention makes mention of this matter in Article 30¹⁸⁸, stating that each Hague contracting state must preserve documents that relate to the adopted child's family and medical history (Article 30(1)) with a view to permit the child to have access to this information.

Article 30, Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption:

(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Indeed, under Article 16¹⁸⁹ of the 1993 Hague Convention, the Central Authority of the State of origin shall prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child. This report is transmitted to the Central Authority of the receiving State (Article 16(2)). However, there is no absolute obligation for contracting states to ensure access to information, as the wording “in so far as is permitted by the law of that State” (Article 30(2)) demonstrates it. Hence, by imposing no obligation, treaties fail in a way to meet the best interests of the child and the child's right to identity. As emphasized by the 2014 UNICEF Report, the application of the best interests of the child is not limited to the individual case of one child, but should be applied to children as a group¹⁹⁰. Therefore, all legislation, policy and measures relating to intercountry adoption must be reviewed from the standpoint of compliance with the best interests of children. Legislation should thus facilitate children's access to their information to better meet their right to identity.

Moreover, Article 8 of the CRC¹⁹¹ mentions ‘the right of the child to preserve his or her identity, including nationality, name and family relations’ which evidences the importance of identity, nationality, name and family relations. However, the recognition and effects of an intercountry adoption has an impact on those aspects, as settled in Chapter V of the 1993 Hague Convention. As stated in Article 26¹⁹², the recognition of an adoption includes the termination of a pre-existing legal relationship between the child and his or her parents, and the recognition of the legal parent-child relationship between the child and his or her adoptive parents. In France, while two types of adoptions exist, simple adoption - which does not sever the parent-child relationship

¹⁸⁶ Ibid. p.32.

¹⁸⁷ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 8.

¹⁸⁸ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 30.

¹⁸⁹ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 16.

¹⁹⁰ Ibid. p.16.

¹⁹¹ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 8.

between the adoptee and their birth family - and full adoption - involving the termination of a pre-existing parenting relationship, intercountry adoption is necessarily a full adoption. It includes that the child adopted obtains the nationality of his or her adoptive parents, meaning his or her nationality of birth cannot be enjoyed anymore. Hence, in some way, the effects of intercountry adoption could seem paradoxical in view of what is nevertheless recognized as important by Article 8 of the CRC. In this view, the bilateral agreement between Ecuador and Canada provides that adopted children will retain their nationality of their birth country¹⁹³, which should be a requirement imposed by the 1993 Hague Convention.

Section 3 : Legal inconsistencies and remedies for human rights violations in intercountry adoption

This section will firstly focus on the subsidiarity principle of intercountry adoption. We will see that intercountry adoption's failure to be in practice a solution of last resort, due to the incentives, mainly economic, pushing to prioritize this option rather than other solutions of care contradicts the child's rights to not be separated from their parents against their will¹⁹⁴, and to know and be cared for by their parents¹⁹⁵ (Section 3.1). Moreover, the perspective of economic profits also creates an incentive for illicit practices. The legal framework should thus be stricter and more precise in regard to fees in intercountry adoption. Since the international legal instruments fail to properly struggle against illegal adoptions, they should also provide a clearer guidance in such case (Section 3.2). Additionally, since illicit adoptions represent a violation of human rights, appropriate legal instruments for reparations should be provided, embracing the particularities of violation of human rights in the case of intercountry adoption (Section 3.3).

1. The subsidiarity principle of intercountry adoption biased in practice

The subsidiary character of intercountry adoption in relation to other suitable in-country care is recognized in international standards. Intercountry adoption must be considered "...if the child cannot be placed in a foster or adoptive family or cannot in any suitable manner be cared for in the child's country of origin" according to Article 21(b) of the CRC¹⁹⁶. In the wording of the 1993 Hague Convention, the competent authorities of the state of origin may only decide that intercountry adoption corresponds to a child's best interests "...after possibilities for placement of the child within the State of origin have been given due consideration"¹⁹⁷. Moreover, Article 3 of the 1986 U.N Declaration¹⁹⁸ states that "the first priority for a child is to be cared for by his or her own parents."

¹⁹² ¹⁹² HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art.26.

¹⁹³ Van Loon, J.H.A., p.314.

¹⁹⁴ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 9(1).

¹⁹⁵ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 7(1).

¹⁹⁶ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 21(b)

¹⁹⁷ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Article 4(b).

However, when intercountry adoption is chosen while it seems to be the best option in regard to the best interests of the child, it is yet also often due to the fact that appropriate conditions to establish proper alternative in-country care are not met. Hence, the best interests determination is in some way biased. The proper functioning of the best interests of the child determination would yet need a favourable environment. Indeed, to determine whether or not intercountry adoption should be pursued for any given child, a number of basic conditions must be met to create an ‘enabling environment’¹⁹⁹. Key issues such as policy approaches, conditions in the country of origin and actions to be taken by receiving countries, need to be addressed to secure this enabling environment.

First, the response to poverty is a necessary policy question to raise while economic inequalities are at the roots of child relinquishment (cf. Chapter 1). Indeed, material poverty used to justify the removal of children from parental care, and still drive the system of intercountry adoption. Yet, it is very concerning that poverty could be a justification for the placement of a child for adoption if the child is not an orphan while international law requires the state to render appropriate assistance to parents and legal guardians to facilitate the upbringing and development of their children (Article 18 of the CRC). It is what Smolin denounced, considering that the intercountry adoption system is built upon the vulnerability of parents living in extreme poverty, and thus, undercuts human rights²⁰⁰. The UN General Assembly also expressed its opinion on the matter and set out the principle that “financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his or her reintegration, but should be seen as a signal for the need to provide appropriate support to the family”, in the 2009 Guidelines for the Alternative Care of Children²⁰¹.

However, countries of origin often fail to take appropriate measures to prevent child abandonment, relinquishment and separation of the child from their family, notably to provide aid to families and comply with Article 18 of the CRC²⁰². Hence, domestic options of care are quite limited in countries of origin. Such deficiency in domestic options of care goes against the aim of Article 20 of the CRC²⁰³ which requires state parties to take appropriate measures to ensure the child’s protection and assistance when he or she is deprived of his or her family environment, and Article 8²⁰⁴ requiring state parties to preserve the child’s family relations. Ultimately, countries of origin mainly provide private residential care facilities²⁰⁵. Yet, those residential care facilities are concerning from the view of the best interests of the child, because they are often neither registered or authorised as being fit to care for children either professionally or ethically. This lack of regulation jeopardizes any attempt to meet the best

¹⁹⁸ UN. General Assembly (41st session, 1986-1987). *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 : resolution / adopted by the General Assembly.* (A/RES/41/85). Article 3.

¹⁹⁹ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.72.

²⁰⁰ Smolin, D. (2007). Intercountry adoption and poverty: A human rights analysis. Samford University. https://works.bepress.com/david_smolin/2/. p.453.

²⁰¹ UN. General Assembly. (64th sess. 2009). *Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly.* (A/RES/64/142).

²⁰² UN. General Assembly. (1989). *Convention on the Rights of the Child.* (Resolution 44/25). Article 18.

²⁰³ UN. General Assembly. (1989). *Convention on the Rights of the Child.* (Resolution 44/25). Article 20.

²⁰⁴ UN. General Assembly. (1989). *Convention on the Rights of the Child.* (Resolution 44/25). Article 8.

²⁰⁵ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.74.

interests of the child. Moreover, while those private residential facilities are often established or financed by adoption agencies, and also supported through prospective adopters' donations, the best interests of the child are easily infringed.²⁰⁶

Actions should indeed be taken by receiving countries to ensure that they do not pressurize or incentivize countries of origin to allow more children to be adopted. Yet, those actions could only mitigate the effects of the structural pressure actually due to the economic inequalities between receiving and sending countries (cf. Chapter 1, Section 1.3). We will dive more in depth on the role of economic profits in intercountry adoption in Chapter 3, Section 2.1. It must be ensured that expenditure related to an adoption must be limited to the costs of services directly involved and nothing more. Any financial support should never be addressed to bodies or individuals involved in an adoption. There is thus a need to sensitize foreign donors to the paradox of funding the kind of facilities that would be discouraged or outlawed in their own countries. On the other hand, competent authorities in receiving countries must systematically refuse any proposed arrangement with a country of origin not respecting the separation between financial support to authority and individuals involved in an adoption.

Hence, it seems the best interests of the child are difficult to ensure in countries of origin facing obstacles to provide proper domestic care. The assessment that intercountry adoption is thus the best option, while being supposed to be a subsidiary option, is therefore biased. Moreover, undertaking a best interests determination on each child for whom intercountry adoption is envisaged needs resources countries of origin often lack, e.g timely intervention and considerable qualified human investment²⁰⁷. The weak economic situation of countries of origin is thus an obstacle to ensure the best interests of the child, but also a fertile ground for illicit practices in intercountry adoption.

2. The issue of illicit practices in intercountry adoption

The manner in which the legal framework deals with illicit practices in intercountry adoption also needs to be questioned. While intercountry adoptions were more and more numerous since the end of the Second World War, an international legal framework covering this practice was lacking for a long time to protect children's rights. As we saw previously, this framework progressively emerged. However, in the meanwhile, cases of abuse and illicit practices were more and more reported. In the middle of the 1990s²⁰⁸, the lawyer Brigitte Trillat and Edwige Rude Antoine, sociologist and jurist listed the cases of illicit practices in intercountry adoption in several studies²⁰⁹. It stressed out the need to take appropriate measures to prevent those irregularities, giving rise to provisions covering the issue in the CRC²¹⁰, the Convention on the Civil Aspects of International Child Abduction²¹¹ and the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption²¹².

²⁰⁶ Ibid.

²⁰⁷ Ibid. p.81.

²⁰⁸ Denéchère, Y., Macedo, F. *Étude historique sur les pratiques illicites dans l'adoption internationale en France*. Université d'Angers. 2023, p.13.

²⁰⁹ Trillat, B. *L'adoption. Essai sur les institutions*, Presses universitaires de Lyon, 1995 ; Edwige, R.A., « *Familles et jeunes étrangers adoptés : lien de filiation et devenir* » rapport demandé par le Groupement d'Intérêt Public – Mission de recherche "Droit et justice" du ministère de la Justice et du Fonds d'Action sociale ; Edwige, R.A., *Adopter un enfant à l'étranger*, Paris, Odile Jacob, 1999.

²¹⁰ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25).

²¹¹ HCCH. (1980). *Convention on the Civil Aspects of International Child Abduction*.

²¹² HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

However, despite the will to prevent illicit practices, cases of abuse persisted after the adoption of such legal texts. The Zoe's Ark scandal of 2007 embodied the very unmonitored, and arguably unethical, practice that the 1993 Hague Convention is intended to prevent²¹³. L'Arche de Zoé (Zoe's Ark), a French non-profit organization, evacuated 10,000 'orphans' in Darfur, during the war in Sudan. Despite the warnings formulated by R. Yade, the French Secretary of State on Foreign Affairs and Human Rights, on the illegality of the group's actions while the children's status as orphans was in question and adoption in Sudan and Chad is prohibited, the airlift has been conducted. Hence, the UNICEF's Executive Director, Ann Veneman (2007), condemned Zoe's Ark for not complying with national and international laws, indeed, consent was invalid, and children were not in fact orphans.

Although those cases have been treated as exceptional events within the media and adoptive parent community, these cycles of abuse have been ongoing over several decades (cf. Section 3.3), stressing a structural problem. Smolin²¹⁴ argues those illicit practices are inherent to the intercountry adoption system as it is. In his analysis, he demonstrates the features of the adoption system contributing to the incidence of practices of buying, trafficking, kidnapping and stealing children. He establishes a typology of the method of operation used for 'child laundering' - he refers to this terminology because he considers the intercountry adoption system frequently takes children illegally from birth parents, and uses the official processes of the adoption and legal systems to "launder" them as "legally" adopted children. For instance, children can be obtained through false pretenses, inducing parents to give their children to various intermediaries, children can be taken in payment of a debt, etc. Hence, Smolin denounces the occurrence of profiteering scandals and the role played by payments in intercountry adoption. The issue of financial gain is raised in the 1993 Hague Convention to "prevent the abduction, the sale of, or traffic in children" which is one of its purposes. Article 8²¹⁵ requires States Parties to take "all appropriate measures to prevent improper financial or other gain in connection with an adoption". Article 32²¹⁶ states:

Article 32, Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption:

- (1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
- (2) Only costs and expenses, including **reasonable** professional fees of persons involved in the adoption, may be charged or paid.
- (3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is **unreasonably** high in relation to services rendered.

However, the vagueness around the wording 'reasonable' and 'unreasonably' is an obstacle to efficiently struggle against illicit practices. Indeed, the Hague regulations fail by not requiring sufficient disclosure and transparency for the use of foreign fees, for continuing to allow unreasonably high compensation to employees or agents in sending countries. Smolin points out the lack of transparency and accountability of the system in his analysis. He advocates for the implementation of limitations on permissible fees and proposes manners of enforcement such as

²¹³ Bergquist, Kathleen J.S (2009) Operation Babylift or Babyabduction? Implications of the Hague Convention on the humanitarian evacuation and 'rescue' of children, *International Social Work*, 52(5), <https://doi.org/10.1177/00208728093337677>. p.629.

²¹⁴ Smolin, D. (2005). *Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children*. bepress Legal Series. bepress Legal Series. Working Paper 749 <https://law.bepress.com/expresso/eps/749>.

²¹⁵ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 8.

²¹⁶ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 32.

the requirement for adoptive parents to sign an undertaking to keep any payments within permissible limits, the requirement for adoption agencies to disclose to the federal government all financial transactions related to each adoption, as a part of the visa processing, etc. Yet, Smolin ultimately stresses out the problem of fees as such while any amount of money will represent a large amount relative to the economy of the sending country, and thus creates a temptation to launder children. Hence, while illicit practices are structural²¹⁷ due the economic inequalities between receiving and sending countries structurally create and incentive for countries of origin to practice intercountry adoption (cf. Chapter 1 ; Chapter 3, Section 2.2), appropriate reforms of the system of intercountry adoption to efficiently prevent those abuses would yet be needed. Binding international standards on transparency and financial accountability in intercountry adoption should be implemented, and a precise legal threshold for what constitutes ‘reasonable’ fees must be fixed.

Moreover, although the legal framework tries to provide guidelines to prevent illegal practices in intercountry adoption, it also still lacks a consistent guidance on child placement in the case of procedural irregularities during the adoption process. Hence, another issue we need to point out is the lack of clarity regarding the legal treatment of improper adoptions. While intercountry adoption cases still often encounter legal and procedural irregularities, a clear guidance of the treatment of such irregularities is needed. However, the current legal framework is quite complex and does not provide consistent guidance. Indeed, intercountry adoption must comply with a myriad of requirements, yet they may conflict with one another. It is the case for procedural or legal improprieties that are discovered after the adoption takes place; the different legal regimes governing the adoption do not reach the same conclusion. Depending on which laws and regulations apply, the child is either retained in the adoptive family or returned to their country of origin.

The U.N Convention of the Rights of the Child (CRC) establishes a preference for returning the child to their country of origin. Indeed, some relevant provisions provide guidance in the case of legal or procedural irregularities in intercountry adoption. Article 8(2) requires States Parties to take appropriate measures to re-establish the identity of the child who has been illegally deprived of his or her identity. In the case of an illegal adoption, implying for instance the fraudulent alteration of his or her nationality, name or other identifying information, the child’s right to his or her identity recognized by Article 8 is compromised. Hence, in such cases of illegal deprivation of identity, Article 8 requires the re-establishment of identity, involving the return of the child to his or her natural parents and/or origin country.

Article 8, CRC:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

²¹⁷ Smolin, D. (2005). *Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children*. bepress Legal Series. bepress Legal Series. Working Paper 749 <https://law.bepress.com/expresso/eps/749>.

Article 9 states that “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.” This article also requires parties to the CRC to return the child to his or her parents in the case of an illegal adoption which may constitute an unauthorized separation.

Article 11 requires States Parties to the CRC to “take measures to combat the illicit transfer and non-return of children abroad”. While an improper adoption may be considered an “illicit transfer”, under Article 11, the child should return to his or her country of origin.

Article 21 requires States Parties to ensure the best interests of the child, involving the fact that adoption must be authorized by both proper authorities, that informed consent has been given, that no improper financial gain was involved in the adoption. In the case of an illegal adoption, such requirements may be violated. Moreover, Article 21 states that intercountry adoption is available only if alternative means of care are not available, which confirms the CRC’s preference for returning the child to his or her country of origin.

The Convention on the Civil Aspects of International Child Abduction (Abduction Convention), adopted in 1980 by the Hague Conference on Private International Law also has a general preference for returning the child to his or her country of origin as some relevant provisions demonstrate it.

Article 1 settles the objects of the Convention which are “to secure the prompt return of children wrongfully removed to or retained in any Contracting State” and to ensure the destination country respects the rights of custody of parents in the country of origin. Article 7 requires Central Authorities to co-operate to “secure the prompt return of children”.

However, whether the child will be returned depends on the length of the adoption. Article 12 settles that an abducted child must return to his or her country of origin if the child has been gone for less than one year, otherwise, parties could consider retaining the child in the receiving country if “the child is now settled in its new environment”. Yet, there are five situations in which the child must be retained in the destination country: if custody rights were not being exercised, if there is subsequent consent to removal or retention, if there is a “grave risk that the return would expose the child to physical or psychological harm”, if the return would “otherwise place the child in an intolerable situation”, if the child “objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of [his or her] views”.

On the other hand, the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 1993 would allow the child to remain with the adoptive parents. Under Article 1 and Article 4, the child may not be “adoptable” if the adoption encounters legal or procedural irregularities or improprieties, for instance if there is an improper payment or a lack of freely given consent. However, there is no direct guidance on child placement after an improper adoption, unless the improper adoption is treated like a “disrupted placement”. Indeed, if improper adoptions are treated similarly to “disrupted placements,” the

intercountry adoption convention reflects a general preference for retaining the child in the destination country. Article 21²¹⁸ establishes the return of the child as an option of last resort.

The Hague Convention Guide to Good Practice no. 1 confirmed that “[r]eturning the child to the State of origin should only be done in rare cases, and only after ‘all measures to find alternative care in the receiving State having been exhausted and any prolonged stay of the child in that State no longer being for his or her welfare or interests.’”

Therefore, the U.N Convention of the Rights of the Child (CRC) and the Convention on the Civil Aspects of International Child Abduction both formulate a general preference for returning the child to his or her country of origin, while the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption stipulates that the return of the child is an option of last resort, preferring the child to remain in the adoptive family.

These legal sources provide inconsistent outcomes, which triggers uncertainty for courts who must decide on the child’s placement. The lack of harmonization between these legal instruments weakens their purpose to protect children’s rights by leaving too much room for discretionary, and thus, potential politicized decisions not intended to protect children’s rights. From a legal standing point, this inconsistency points out the need for interpretative guidance or a unified framework to clarify how courts must decide between the child’s return to his or her country of origin or to let him or her stay in his or her adoptive family in cases of intercountry adoption irregularities. Another issue that arises in the case of illicit adoptions is the reparation for the adoptees’ human rights violations.

3. Repairing human rights violations in illegal intercountry adoptions: which legal instruments?

In recent years, more and more cases of illicit practices have been discovered, notably through reports investigating irregularities commanded by governments. In Europe, since the 2020s, states started to issue reports on illicit practices in intercountry adoptions they were involved in, Switzerland published a report in 2020²¹⁹, the Netherlands²²⁰ in 2021²²¹, France in 2024²²². The publication of those reports triggered the interdiction of intercountry adoption in Netherlands since the adoption of this motion at the House of Representatives on 16 April 2024²²³, and Federal Council of Switzerland also decided in 2025 to ban intercountry adoption by 2026²²⁴, while France still did not express such statements in this sense despite revelations of the report. In Belgium, some measures are also taken to address illicit adoptions, such as recognizing the persons illegally adopted as

²¹⁸ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

Article 21(1)(c): as a last resort, to arrange the return of the child, if his or her interests so require.

²¹⁹ Conseil Fédéral Suisse. (2020). *Adoptions illégales d'enfants du Sri Lanka : étude historique, recherche des origines, perspectives*. Rapport du Conseil fédéral donnant suite au postulat 17.4181 Ruiz Rebecca du 14.12.2017.

²²⁰ <https://www.bbc.com/news/world-europe-55982542>.

²²¹ Joustra, T. et al. (2021). *Report of the Committee Investigating Intercountry Adoption*. Commissioned by Minister Dekker.

²²² Aubin, C. et al. (2024). *Mission interministérielle relative aux pratiques illicites dans l'adoption internationale en France*. Report commissioned by the Inspection générale des affaires étrangères ; Inspection générale de la justice ; Inspection générale des affaires sociales.

²²³ See : <https://www.government.nl/latest/news/2024/12/09/careful-phasing-out-of-inter-country-adoption-over-six-years>

‘victims of human trafficking’, since 2023²²⁵. Most recently, in 2025, an independent commission in Sweden recommended the end of intercountry adoptions due to the numerous irregularities reported²²⁶.

Since illicit practices are reported and acknowledged, it points the need for governments to implement some measures in regard to intercountry adoption, attempting to reform this practice or banning it. However, the issues of apologies and reparations also come. Indeed, governments often played a role in such irregularities, by not being active enough in preventing abuse, or by directly being involved. The issue of reparation is particularly important while the victims of illicit adoptions are victims of a violation of their human rights, e.g their right to preserve their identity²²⁷, the right to not be separated from their family²²⁸, etc. Thus, a growing movement of illegally adopted individuals request remedies and reparations for the human rights violations that they and their biological families had suffered²²⁹. Indeed, according to international human rights law, victims of human rights violations have the right to an effective remedy and reparation. According to Article 8 of the Universal Declaration of Human Rights, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”²³⁰. However, international instruments on intercountry adoption do not provide specific standards solely regarding remedies and reparations for illegal adoptions²³¹. While intending to prevent illicit practices in intercountry adoption, the 1993 Hague Convention²³² fails to set out legal standards to guide remedies and reparations for victims of illegal adoptions.

In this sense, some authors²³³ propose to use transitional justice instruments to redress the harm inflicted upon victims of illegal adoptions. The notion of transitional justice refers to “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”²³⁴. While transitional justice is composed of various types of measures, combining instruments of retributive justice and instruments of

²²⁴ Swissinfo.ch. (2022, February 15). *Fin des adoptions internationales en Suisse*. <https://www.swissinfo.ch/fre/fin-des-adoptions-internationales-en-suisse/88798179>.

²²⁵ Belga, A.F. (2023, December 14). *Les enfants adoptés illégalement seront reconnus comme victimes de la traite des êtres humains*. VRT NWS. <https://www.vrt.be/vrtnws/fr/2023/12/14/les-enfants-adoptes-illegalement-seront-reconnus-comme-victimes/>.

²²⁶ Hivert, A-F. (2025). *En Suède, une commission indépendante recommande la fin des adoptions internationales*. Le Monde. https://www.lemonde.fr/international/article/2025/06/02/en-suede-une-commission-independante-recommande-la-fin-des-adoptions-internationales_6610253_3210.html.

²²⁷ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 8.

²²⁸ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 9.

²²⁹ Loibl, E. C. (2022). *The aftermath of transnational illegal adoptions: Redressing human rights violations in the intercountry adoption system with instruments of transitional justice*. *Childhood*, 28(4), 477-491. p.1.

²³⁰ UN. General Assembly. (1948). *Universal Declaration of Human Rights (UDHR)*. Resolution 217 A. Article 8.

²³¹ Smolin, DM. (2021). *The case for Moratoria on intercountry adoption*. *Southern California Interdisciplinary Law Journal* 30(2).

²³² HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

²³³ Loibl, E. C. (2022). *The aftermath of transnational illegal adoptions: Redressing human rights violations in the intercountry adoption system with instruments of transitional justice*. *Childhood*, 28(4), 477-491.

restorative justice could be a manner to repair the victims of human rights violations caused by illegal intercountry adoptions. Retributive justice instruments hold wrongdoers accountable to punish them, while restorative justice instruments focus on victims, seeking to repair harm by providing them an opportunity and offenders to communicate about the causes, circumstances, and impact of harmful practices, and to address the victims' related needs.

Several international legal instruments require states to take a retributive approach toward illegal adoption practices by holding criminally accountable those involved in such illicit practices. Article 3 of the Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography²³⁵ requires state parties to cover a list of acts, including the inducement of improper consent for the adoption of a child (Article 3(1)(a)(ii)), under their criminal or penal law whether these offences are committed domestically or transnationally. The third paragraph²³⁶ requires states parties to establish criminal penalties that are proportional to the seriousness of the crimes, taking into account their grave nature. The fourth paragraph²³⁷ requires state parties to take measures to establish the legal, criminal, civil or administrative liability of legal persons for the offences mentioned in paragraph 1. Article 25 of the United Nations International Convention for the Protection of All Persons from Enforced Disappearance²³⁸ also provides that states parties shall prevent and punish under their criminal law the wrongful removal of children as well as the falsification, concealment or destruction of documents attesting to the true identity of these children (Article 25(1))²³⁹.

²³⁴ UN. Secretary-General. (2004). *Report on The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*.

²³⁵ United-Nations. (2000). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. A/RES/54/263. Article 3:

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) [...]

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

[...]

3. Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

²³⁶ United-Nations. (2000). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. A/RES/54/263. Article 3 para. 3.

²³⁷ United-Nations. (2000). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. A/RES/54/263. Article 3 para. 4.

²³⁸ UN. General Assembly. (2006). *International Convention for the Protection of All Persons from Enforced Disappearance*. Resolution 61/177.

²³⁹ UN. General Assembly. (2006). *International Convention for the Protection of All Persons from Enforced Disappearance*. Resolution 61/177. Article 25(1): Each State Party shall take the necessary measures to prevent and punish under its criminal law:

Hence, adopting a retributive approach towards illegal adoptions involves the fact to render accountable the lawbreakers and thus their criminal or administrative punishment. Sanctioning wrongdoers serves to restore the rule of law and respect for human rights as a proper punishment could discourage repetition.

However, receiving countries' policy on remedies should not only provide for retributive but also restorative measures focusing on the victims' current needs and interests. As suggested by Loibl et al.²⁴⁰, receiving countries could inspire themselves from the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Humanitarian Law²⁴¹ in the development of a policy on remedies for abuses and illegal practices. Indeed, the UN Basic Principles²⁴² distinguish four categories of reparations, e.g, satisfaction, restitution, compensation and rehabilitation, and guarantees of non-repetition.

Satisfaction, settled in Principle 22²⁴³, includes broad range of measures, such as establishing and publicly disclosing the truth, searching for the whereabouts of the disappeared and for the identities of the children abducted, acknowledging wrongful conduct, accepting responsibility, issuing judicial and administrative sanctions against those persons involved in the violations as well as a public apology. The probability that the actors in the sending countries involved in illegally obtaining children for adoption receive a criminal punishment is low, since the children are laundered through the legal adoption system and the true circumstances of an adoption are difficult to establish years later. Hence, while prosecutions for human rights violations are often impossible in intercountry adoption, satisfaction through truth commissions can account for the past and advance reconciliation. It is in this sense that the Dutch Minister of Justice and Security established the 'Committee Investigating Intercountry Adoption in the Past', led by Tjibbe Joustra. The Joustra Committee²⁴⁴ founded cases on abuses in intercountry adoptions within the period of 1967–1998, focussing on Bangladesh, Brazil, Colombia, Indonesia and Sri Lanka that several government officials had knowledge of, while some of them even facilitated illegal adoptions from abroad. The Committee recommended to the Dutch Minister to recognize the harm caused by the adoption abuses through public apologies and to suspend intercountry adoptions that he both followed. The 2021 Dutch public apologies were thus the first official apologies offered to victims of illegal intercountry adoptions. However, this symbolic form of reparation that are public apologies should be combined with material forms of reparation that affirm that the apologizer is committed to recognizing the

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

²⁴⁰ Loibl, E. C. (2022). *The aftermath of transnational illegal adoptions: Redressing human rights violations in the intercountry adoption system with instruments of transitional justice*. *Childhood*, 28(4), 477-491.

²⁴¹ UN. General Assembly. (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Resolution 60/147.

²⁴² Ibid.

²⁴³ UN. General Assembly. (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Resolution 60/147. Principle 22.

²⁴⁴ Joustra, T. et al. (2021). *Report of the Committee Investigating Intercountry Adoption*. Commissioned by Minister Dekker.

rights and dignity of the victims and their well-being²⁴⁵. Such forms of reparations include restitution, compensation and rehabilitation.

Restitution, defined in Principle 19²⁴⁶, refers to measures that restore victims, in as much as possible, to the original situation before the gross human rights violation(s) occurred. In the case of illegal adoptions, the child's identity rights are violated, which means that the restitution requires restoring the child's identity, including their nationality, name and family relations, according to Article 8 of the CRC²⁴⁷. Indeed, Article 8 obliges states to set up a legal mechanism for re-establishing the identity of the adoptee in the paragraph 2²⁴⁸. For this purpose, adoption agencies and state authorities should be obliged to facilitate the access to relevant information, to comply with Principle 24²⁴⁹ requiring the access to relevant information concerning violations and reparation mechanisms.

According to the Principle 20 of the UN Basic Principles²⁵⁰, *compensation* should be made available 'for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case'. In the context of illegal adoptions, it could include the expenses for searches and reunion, such as the cost for travelling, gaining access to birth and adoption records, DNA tests etc. For this purpose, the Australian government made available a reparation fund to assist victims of illegal adoptions to find their relatives and to compensate for their search expenses²⁵¹. Funding should also be provided for support services for adoptees and their families to meet Principle 21²⁵² which requires that *rehabilitation* should be made available to victims of human rights violations, including 'medical and psychological care as well as legal and social services.'

²⁴⁵ Carranza R, Correa C and Naughton E. (2015). *Reparative Justice: More than Words, Apologies as a Form of Reparation*. December: ICTJ.

²⁴⁶ UN. General Assembly. (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Resolution 60/147. Principle 19: "Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property."

²⁴⁷ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 8.

²⁴⁸ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 8.(para. 2): [w]here a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

²⁴⁹ UN. General Assembly. (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Resolution 60/147. Principle 24.

²⁵⁰ UN. General Assembly. (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Resolution 60/147. Principle 20.

²⁵¹ Loibl, E. C. (2022). *The aftermath of transnational illegal adoptions: Redressing human rights violations in the intercountry adoption system with instruments of transitional justice*. *Childhood*, 28(4), p.487.

²⁵² UN. General Assembly. (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Resolution 60/147. Principle 21.

Aside the importance to punish wrongdoers and repair the victims of human rights violations in the case of illegal adoptions, *guarantees of non-repetition*²⁵³ are also of particular importance. Guarantees of non-repetition are measures that serve as safeguard against the repetition of human rights violations and abuses. Indeed, it makes little sense to investigate and publicly acknowledge historical wrongs if no efforts are made to reform the system to combat the structure encouraging and facilitating illicit intercountry adoptions. It thus in this sense that the Netherlands decided to end intercountry adoption, while other European countries, e.g Switzerland, Sweden, Denmark, consider this option.

Thus, as more and more cases of illicit practices in intercountry adoption are reported, is it of particular importance to have proper legal instruments to repair the victims of violation of human rights. While some authors²⁵⁴ provide some suggestions of legal tools to use, it is regrettable that the legal texts specifically addressing intercountry adoption, such as the 1993 Hague Convention²⁵⁵, did not include any provision regarding reparations in case of violations human rights despite their purpose to struggle against illicit practices and to protect children's rights. It is also regrettable that any legal text regarding the issue of reparations for human rights violations specific to the case of illegal intercountry adoption does not exist. Indeed, the issue of reparations in this case have specific features that would need appropriate guidance. For instance, while Article 8(2) of the CRC provides the re-establishment of the adoptee's identity, the adoptee might wish to still maintain elements of his or her identity after his or her adoption. It must be possible in such case to allow both identity elements to exist.

Another limit we could point out is the difficulty to ensure in practice guarantees of non-repetition. Ultimately, attempting to implement some reforms to prevent new cases of illegal adoptions does not seem very efficient. Indeed, the implementation of the 1993 Hague Convention²⁵⁶ intending to prevent abuses failed to do so. Thus, the only way to ensure non-repetition of human rights violations would be to end the practice of intercountry adoption. It seems to be the only way to address the structural weaknesses of the system that continue to incentivize human rights violations in intercountry adoption, e.g the motivation of adoption agencies to place as many children as possible fueled by economic profits from receiving countries, the blind trust in sending countries structures to finally permit Western families to adopt, the incentive to prioritize intercountry adoption rather than domestic care, child laundering, etc.

In sum, we focused on the progressive development of the international legal framework governing children's rights protection in intercountry adoption in Chapter 2. However, we pointed out the legal gaps and inconsistencies that remain and prevent the effectiveness of this regulation. We addressed the issue of the ambiguity around the interpretation and application of the best interests of the child which are a core principle for decision-making in intercountry adoption. Hence, a clearer guidance should be provided

²⁵³ UN. General Assembly. (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. Resolution 60/147. Principle 23.

²⁵⁴ Loibl, E. C. (2022).

²⁵⁵ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

²⁵⁶ Ibid.

to avoid misuse of this principle. A consensus around the best interests of the child determination (BID) should be found and become binding.

We also stressed some limits of the 1993 Hague Convention²⁵⁷ which is the main legal tool addressing intercountry adoption. It failed to outlaw independent adoptions that more easily do not respect children's rights and it did not prevent member states from continuing to adopt from non-member states who did not respect Hague standards. To thus ensure more consistency, the Hague Convention should outlaw independent adoption to properly fight against illicit adoptions it intend to avoid, and should prevent states parties from adopting from non-states parties. Indeed, the legal framework fails to properly struggle against illicit practices, and should thus be more precise and leave less discretion in regard to the important matters of fees and consent. Clearer guidance in the case of illicit adoptions should also be provided due to the inconsistencies between the different legal sources. Moreover, it is also important to provide appropriate legal instruments for reparations for violation of human rights in the case of illicit intercountry adoptions. Additionally, we saw how the subsidiarity principle of intercountry adoption fails to be in practice respected due to the incentives, mainly economic, pushing to prioritize this option rather than other solutions of care. Such failure contradicts the child's rights to be maintained in their family²⁵⁸ and be raised by their parents²⁵⁹.

Despite the designation of intercountry adoption as a solution for children's care and children's rights protection, the legal framework fails to address structural weaknesses of the system that undermine the purpose of intercountry adoption. Indeed, as we saw in Chapter 1, the system of transnational adoption is rooted in economic inequalities between countries of origin and receiving countries. Hence, to fully ensure children's rights to not be separated from their parents, the question of poverty at the roots of relinquishment must firstly be addressed. Since the system is biased by inequalities maintaining it and encouraging to prioritize intercountry adoption instead of developing domestic solutions, that profits create an incentive for illicit practices and child laundering, intercountry adoption cannot be an adequate solution to protect children's well-being and their rights.

After having explored some limits of the legal regulations demonstrating intercountry adoption fails to properly protect children's rights adoption from a legal standing point, Chapter 3 will evidence the power dynamics rooted that exist in transnational adoption under the rhetoric of international solidarity. We will stress out how the fact that the system is driven by the adoptive parents' demand undermine the purpose of intercountry adoption to fulfill children's rights, and how the legal tools fit the interests of those center actors. The next chapter will thus analyze the power dynamics between the different actors involved in transnational adoption and the imperialist violence imposed.

²⁵⁷ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

²⁵⁸ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 9(1).

²⁵⁹ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 7(1).

CHAPTER 3: THE POWER DYNAMIC GAME OF TRANSNATIONAL ADOPTION DISGUISED IN INTERNATIONAL SOLIDARITY

Throughout history, adoption has always had a political dimension²⁶⁰, expressing a form of power. For instance, adoption has been used in Australia to impose a dominant culture by assimilating indigenous people²⁶¹. Adoption, in some way, is the expression of power of the one who adopts above the one who renounces to its parenthood and the one who is adopted. Transposed to the case of transnational adoption, it reveals the power of the receiving country above the sending country, evidencing a power dynamic between states. As we saw in Chapter 1, France notably refused after WW2 to allow the adoption of French children by foreigners perceived as a sign of weakness, while other European countries accepted and many children were adopted in the United-States. The practice of adoption falls under the jurisdiction of the states authorizing it or not. Adoption is a legal process, however, the way to shape the law deemed to regulate this process is a political matter. Adoption is also a social construct fitting the values and the norms of the culture which produces it. A vast majority of societies practice adoption in their own way. However, transnational adoption, regulated by the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 1993²⁶² lacks acknowledging those various practices of adoption in different societies. This Convention retains a Western approach to adoption and imposes this single view. While transnational adoption is presented as an international solidaristic aid, it finally reveals power dynamics. The dominant countries institutionalized this practice, serving their interests, instead of addressing responses to the causes at the roots of transnational adoptions, e.g mainly underdevelopment. The perpetuation of this system is thus the expression of the prevalence of adoptive parents' interests, embodying the Center's center (Section 1). Their demand for parenting drives the system of transnational adoption shaped to respond to this demand. However, since transnational adoption seems to be more driven by the desire of prospective parents to start a family than to find a family for children in need, the philanthropic purpose of the practice seems undermined. Through this demand-driven system, the profiles of the children more likely to be adopted are the youngest and healthiest. The supply therefore tries to meet the demand. Indeed, due to the economic benefits a sending country perceives through an adoption abroad, it creates an incentive to resort to this practice. While some would argue it is a way to pursue national interest, through Neo-Marxist lenses, it could be understood as a way to serve the dominant class interests. Indeed, the practice of transnational adoption within sending developing countries does not benefit all. It benefits Periphery's center actors in link with Center's center, while both exploiting the Periphery's periphery. Indeed, actors working in adoption agencies, or intermediaries, linked with Central Authorities and adoptive parents in developed countries benefit from those linkages, and profit from vulnerable actors, birth mothers and their children (Section 2).

²⁶⁰ O'Halloran, K. (2009). *The politics of adoption: International perspectives on law, policy & practice*. Springer, p.1

²⁶¹ Bird, C., (1998) *The Stolen Children; Their Stories*, Random House, Australia.

²⁶² HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

Section 1 : A demand-driven system in favor of Western adoptive parents

Transnational adoption can be understood through a market approach, resulting from a supply-demand dynamic between receiving countries and sending countries. Children would embody the exchanged goods, which could make this approach sound disturbing. However, we will see in this section that this approach is relevant, portraying a reality, notably considering this system does not escape the market logic of making profits, and involves monetary exchanges²⁶³. The eternal economic debate questioning if it is the supply creating the demand²⁶⁴ or the demand creating the supply²⁶⁵ finds a place in the context of transnational adoption. Are Western families being sought for Southern orphans, or are Western prospective parents looking for Southern children to start a family? It seems transnational adoption is more driven by a desire of Western prospective parents to start a family, than accomplishing a philanthropic act. Indeed, according to Yngvesson²⁶⁶, since the 1960s and 1970s, the motives driving the demand for adoption is more about responding to infertility than social justice²⁶⁷. This demand driven dynamic undermines the purpose of transnational adoption supposed to be ‘in the best interest of the child’ (cf. Chapter 2), leading the supply to adjust to the demand.

The demand-driven dynamic is supported by the international legal framework covering intercountry adoption expressing the interests of the Center due to the Western domination of international institutions. Moreover, this demand from Northern countries to adopt children from Southern countries, is driven by several factors such as the rise of infertility, the decline of population growth in developed countries, and thus less domestic adoptable children also related with the increase in contraceptive methods. Hence, those prospective parents’ motivations have a concerning impact on the profiles of children to be adopted abroad. The supply of children to be adopted is not only composed of children in need, but it tries to fit the Western demand. Some sociological studies focused on the way prospective parents consider adoption, i.e a solution of last resort for parenthood after biological conception and medical intervention. This motivation for adoption shapes the profile of children wished to be adopted, i.e healthy and young babies. If adoption was mainly driven by a humanitarian ambition, disabled children and older children would be as desired by prospective parents as healthy and young children. However, sociological studies²⁶⁸ reveal a certain profile of children to be adopted is more desired.

²⁶³ Krishnakumar, A. (2005). *The Adoption Market*, Frontline. <https://frontline.thehindu.com/cover-story/article30204931.ece>

²⁶⁴ Referring to Say's law, postulating that supply creates its own demand. It was developed by the French economist Jean-Baptiste (1767-1832), in *Traité d'économie Politique* ('A Treatise on Political Economy'), (1803)

²⁶⁵ The French economist John Maynard Keynes (1883-1946) proposed an opposing view to the classical model. He considers the demand drives the supply

²⁶⁶ Yngvesson, B. (2002) *Placing the 'Gift Child' in Transnational Adoption*. *Law & Society Review* 36, no. 2 p.227–56. <https://doi.org/10.2307/1512176>

²⁶⁷ Dickens, J. (2009). *Social policy approaches to intercountry adoption*. *International Social Work*, 52(5), 595-607. <https://doi.org/10.1177/00208728093337678>

²⁶⁸ Roux, S. (2021) *Sang d'Encre, Enquête sur la fin de l'adoption internationale*, Vendémiaire.

1. An international regulation expressing the interests of the Center due to the Western domination of international institutions

After having addressed some limits of the legal framework covering children's rights protection in intercountry adoption in Chapter 2 from a legal perspective, we could formulate an ultimate political critic to this regulation conveying Western domination, mostly serving the interests of receiving countries. Indeed, the very conception of this legal framework could be criticized. The 1993 Hague Convention aiming at framing the system of transnational adoptions, thus contributes in some ways to its institutionalization. It does not deal with the problem of inequalities causing intercountry adoptions; it does not provide any answer to solve the causes at the roots of transnational adoption. Hence, by attempting to regulate the system, the 1993 Hague Convention, in a way, perpetuates and legitimizes this practice. This Convention thus brings some interrogations, for whom this law is made and for what purpose, because it ultimately seems built to respond to the Western demand to "create a family".

The Western domination of international institutions

This tendency of some international legal tools to serve Western interests has been criticized more generally. The critical scholarship Third-World Approaches to International Law (TWAIL) notably addressed this critique, sustaining the idea that international law has been constructed in favour of Western developed countries to the detriment of the Third World countries. International law, introduced by Jeremy Bentham as the system of law that governs relations between States and nations, served in the eighteenth century to legitimize Westerners' acts of exploitation, colonialism, slavery, in developing countries. Since international law was initially drafted only by Western countries, Third-world countries and their peoples became subject of international law without their consent in the past. Hence, the TWAIL perceives international law as a 'global law made by the West'²⁶⁹. They consider the West still takes advantage of international law in the contemporary period. They view international law as a tool to maintain neo-colonial domination of periphery's countries. Chimni²⁷⁰ postulates 'international law is playing a crucial role in helping legitimize and sustain the unequal structures and processes that manifest themselves in the growing North-South divide. By controlling international institutions and notably International Financial Institutions (IFIs) Western countries continued to infringe Southern countries' development by shaping international affairs in ways that often conflict with the achievement of development. Indeed, rather than providing an independent development, Western countries often view Southern development as something they would deliver through their policy interventions and aid programmes²⁷¹, maintaining a dependency. Hence, Western countries managed to control economic relations with Third World countries using international law, dictating policies and actions of international financial institutions. It contributed to perpetuate economic inequalities, which have a significant importance within the system of transnational adoption. Thus, international law can be seen as a tool to maintain inequality and domination over Southern countries.

²⁶⁹ Ikejiaku, B. (2014). *International Law is Western Made Global Law: The Perception of Third-World Category*. *African Journal of Legal Studies*, 6(2-3), 337-356. <https://doi.org/10.1163/17087384-12342022>.

²⁷⁰ Chimni, B. (2006) 'Third World Approaches to International Law: A Manifesto', 8 *International Community Law Review*, 3-7.

The Western upper hand on the 1993 Hague Convention

Indeed, while both receiving and sending countries participated in the elaboration of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, the Western upper hand must be highlighted. First, it must be noted that the involvement of Third World countries depends on the goodwill of the dominant countries. Indeed, as previously mentioned the participation of sending countries has been decided by the Permanent Bureau of the Hague Conference not comports sending countries Members States, which finally decided on a special commission to involve sending countries as ad hoc Members.

Before delving into the substantive aspects of the Convention, we can notice the Western prevalence is also significant in some practical aspects. First, French and English are the official languages of the Conference, triggering some difficulties for some representatives to express themselves. Hans van Loon who was a member of the Permanent Bureau reported²⁷² representatives from Latin American countries had difficulties expressing themselves in French or in English, therefore, an interpretation from Spanish into English or French was introduced for the Spanish-speaking delegations. Moreover, English and French languages were recognized both equally as authentic texts. The end of the Convention specifies a single copy of each is deposited in the archives of the Government of the Kingdom of the Netherlands.

The primacy of Western conception of parenthood denying other models of adoption and parenting

Moreover, an undeniable critic we could address to the 1993 Hague Convention is that the law created is based on the Western conception of parenthood. By relying on the Western model of family-making, the law fails to properly consider local alternatives, and the reality of adoption involving multiple links of parenting.

Roby and Ife (2009), Ouellette (2009) and Fonseca (2004) denounced the fact that the Convention is based on one conception of adoption, which is the Western one. However, Western societies have a conceptualization of family which is different in other societies; and it is what the Convention lacks to take into consideration. Isabelle Leblic worked on this confrontation between the different conceptions of adoption and parenting in different societies²⁷³. While adoption exists in the majority of societies, this practice does not have the same meaning everywhere²⁷⁴. This ambiguous difference of meaning could facilitate illicit practices. The Arte documentary ‘Adoption internationale, un scandale planétaire’²⁷⁵ (International adoption, a global scandal) reports the case of Johanna Lamboley who was adopted in France from Chile when she was five. After having investigated and found her biological mother, she discovered her adoption was a fraud. Her mother temporarily let her daughter in a pension and did not consent for adoption, when she returned, the structure told her that her daughter was not here anymore. Indeed, the illicit practices of the structure *Hotel Montecarlo* leading to roughly three hundred illicit adoptions have been discovered.

²⁷¹ Luckham, R. (2009), *Transforming Security and Development in an Unequal World*, Institute of Development Studies (IDS) Bulletin Volume 40 Number 2, Blackwell, Oxford.

²⁷² Van Loon, J. H. A. p.331.

²⁷³ Leblic, I. (ed.), 2004, *De l'adoption : des pratiques de filiation différentes*, Clermont-Ferrand, Presses universitaires Blaise Pascal (Anthropologie), p.336.

²⁷⁴ Bourgain, J. (2021). *L'adoption internationale, mythes et réalités*. Anacaona, p.122.

²⁷⁵ ‘Adoption internationale, un scandale planétaire’ (International ‘Adoption: A Global Scandal), Arte reportage, Realization: Christine Tournadre and Sonia Gonzalez, France, 2024

Furthermore, Westerners conceive parenting in an exclusive way. Blood links are of great importance, settling an exclusive filiation; that is why adoption often comes as a solution for parenting in last resort after having tried to have biological children. The exclusive character of filiation is very linked with the capitalist logics, implying the concepts of property. Western societies shaped by capitalist and individualist ways of thinking, do not conceive that infants could be children of a larger community, but rather conceive children are members of an exclusive familial nucleus. It is notably due to the importance of the material heritage transmitted from one generation to another in Western societies. Culturally, Western societies thus still do not significantly conceive plural parenting. It is therefore this exclusive conception of family that the 1993 Hague Convention retained to frame intercountry adoptions. Indeed, *Chapter V* of the Hague Convention of 1993 states the recognition and effects of the adoption and Article 26(c)²⁷⁶ stipulates a transnational adoption implies to cut the pre-existing parenting relationship replaced by the new one:

Article 26, Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption:

- (1) The recognition of an adoption includes recognition of
 - a. the legal parent-child relationship between the child and his or her adoptive parents;
 - b. parental responsibility of the adoptive parents for the child;
 - c. **the termination of a pre-existing legal relationship between the child and his or her mother and father**, if the adoption has this effect in the Contracting State where it was made.
- (2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.
- (3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

The 1993 Hague Convention thus does not permit plural parenting, whereas the reality of adopted children however falls under this situation involving double parenthood. What we could also highlight is that this provision seems more to protect adoptive parents' interests, preventing them from being confronted to complex and ambiguous situations, rather than adoptees and biological parents. It diminishes the risk of situations such as biological parents getting their children back, or children returning to their birth family after having found it back. This effect prevents conceiving both parenthoods on the same scales, and avoids the possibility for children to maintain both links. As market goods, after the exchange has been made, the ownership status is sealed! Thus, here lies a violence of the system of transnational adoption, the Convention settles the rules of this form of parenting without taking into consideration the various conceptions of families within the different societies and imposes the Western one. Rules are settled in a way to make transnational adoptions fit the model of biological parenting which is exclusive, and therefore it does not consider the particularities of adoptions implying *de facto* multiple parenting relationships. By imposing its model of parenting, the 1993 Hague Convention imposes a cultural violence, e.g one of the forms of imperialist violence Galtung conceptualized. It perpetuates the mechanisms of colonialism, imposing the Western civilisation considered as superior, over local norms. Moreover, the colonialist dimension also lies in the fact that through transnational adoptions, Northern countries dispossessed Southern countries of a 'resource', e.g a part of their population. They are dispossessed under the ground that Northern countries would better ensure those children's welfare, reinforcing the supremacist vision of the Western civilization.

²⁷⁶ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Article 26(c).

Hence, while the ‘best interests of the child’ principle is still not well defined despite some attempts of clarification (cf. Chapter 2, Section 2), it might be impacted by Western lenses. It could be considered that growing up in a family in a developed country with a higher GDP would offer a better life to the child. However, this opinion is mainly based on economic factors, while not taking into account intangible factors. Living in a high income country does not necessarily guarantee happiness, or at least a greater happiness. To capture this nuance, the OECD developed a measurement of living conditions, the ‘Better Life Index’²⁷⁷, encompassing indicators that go beyond the economic criteria, such as community (e.g the quality of relationships entertained), life satisfaction, health which also involves mental health. Those criteria would not be necessarily better ensured by transnational adoption in developed countries. Transnational adoptions that are also very often transracial adoptions can lead adoptees to face many difficulties, such as racism, notably intra-familial racism, discriminations. Those negative effects of transnational adoption decrease the welfare of the child, proving that growing up in another country and a different culture could also be harsh, and might not fulfill the ‘best interests of the child’. It is in this sense that Article 20 of the CRC points out the need to pay due regard to ‘to the child’s ethnic, religious, cultural and linguistic background’ for a child’s placement for care.²⁷⁸

2. Transnational adoption as a solution to parenthood accessible only for Western upper classes

Transnational adoption is driven by Western desire of parenting that cannot be fulfilled otherwise. Transnational adoption comes as a third solution to parenthood for affluent prospective parents. Indeed, studies²⁷⁹ reveal adoption comes in last resort after having tried to biologically conceive the baby and after medical assistance treatment. Adopting seems to be a solution to infertility, challenging parenthood. Infertility means the effective non-occurrence of pregnancy after one year of having sexual intercourse without the use of means to prevent pregnancy²⁸⁰. The World Health Organization (WHO) reports around 17.5% of the adult population – roughly 1 in 6 worldwide – are affected by infertility. This increasing phenomenon due to delayed motherhood implying to seek medical help too late, reducing success rates; environmental factors, notably the exposure to endocrine disruptors and air pollution affects fertility; and medical conditions, implying mechanical issues (e.g endometriosis) or hormonal issues (e.g polycystic ovary syndrome) for women, or endocrine disorders, testicular dysfunction or genital tract damage for men²⁸¹, occurs globally. However, while transnational adoption became a solution to parenthood, it has a cost only affluent prospective parents can cover.

²⁷⁷ OECD, Better Life Index, see: <https://www.oecdbetterlifeindex.org/#/111111111111>.

²⁷⁸ UN. General Assembly. (1989). *Convention on the Rights of the Child*. Resolution 44/25. Article 20(3).

²⁷⁹ Soares, J., Ralha, S., Fonseca, S. M., Prego, J., & Barbosa-Ducharne, M. A. (2023). *Why and how do parents decide to adopt? A study on motivations and the decision-making process in becoming an adoptive family*. *Child & Family Social Work*, 28(3), 753–763. <https://doi.org/10.1111/cfs.13001SOARES>

²⁸⁰ Yassini SM, Taghavi Shavazi M, Taghavi Shavazi N. (2012) *Factors associated with adoption acceptance rate from the view point of infertile couples*. *Iran J Reprod Med*.(5):413-8.

²⁸¹ Vie Publique, Hausse de l’infertilité : à quoi est-elle due et comment la combattre ?, 2022, see: <https://www.vie-publique.fr/en-bref/284231-hausse-de-linfertilite-quoi-est-elle-due-et-comment-la-combattre>.

Even though improper financial or other gain in connection with an adoption are prohibited by Article 8²⁸² of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), a transnational adoption has a cost that only the relatively affluent households in developed countries can afford. Only few households in developing countries wanting to start a family might consider doing so through the system of international adoption because of high costs. Indeed, adopting in a foreign country involves the costs of the constitution of the adoption file (translation fees, legislation of acts), judicial and administrative procedures abroad, fees of the organization's representative abroad, travel and accommodation expenses abroad, the costs of the child's care in an institution and those related to the preparation of their personal and medical files for adoption, passport and visa fees for both parents and the child, the financial contribution requested by the authorities of the countries of origin, etc²⁸³. Intercountry adoptions typically cost between \$15,000 and \$35,000²⁸⁴. To give an estimate, in France, the cost of an international adoption ranges between 2,000 and 20,000 euros, excluding travel and accommodation expenses in the country of origin²⁸⁵. In Canada, this cost is estimated from 17,000 to 57,015 Canadian dollars. The cost of an adoption in Thailand is estimated between 17,000 \$ and 28,000 \$, in Taiwan between 30,932 \$ and 39,872 \$ and in South Korea between 44,778 \$ and 57,015 \$²⁸⁶. Moreover, some countries of origin impose in their conditions for the eligibility of adopters a minimum annual income. To adopt in the Philippines, a minimum annual income of 40,000 \$ for the couple is required, whereas South Korea requires a minimum annual income of 30,000 dollars \$ (USD). Hence, the high costs of transnational adoption demonstrates the power dynamic at stake between Western middle or upper class families that can fulfill their desire of parenting by adopting children from Southern countries.

Furthermore, studies on the profile of adoptive parents reveal certain recurring characteristics, e.g upper classes and higher level of income. Indeed, C.Villeneuve-Gokalp demonstrates in her 2007 survey²⁸⁷ that although infertility does not depend on social classes, upper classes are more likely to initiate an adoptive procedure. It can notably be due to the self selection²⁸⁸ of lower social categories who may be more reluctant to apply because they tend to anticipate the outcome. Moreover, while the agreement procedure does not explicitly operate a selection based on social classes and the level of income, social

²⁸² HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Article 8: "Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention."

²⁸³ The list of those costs can be found on the website of Gouvernement du Québec, see: <https://www.quebec.ca/famille-et-soutien-aux-personnes/grossesse-parentalite/adoption/adoption-internationale/adopter-etranger/avant-adoption/couts-adoption>

²⁸⁴ Smolin, D.M, (2007), *Intercountry Adoption and Poverty: A Human Rights Analysis*, p.445, and Spar, D. (2006) *The Baby Business, How Money, Science, and Politics Drive The Commerce of Conception*, p.182, 184.

²⁸⁵ Bourgain, J. (2021), *L'adoption internationale, mythes et réalités*, Anacaona, 2021, p. ... Data available on the website of the Mission de l'Adoption Internationale (MAI) when cited by the author

²⁸⁶ Gay, A. (2018) *La mobilisation politique des adoptés transnationaux ou transraciaux adultes : du groupe affinitaire au groupe de plaidoirie*, Mémoire. Montréal (Québec, Canada), Université du Québec à Montréal, Maîtrise en sociologie, Annexe A p.139. The data in Annexe A come from the Secrétariat à l'Adoption Internationale du Québec. (2015), not available on the website anymore.

²⁸⁷ Villeneuve-Gokalp, C. (2007), Translated by Le groupe CSF, *The Road to Successful Adoption. A Survey in France*. Population, . 62(2), 239-270.

²⁸⁸ Halifax, J. and Villeneuve-Gokalp, C. (2005). *Adoption in France: who are the adopted children and who are the adopters?* Population & Societies, 417(10), p.3

classes are a factor impacting the ability of expressing oneself. Adoptive social services expect prospective parents to be able to formulate a discourse fitting the institutional expectations. Prospective parents should be able to verbalize their project, their motivations, the way they would respond to the difficulties encountered with their child, etc; but this ability is not distributed equally between social classes. Middle and upper classes are thus more likely to be able to express themselves than lower classes. It is what evidences the case of Mr and Mrs Duc reported by Roux²⁸⁹. This couple from the worker class followed the agreement procedure to be candidate for adoption and met a psychologist. However, the social report on this couple highlights their difficulties to express themselves and to formulate a discourse fitting the expectations of the social service.

Moreover, it is notable that prospective parents give priority to transnational adoptions rather than domestic adoption for several reasons. First, there are less domestic children to be adopted in developed countries due to the overall decline of population growth, and the rise of contraceptive aids. Prospective parents are also more willing to adopt young and healthy children while the profiles of domestic children available are less likely to fit those requirements²⁹⁰. Western prospective parents are also more likely to choose transnational adoption because it is easier and faster than domestic adoption²⁹¹, due to the differences of regulations.

3. The consequences of this demand-driven system

Hence, this understanding of adoption as a solution for parenthood instead of a way to meet children's needs has negative consequences on the system of transnational adoption. It undermines its purpose which is to find a family for children in need to protect their rights. Instead, babies corresponding to prospective parents' will are sought to fit this demand, e.g young and healthy children. This preference for certain profiles of children to be adopted not merely undermines the purpose of transnational adoption but also creates an incentive for illicit practices to find 'adoptable' children. Several authors (Macedo, Halifax and Villeneuve-Gokalp, Roux) demonstrate that while adoption is a way to respond to a desire of parenthood, prospective parents have preferences regarding the characteristics of the child to be adopted to fit their expectations. While adoption allows more the expression of specific criteria compared to biological conception, which is more random, prospective adoptive parents set qualitative requirements to find the 'ideal' profile of child to adopt. The most recurrent features desired are a young and healthy baby.

Fabio Macedo evidenced this aspect²⁹² highlighting how international adoption is shaped by adopters.

"On the question of age [...] the Insee Family History Study and its 87% of adopted children 'before 1950' under the age of three, with 44% under three months old, confirm the trend observed in the results of our

²⁸⁹ Roux, S. (2021) *Sang d'Encre, Enquête sur la fin de l'adoption internationale*, Vendémiaire, p.103.

²⁹⁰ Dickens, J. (2009) *Social policy approaches to intercountry adoption*, International Social Work; 52; p.599.

²⁹¹ Khanna N. and C. Killian. (2015). *We Didn't Even Think about Adopting Domestically": The Role of Race and Other Factors in Shaping Parents' Decisions to Adopt Abroad*, Sociological Perspectives, Vol. 58, No. 4, pp. 570-594, <https://www.jstor.org/stable/44290130>.

²⁹² Macedo, F. (2019). *Choisir les enfants Nationalité, race et « qualité » dans l'histoire globale de l'adoption internationale (1830-1980)*, Thèse de doctorat, Ecole des Hautes Etudes en Sciences Sociales, EHSS.

sample: sixteen out of the twenty-three applicants who expressed an opinion on this matter wish to adopt a child under the age of three, including twelve who prefer a child under one year old.”²⁹³

More recent studies evidence the same preponderance of youngness as a preference criteria. J. Halifax and C. Villeneuve-Gokalp dress the portraits of adopters and adoptees in their 2005 survey and found children are typically adopted at a young age, with an average age of two years and ten months, and half are adopted before reaching nineteen months²⁹⁴.

In February 2013, within the framework of his survey questioning the end of international adoption²⁹⁵, Sébastien Roux, sociologist at the CNRS, had access to the questionnaires filled by prospective parents to the Saudre adoption service²⁹⁶. He noticed all parents mentioned their preferences to adopt young and healthy babies. The medical dimension has actually gained importance in parenting, but it differs between biological parenting and adoption. In biological parenting, it focuses on detecting risks and allowing parents to make choices before childbirth, whereas in adoption, it comes into play when the child is already born. Children's health status is hence a significant factor in the desirability of parents to adopt. However, since the end of the 1990s, the reduction of transnational adoption is accompanied with an increase of the share of children with special needs adopted. They paradoxically do not fit the idealized profile of children that prospective parents wish to adopt, but are more likely to satisfy their demand because the adoption is more likely to succeed. It nonetheless engenders a risk that parents agree to take care of a child with special needs for their parenting project to succeed without really being nor aware of what it implies and neither able to meet the child's needs. Hence, there is a risk adoptive parents adopt a child with specific needs to facilitate the success of their project. In 2011, the French Ministry of Foreign and European Affairs addressed this problematic in its annual report on international adoption:

“In this context, the mismatch and gap between, on the one hand, the expectations of French families applying for international adoption - who, in the vast majority, wish to adopt healthy and young child - and, on the other hand, the evolving profile of children proposed by countries of origin, which is increasingly shifting toward children with special needs (siblings, older children, or those with medical conditions - Vietnam being a particularly emblematic case) is becoming ever more apparent. This underscores the importance of ensuring, well in advance and even before the approval process, better information and preparation for families so that they fully understand the new realities at play and embark on the often long and complex process of international adoption with full awareness.”²⁹⁷

In response, the report enounces in Chapter 7 the aim to better inform and prepare families to adopt children with specific needs. For this purpose, the report evidenced the importance of a medical and psychological monitoring of adopted children and the role of the Service of International Adoption (SAI) to inform families. The SAI notably organized a seminary to deal with the topic of “*Preparing the international adoption project: current issues*”.

²⁹³ Ibid, p.208, Translated from French, citation in French: “sur la question de l’âge [...] l’Étude de l’histoire familiale de Insee et ses 87% d’enfants adoptés « avant 1950 » de moins de trois ans et 44% de moins de trois mois, confirme la tendance issue des résultats de notre échantillon : seize postulants sur les vingt-trois s’étant exprimés sur ce point souhaitent adopter un enfant de moins de trois ans, dont douze, de moins d’un an.”

²⁹⁴ Halifax, J. and C. Villeneuve-Gokalp. (2005). *Adoption in France: who are the adopted children and who are the adopters?*, Population & Societies, 417(10), p.1-4.

²⁹⁵ Roux, S. (2021). *Sang d’Encre, Enquête sur la fin de l’adoption internationale*, Vendémiaire.

²⁹⁶ Ibid, p.157

²⁹⁷ Translated from French. Ministère de l’Europe et des Affaires étrangères, *L’Adoption internationale en France. Rapport annuel*, 2011, p.3.

Indeed, there is a real need to prepare families to the particularities of adoptive parenting, especially in the case of children with specific needs. In his chapter '*Le sain et le pathologique*' in *Sang d'Encre*, Roux reports some cases of difficulties encountered by some families due to the lack of preparation. A French couple testified²⁹⁸ that an Authorized Adoption Organization (OAA) strongly advised them to consider adopting a child with special needs in order to expedite the process, finalizing the adoption procedure roughly in less than two years. However, they refused after learning of a case in their surrounding where parents had adopted a child whose condition was initially deemed operable, but the required medical care turned out to be far more extensive than what had been communicated to them. This testimony enlightens the responsibility of associative actors to better orient parents to meet children's needs. Hence, it is in this sense that adoption consultations with medical professionals is useful to better orient and inform future parents. It is what Mrs Arly did with Dr Chabaud²⁹⁹, as other future parents, she filled a questionnaire helping her to define which pathologies she feels able to accept or not for the child she would adopt. Dr Chabaud gave her a feedback on these answers and highlighted the fact that Mrs Arly was demanding about 'quality' and was therefore not ready to face the difficulties of a pathology; according to him, she should not adopt.

Thus, while transnational adoption is mainly driven by the demand of prospective parents, it has an impact on the profiles of children more likely to be desired to be adopted. Moreover, as young and healthy children are the most demanded, which could engender an incentive for illicit practices to fit this demand.

Hence, the preponderant weight of adoptive families within the system of transnational adoption confirms it is a demand-driven system, built upon the vulnerability of parents living in extreme poverty³⁰⁰. Adoptive parents are indeed able to exercise a certain pressure on this system to serve their interests, confirming their dominant position. That is why we can associate this group with the *Center's center*. Some examples across history evidenced their influence. In 1970, while South Korea decided to stop adoption to Western countries due to North Korea's pressures accusing Seoul of selling orphans, Western pressure was impactful so as the decision has not been implemented. In 2007, Nepal decided to block adoptions while the French ambassador to Nepal from 2007 to 2010, Gilles-Henry Garault, faced adoptive families pressure, resulting in 80 cases being successfully processed³⁰¹. Adoptive parents constitute a dominant group within the system of transnational adoption, capable of exerting a certain pressure to ensure their parental aspirations are fulfilled.

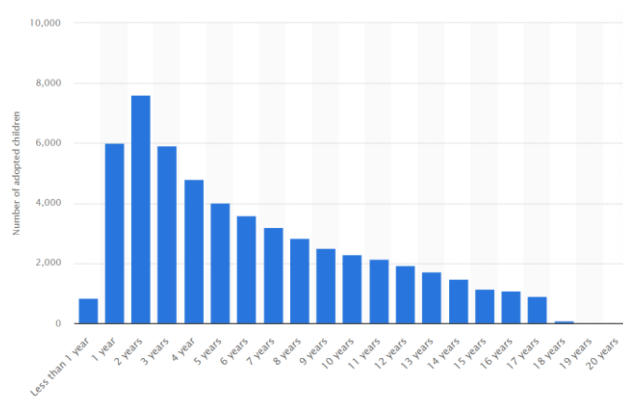
*Graph. 2 : Number of children adopted with public agency involvement
in the United States in FY 2021, by age.*

²⁹⁸ Roux, S. (2021). *Sang d'Encre, Enquête sur la fin de l'adoption internationale*, Vendémiaire, p.164.

²⁹⁹ Ibid, p.160.

³⁰⁰ Smolin, D. (2007). Intercountry adoption and poverty: A human rights analysis. Samford University. https://works.bepress.com/david_smolin/2/, p.437.

³⁰¹ '*Adoption internationale, un scandale planétaire*' (International 'Adoption: A Global Scandal'), Arte reportage, Realization: Christine Tournadre and Sonia Gonzalez, France, 2024. See: https://www.arte.tv/fr/videos/111764-000-A/adoption-internationale-un-scandale-planetaire/?utm_source=ios&utm_medium=share&utm_campaign=111764-000-A.



Source: Statista, see: <https://www.statista.com/statistics/633415/age-distribution-at-time-of-adoption-us/>

Therefore, the adoptive families' demand maintains the system of transnational adoption which responds to the demand to found families, generating many negative consequences. It creates an incentive to resort to transnational adoption generating economic gains, instead of privileging domestic adoption and improving welfare systems (cf. Section 1.3, Chapter 1). It also increases the pressure on birth mothers to relinquish their children, and creates an incentive to illicit practices.

Section 2 : The violence conveyed by *the harmony and disharmony of interests* between the actors of transnational adoption

1. The perverse role of economic profits in intercountry adoption

While the system of transnational adoption is mainly demand-driven, the Periphery's center actors try to supply this demand to benefit from it. This harmony of interest between Center's center actors, e.g adoptive parents and actors working in adoptive institutions, and Periphery's center actors perpetuates the system of transnational adoption and imposes a structural violence to periphery actors (cf. *Appendix 1*). Indeed, there is a conflict of interest between Periphery's center and Periphery's periphery actors. Dominant classes within the Periphery benefit from this system, perceiving the economic profits that an international adoption provides, and thus, do not have interest to stop this system. Indeed, a child adopted internationally would bring in five times more money than a child adopted domestically³⁰². That is why sending countries fail in practice to meet the requirements settled in international law, such as considering intercountry adoption as a subsidiary option. Those mechanisms of harmony of interest between Western prospective families and agencies benefiting from this system in underdeveloped countries perpetuates this dependency, and as discussed in Chapter 1, Section 1.3, it prevents welfare systems of sending countries from being improved. Indeed, many private residential facilities often related to adoption agencies in countries of origin are supported through prospective adopters' donations (Section 3.1, Chapter 2). Hence, those economic profits undermine the solidaristic and philanthropic dimension of transnational adoption. Such economic profits harm the system in several ways, creating a dependency of the underdeveloped countries to

³⁰² Ibid.

developed countries, preventing the improvement of domestic welfare systems while also creating an incentive for illicit practices.

As we saw in Chapter 2, the international legal framework covering intercountry adoption tries to prevent illicit practices, condemning ‘improper financial or other gain from an activity related to intercountry adoption’³⁰³. However, it does not fully outlaw financial gains, considering ‘reasonable’ fees are accepted. Yet, in a context of extreme poverty many sending countries face, Smolin³⁰⁴ argues that even a small amount of money would create an inducement to relinquish their children given the desperate poverty of some birth parents. He also stresses the paradox of adoptive parents committed to spend large amounts of money for the adoption procedure, while an amount of hundred dollars of aid fund would have permitted the child to remain in his or her family of origin, for children relinquished due to poverty³⁰⁵. Through those flows of money coming from developed countries to underdeveloped countries, it creates an incentive for sending countries to rely on intercountry adoption rather than developing domestic solutions of care. In practice, financial fees undermine provisions of international law stating that intercountry adoption should only be chosen after domestic solutions to enable the child to remain in his or her country of birth have been considered. While intercountry adoption is more easily chosen over family preservation efforts - due to the fact sending countries are discouraged from developing domestic options to perceive the profits of intercountry adoption - it leads the system of transnational adoption becoming exploitative in the sense it would be built upon the vulnerability of the poorest³⁰⁶.

Moreover, those amounts of money that Periphery’s center actors would perceive create a temptation for illicit practices. The poor economic situation of countries of origin does not permit to prevent abuses while not having effective governmental capacities. Hence, there exists a wide range of methods of operations for child laundering, and many of them also exploit the economic vulnerability of birth parents. For instance, sending countries actors, such as independent facilitators, orphanage directors or attorneys, creates a system of purchasing infants and children from birth families³⁰⁷. Those Periphery’s center actors are skilled individuals often having the material and social position and the linguistic capacities to interact with Center’s center actors. Yet, those skilled individuals often rely on intermediaries of a lower social status. For each child placed for intercountry adoption, the persons at the top of the criminal conspiracy may perceive between \$2,000 to \$20,000 coming from legitimate adoption fees, and will redistribute those funds to intermediaries, birth families, etc. Indeed, birth families are often incited to relinquish their children in exchange for amounts of money. While the 1993 Hague Convention specifies that parental consents to adoption cannot have been “induced by payment or compensation of any kind”, it is very difficult to verify in practice. Moreover, even without amounts of money, it is still questionable to rely on the consent of poor birth parents to relinquish their children and legitimize the practice of intercountry adoption given their situation of extreme

³⁰³ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Article 32.

³⁰⁴ Smolin, D. (2007). *Intercountry adoption and poverty: A human rights analysis*. Samford University.

³⁰⁵ Ibid. p.448.

³⁰⁶ Ibid. p.453.

³⁰⁷ Smolin, D. (2005). *Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children*. bepress Legal Series. bepress Legal Series. Working Paper 749 <https://law.bepress.com/expresso/eps/749>. p.118.

poverty. As Smolin argues, poor persons “consent” to the use of their bodies for sexual services, but it does not justify the rich foreign tourists who choose to buy those services rather than simply offer some gratuitous assistance³⁰⁸.

2. The exploitation of birth mother’s distress in sending countries

The system of transnational adoption exercises significant violence toward birth mothers in sending countries. They represent the periphery of the Periphery, exploited by the center of the Periphery benefiting linkages with the Center. Hence, vulnerable mothers - with poor conditions of living, unwed or single - are targeted to incite or dupe them to relinquish their babies for adoption³⁰⁹. This incentive is produced through different methods. Mothers can be incited to give up their babies in exchange of protection, such as free care, or help to be rehabilitated. It has been the case for many years in Taiwan, mothers were encouraged to relinquish their child in return for receiving free maternity care³¹⁰.

This type of pressure also relies on the significant stigma against single mothers, which remains deeply rooted in many countries. It is particularly the case in South Korea. In this sending country, intercountry adoption began in 1955 with more than 120,000 children placed abroad. Most of them were children of mixed race between American military servicemen and South Korean women, due to the rejection by society. However, despite the economic growth the country has experienced, South Korea remains a major sending country for adoption due to the continuing stigma of unmarried parenthood inciting single mothers to relinquish their child³¹¹.

Patriarchy also creates an incentive to relinquish babies, mainly girls in China. From 1980 to 2016, the Chinese government imposed the *One-child policy* implying to limit families to one child each to reduce the growth rate of population. It pushed many parents to relinquish their daughters because of the preference for male children due to patriarchal traditions. Sons are indeed the ones who perpetuate the family name and the property inherited, and care of elderly parents. Hence, by 1990, hundreds of thousands girls were abandoned, as male sex ratios reached over 110³¹². Intercountry adoption increased, notably for female children, in the 1990s the number of adoptions from China were to rise to 10,000 per annum.

Mothers can also be encouraged to give up their child in exchange for money, due to their very poor conditions of living. Some financial incentives are also offered to women to conceive a child specifically for adoption abroad. It has been the case in Sri Lanka where a system of “Baby farms” in which destitute women served as ‘wombs’ to give birth to babies

³⁰⁸ Smolin, D. (2007). *Intercountry adoption and poverty: A human rights analysis*. Samford University. p.440.

³⁰⁹ Krishnakumar, A. (2008) *The Adoption Market*, 22 FRONTLINE, at 9, available at <http://www.flonnet.com/fl2211/stories/20050603006700400.htm>

³¹⁰ Selman, P. (2014) *Intercountry adoption of children from Asia in the twenty-first century*, Children's Geographies, p.11.

³¹¹ Selman, P. (2001) *The Movement of Children for Intercountry Adoption: A Demographic Perspective*, Presentation at IUSSP General Population Conference, Aug. 18-24, at p.18.

³¹² Johansson S & Nygren O (1991) *The missing girls of China: A new demographic account*, Population & Development Review 17-1

to be sold to adoption agencies. This scandal emerged in 2017 and Sri Lankan authorities have in a Dutch documentary reporting that thousands of babies born there were fraudulently sold for adoption abroad in the 1980s³¹³. Up to 11,000 Sri Lankan children may have been sold to European families. Those scandals raise a serious concern around the commodification of women's bodies in underdeveloped countries. It seems the system of transnational adoption relies on the incapacity of women from the South to raise their children to allow Western women to start a family. International adoption almost appears as a form of delocalized surrogacy, commercialized and 'acceptable' because it is externalized beyond Western borders³¹⁴. Indeed, the geographical distance and the intermediary actors allow adoptive parents to worry less about the 'conditions of production' of adoptable children. As David Smolin has noted, 'only when the adoption system equally values the human dignity of birth families, children and adoptive parents will the system be compatible with the basic principles of human rights'³¹⁵.

Moreover, misleading information can dupe biological mothers to obtain their consent for adoption. Mothers are often told they will maintain links with, or receive news of the child after adoption, whereas it is false, as we saw with Johanna Lamboley's testimony. They can also be influenced by a positive discourse on adoption, which could represent a chance for their child, providing them a better education and better living conditions in Western countries. Such narrative is vehiculated through communication and cultural imperialist as mentioned assessing the impact of the White Savior imaginary. Some mothers are also being duped by being told their babies are stillborn to be kidnapped for adoption.

Hence, biological mothers are the first victims of this system with their children. They are incapacitated to raise their children, because of poverty, the system of transnational adoption pressuring them to relinquish their children instead of being supported by efficient welfare systems. They are also victims of many abuses exploiting their vulnerability. Little attention is paid to those actors of the system of transnational adoption, through studies, mediatic spaces, institutions, fiction, etc. Birth mothers have almost no voice, which prevents from hearing the dark underbelly of this system. Recently, an emerging focus on those actors started with Bos (2007)³¹⁶ focusing on mothers in South India; Dorow (1999)³¹⁷ and Han (2010)³¹⁸ who collected stories written by Korean biological mothers; Laura Briggs³¹⁹ with her book *Somebody's Children*. There is therefore a real need to enhance the empowerment of birth mothers. It can be done through improving protection systems, diminishing the sexist stigma pressure, and a better control of illicit practices.

³¹³ 'Sri Lankan baby trade: Minister admits illegal adoption trade', BBC, 21 September 2017.

³¹⁴ Bourgain, J. (2021) *L'adoption internationale, mythes et réalités*, Anacaona, p.127.

³¹⁵ Smolin, D. (2007). *Intercountry adoption and poverty: A human rights analysis*. Samford University. https://works.bepress.com/david_smolin/2/p.453.

³¹⁶ Bos, P. (2007). *Once a Mother: Relinquishment and Adoption from the Perspectives of Unmarried Mothers in South India*. Nijmegen: Radboud University.

³¹⁷ Dorow, S. K. (1999). *I Wish For You A Beautiful Life*. Minnesota: Yeong & Yeong Book Company.

³¹⁸ Han, S. (2010). *Dreaming a World: Korean Birth Mothers Tell Their Stories*. Minnesota, MN: Yeong & Yeong Book Company.

³¹⁹ Briggs, L. (2012). *Somebody's Children: The Politics of Transracial and Transnational Adoption*. London: Duke University Press

3. The cultural imperialism imposed by adoptive parents upon their adopted children

Another dynamic of violence imposed within the system of transnational adoption is the symbolic violence imposed by adoptive parents on adopted children. Indeed, while intercountry adoption is supposed to be in the best interests of the child, it seems to mainly fit parents' desire to raise a family who often lack taking into account the particularities of their parenthood. Hence, they often provide a monocultural education to their adopted child, which is a form of cultural imperialism. Moreover, adoptive parents who are often imbued with the myth of the blank page, choose to change the name of their adopted children. However, through this symbolic action, adoptive parents totally deny the particularities of their parenting, and behave as biological parents, choosing a name for their adopted child who yet already has a name and an identity. Adoptive parents prefer adopting young babies which give them the impression to better embrace the usual path of parenthood. Yet, by doing so, they fail to consider their adopted child has a background. The conception adoptive parents have of the name of their adopted child symbolizes the perception they have of his or her identity. Indeed, by preserving his or her name of origin, the parents would express a desire of continuity in the child's story, while by changing his or her name, the parents want to impose a rupture with the child's background³²⁰.

International and national legislations also permit a dynamic of rupture while the effects of an intercountry adoption is to create a new legal parent-child relationship between the child and his or her adoptive parents and the termination of a pre-existing legal relationship between the child and his or her birth parents³²¹. In many countries such as France, the full adoption implies that the nationality of adoptive parents supplants the nationality of birth of the child. Those changes of the child's name, first name, parent-child relationship and nationality represent ruptures with elements of the child's identity. While the importance of such identity elements is acknowledged by the CRC settling a right to identity³²², the possibility of supplanting them through intercountry adoption goes in the opposite direction of the purpose of Article 8 of the CRC. If an adoption is a new step in the child's life, it should never be considered as a new beginning by adoptive parents³²³. They must have the responsibility to maintain the memory of the child's past.

By not maintaining any association with the child's country of birth, adoptive parents accentuate the rupture with the child's background. Those ruptures represent a symbolic violence, dispossessing the child. It is in this sense that Trenka³²⁴ considers that "transracial adoption [is] the intimate face of colonization, racism, militarism, imperialism, and globalization". Adoptive parents often educate their adoptive child through their single culture, without maintaining any link with the culture of origin of the child. Aurélie Harf et al.³²⁵ conducted a research focusing on French adoptive parents to explore their

³²⁰ Halifax J., Villeneuve-Gokalp C. *L'élaboration d'une enquête sur l'adoption en France*. In: Population, 59^e année, n°5, 2004. p.780

³²¹ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 26.

³²² UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 8.

³²³ Roux, p.87.

³²⁴ Trenka, J. J., Oparah, J. C., & Shin, S. Y. (Eds.). (2021). *Outsiders Within: Writing on Transracial Adoption*. University of Minnesota Press. <https://doi.org/10.5749/j.ctv1j13xzx>.

³²⁵ Harf, A., Skandrani, S., Sibeoni, J., Pontvert, C., Revah-Levy, A., & Moro, M. R. (2015). *Cultural identity and internationally adopted children: qualitative approach to parental representations*. PloS one, 10(3), e0119635. <https://doi.org/10.1371/journal.pone.0119635>.

representations of their child's cultural belonging and their positions concerning connections with the child's country of birth and its culture. It analyzes the reasons why they consider it important to promote connections with the child's country of birth and its culture, or inversely, why they think that it is not beneficial for the child. The results of the answers brought the researchers to classify the parents into three groups (cf. *Tab.3*). In Group 1, parents “act as if” their children were French children born in France, to be able to make them a part of their family and so that they will not be seen as foreigners. The adoptive parents have a need to nullify the difference between them and the child. They do not provide any link with the child's country of birth, and refuse any multiplicity of cultural identities for their child. Yet, parents in Group 2 actively maintained regular associations with the children's country of birth and culture and affirmed that they were a multicultural family, and in Group 3, parents consider that the links with the country of birth and its culture depend on the child's questions and interests.

Tab. 3: Themes found on the representation of internationally adopted children's cultural identity in the three groups of adoptive parents respondents

Table 1. Themes found in the three groups.

	GROUP 112 parents	GROUP 218 parents	GROUP 321 parents
Choice of country	Chance or Minimize the difference in the child's and parents' physical appearance	Attraction to the country and/or Seeking a visible difference between child and parents	Compromise between affective factors and practical constraints
Experience of racism	Denial or trivialization	Talk to the child about racism	Talk about racism Teach self-defense strategies against racism
Child's cultural belonging	Refusal of cultural belonging other than French	Actively defend the child's bicultural identity	Promote links with the country of birth and its culture, when the child so requests
Child's history before adoption	No research	No research	Active research
Contacts with adoptive parents	No contacts	Adoptive-parent associations, internet groups	Support from adoptive-parent groups
Travel to the country of birth	No plan for a trip	Trip already made or being planned	Trip if child asks for it

doi:10.1371/journal.pone.0119635.t001

Source: Harf, A., Skandrani, S., Sibeoni, J., Pontvert, C., Revah-Levy, A., & Moro, M. R. (2015). *Cultural identity and internationally adopted children: qualitative approach to parental representations*. PloS one, 10(3), e0119635. <https://doi.org/10.1371/journal.pone.0119635>. p.9.

The approach of adoptive parents in Group 1 toward their child's cultural belonging is concerning. This group of 12 parents represents 24% of the responders, while not representing the majoritarian group in this survey those numbers still evidence the fact that a certain proportion of adoptive parents does not provide any association with the child's country of birth in their daily lives and have no interest in this country. Indeed, the responders claimed that they chose by chance or expedience the country of origin of their child. Father 5 in Group 1 answered "we went to China. But it was a chance. In any case, we wanted to adopt, so it didn't matter what country". Thus, they also responded that they were not interested in the culture of their child's country of birth. Those parents consider their children are French and that their culture is only the culture of the country of adoption, French culture in the case of this survey. They think the child's integration in his or her country of adoption requires refusal of any association with the culture of the country of birth. Mother 9 in Group 1 said "[My daughter], for me, she's French, now her country is France, she will have lived in France, not in Mali (...). Her cultural origins, they will be ours, I think". It evidences the rejection of the child's background and the will to substitute the child's cultural origins with the adoptive parents' culture. In such behaviors lies the imperialist dimension of intercountry adoption. Moreover, the survey found that

the parents in Group 1 made no active effort to learn about elements of the child's history before adoption, a father reported "you have to let go of the past". The way they approach their child's history before adoption is very concerning while it is an important feature for prospective adoptive parents to be aware of the importance of their child's background. Indeed, the 2014 UNICEF Report recommends the constitution of a 'lifebook' providing a detailed outline of the child's life before the adoption and encourages prospective parents to take part in the lifebook's preparation³²⁶.

By imposing a 'cultural assimilation', encompassing parenting behaviors that reject differences or downplay the child's unique racial and ethnic experiences, according to Lee³²⁷, parents in Group 1 ignore the problem of racism their adopted child will yet inevitably face. Indeed, respondents said they do not talk about racism with their child and do not consider it as a problem. A father said "children tease; but without any more, it's just teasing (...); he's too young to have faced this, I think", emphasizing the ignorance of adoptive parents toward the impact of racism on their children and they downplay the importance of preparing them to face racism. By avoiding the issue of racism, adoptive parents prevent their children from being enabled to face racism and thus facilitate their oppression - when they are not the oppressors themselves. Not taking into account identity issues and making this issue a taboo silences the one who is oppressed, which is a form of domination.

Thus, by considering the adopted child as a blank page and by considering him or her as White, adoptive parents impose a symbolic violence upon their child, avoiding important parts of his or her identity and his or her background.

Section 3 : Challenging dominant narratives: advocating for adoptees-centered approaches in transnational adoption

1. The conception of intercountry adoption as being in the best interests of the child challenged by the negative impacts faced by adoptees

Transnational adoptions trigger identity issues for adoptees regarding their kinship ties but also their cultural belonging. As we saw, intercountry adoption involves changes in country, nationality, names, parent-child relationship, and the rupture can also be accentuated by the adoptive parents according to the way they conceive the child's background. The way they apprehend the race of their child and his or her differences also trigger identity issues.

As we saw in Chapter 1, transnational adoption is a one way dynamic from Southern countries to Northern countries. Hence, adopted children are very often from a different ethnicity and race from their adoptive parents. However, many White adoptive parents declare they do not perceive

³²⁶ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.65.

³²⁷ Lee D.C., & Quintana S.M. (2005). *Benefits of cultural exposure and development of Korean perspective taking ability for transracially adopted Korean children*. Cultural Diversity and Ethnic Minority Psychology, 11(2)

the differences in race with their child³²⁸. For instance, Grada Kilomba³²⁹ reports in her essay *Mémoires de la plantation* the testimony of Alicia, a Black woman adoptee whose White German family claimed not seeing she was Black. Indeed, with such claims, White adoptive families want to evidence that they are not racist, as not perceiving the race would necessarily avoid any signs of racism. However, it is not about being colorblind, but about being aware of the structural impacts of racism to struggle against them and enable the adoptees to have the tools to properly face it. Ignoring the social race of adopted children and not providing an anti-racist education has significant consequences on the identity construction of adoptees.

By being raised as a White person, the adoptee is raised through the prism of an identity he or she would never be able to fully embrace. The adopted child's surroundings are often mainly White, and builds his or her identity through the White gaze, interiorizing White norms, which could even lead him or her to interiorize racist stereotypes and to reject members of his or her own ethnic community. Indeed, by not having received an education permitting the adopted child to be aware of his or her racial differences, the child will discover them through racism. Unprepared, the offense will be even more impactful and hurting. Persuaded to be White by being treated as such in his or her adoptive family, the adoptee's identity will be questioned through racist offenses. If some adoptive parents declare not perceiving the differences with their children, their differences will be perceived by others. Thus, by not being aware of their belonging to ethnic minorities, adoptees lack strategies to cope with racism and discrimination. This identity issue is an impactful feature of transnational adoptions, which are also transracial adoptions.

It is however important to notice discourses of adoptive parents claiming their *colorblindness*, avoiding the race of their adopted child is quite hypocritical in the sense that the race of the child oriented their choice as prospective parents. For instance, in France, during the procedure to adopt, prospective parents must formulate their preferences regarding the race of the child. The aim is supposed to avoid racist behaviors of parents toward their adopted child. However, those pre-adoption surveys do not fully avoid the risk of racist behaviors. Roux reported a case of a father who could not approach his own daughter because she was Black, adopted from Mali³³⁰. Moreover, a more latent racism also exists, built upon stereotypes and essentialized and orientaling images. For instance, some studies³³¹ demonstrated that White adoptive parents expressed a higher desirability for Asian children³³², which could be associated with stereotypes and fetishization around this ethnicity. A common stereotype of the Asian community is that of the "model minority" supposed to have a certain work ethic, so adoptive parents may project essentialist expectations of their child's character based on their ethnicity, such as being diligent or shy. "China doll syndrome"³³³ also projects a stereotype on Asian girls supposed to be fragile and docile.

Hence, by being raised by a White family without being educated to face racism, the adopted child will have to face discrimination by his or her own. He or she will not benefit from the

³²⁸ Bourgain, p.95.

³²⁹ Kilomba, G. (2021). *Mémoires de la plantation. Episodes de racisme ordinaires*. Paris, éditions Anacaona.

³³⁰ Roux, p.95-96.

³³¹ Dorow, S. (2006). *Transnational Adoption: A Cultural Economy of Race, Gender, and Kinship*. New York University Press.

³³² Roux, p.95.

³³³ Cohen, F. (1996). *Tracing the Red Thread: An Ethnography of Chinese-U.S. Transnational Adoption and the Legacies of Home?* *Anthropologica*, vol. 57, no. 1, 2015, pp. 41–52.

support of members of his or her community. It is in this sense that supportive groups are recognized as being important for post-adoption issues. The 2014 UNICEF Report states that including elements of community education or the encouragement of community support contributes to a good post-adoption support³³⁴, going in the sense of the best interests of the child. However, as pointed out by the qualitative survey on parental representations of the cultural identity of adopted children³³⁵, many adoptive parents deny this importance. Parents in Group 1, while acknowledging they are not interested in their child's cultural background, they also state that they do not want to maintain contact with other adoptive parents. A mother considers this kind of meeting is "a little like a ghetto" and perceives that as a stigma while they consider being parents like any others.

Thus, through the ruptures with several elements of the adoptees' identity, the lack of knowledge regarding his or her culture of birth, the lack of education to face racism and the isolation with his or her ethnic community or a community of other adoptees, the adoptee will have more difficulties to face identity issues. Those identity questionings, accentuated with racism, are likely to create a feeling of in-between for adoptees. On the one hand, their belonging to their country of adoption is questioned due to racist discrimination faced, and by the fact their origins come from another country. On the other hand, it is hard for them to feel a sense of belonging toward their country of origin and their ethnic community while not having been raised with those cultural norms. In her essay, Joohee Bourgain explains³³⁶ the difficulty she faced when she came back to her country of origin, South Korea, notably because she did not speak Korean, which gave rise to surprised reactions from Koreans. When adoptive parents do not maintain any link with their child's culture of birth, it accentuates the dispossession of identity elements of the adoptee. However, cultural belonging issues can become a point of distress during the construction of the adoptee's identity, and within the parent child relationship³³⁷.

During adolescence, identity issues play a particular role. Adopted teenagers face even greater difficulties notably due to the fact they lack identification markers while they are physically different from their adoptive parents. The difference and the acceptance of the body changements can be even harder to face when the teen has been raised only through a White gaze, interiorizing White aesthetic standards he or she does not fit. Moreover, the teenage period could also generate conflict within the parent-child relationship which could be harder in the case of an adoption. During adolescence, teenagers are more likely to have oppositional behaviors which are a way to test and ensure the solidity of the bonds of the parents-child relationship. Adopted adolescents, because of their initial rupture with their parents of birth, may need to verify those ties even more. The adolescent would specifically compromise the relationships between adopters and adoptees. However, it has been demonstrated that a good parents-child relationship better protects teenagers from suicide³³⁸. However, the relationship between adoptees and adoptive parents is more likely to be conflictual for several reasons stressed by Prati³³⁹. The poor parent-child relationship quality increases the risk of suicide for teenagers.

³³⁴ Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.68.

³³⁵ Harf, A et al. (2015).

³³⁶ Bourgain, J. p.27.

³³⁷ Harf, A., et al. (2015). p.3

³³⁸ Slap, G. et al. (2001). *Adoption as a risk factor for attempted suicide during adolescence*. Pediatrics, 108. p.1-8.

³³⁹ Prati, B. (2006). *Les adolescents adoptés sont-ils plus à risque de suicide que leurs pairs non adoptés ?* Adolescence, T. 24 n°1(1), 111-128. <https://doi.org/10.3917/ado.055.0111>.

Hence, some studies³⁴⁰ demonstrate that while adoptees are more likely to have a bad parent-child relationship, they also are more likely to attempt suicide than non-adopted teenagers. Keyes et al. found that adopted teens are four times more likely to attempt suicide than their non-adopted peers³⁴¹.

2. Improvements to mitigate the negative impacts of transnational adoption

Transnational adoption conveys negative long-term consequences for adoptees, challenging the idealized conception of international adoption, supposed to be in the best interests of the child, and to protect children's rights. Shedding lights on those aspects is essential. While the system of transnational adoption is based on inequalities (cf. Chapter 1), its existence is very contestable; yet it is perpetuated through mechanisms maintaining those inequalities. Since this system still exists, the aim is at least to provide some improvements to mitigate its negative impacts, which can only be done by taking into account the adoptees' standing point and their needs.

While studies are not all consistent, many found a correlation between bicultural socialization and positive psychological outcomes as higher self-esteem, higher educational achievement, and higher levels of adult adjustment³⁴². A bicultural socialization enhances children's pride in their cultural heritage, enabling them to be prepared to live as members of an ethnic minority, detaining the strategies to cope with racism and discrimination. The development of a strong cultural identity is also key to their well-being and psychological adaptation, decreasing the risk of psychopathologic symptoms, such as depression and attempted suicide. Indeed, the Hague Guides to Good Practice³⁴³ provides core areas in which adoptive families should receive training, including unique issues of identity, which vary according to the age and developmental stage of the adopted child, and culture and ethnicity. Moreover, the importance of the child's cultural background is also acknowledged in provisions of international law, such as Article 8 of the CRC³⁴⁴ regarding the child's right to identity, but also Article 20 para. 3 of the CRC³⁴⁵ saying that the child's ethnic, religious, cultural and linguistic background should be taken into account when the decision of placement is settled. Hence, adoptive parents should be trained by accredited bodies in the receiving state - as Article 9 of the Hague Convention on Inter-country Adoption³⁴⁶ provides without settling the content of such training - to maintain links with the child's culture of origin.

Cultural identity is defined as the entire set of beliefs, social behaviors, rites, customs, traditions, values, language, and institutions of a given culture. Thus, the cultural competences of adoptees in their birth culture can be developed through different ways: learning the language, learning the birth country's history, traditions, cooking the traditional meals, visiting the country of birth, listening to music and seeing films from that country, etc. Adoptive parents in Group 2 of Harf

³⁴⁰ Ibid.

³⁴¹ Keyes, M. A. et al. (2013). *Risk of Suicide Attempt in Adopted and Nonadopted Offspring*. Pediatrics. DOI: 10.1542/peds.2012-3251.

³⁴² Harf, A., et al. (2015).

³⁴³ HCCH. (2008). *The Implementation and Operation of the 1993 Hague Inter-country Adoption Convention*. ISBN: 978 1 84661 144 5 (English). <https://www.hcch.net/en/publications-and-studies/details4/?pid=4388>.

³⁴⁴ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 8.

³⁴⁵ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 20(3).

³⁴⁶ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption*. Art. 9.

et al.'s survey reported that they actively maintain regular links with the children's country of birth and culture, following the news of the country of origin, maintaining contacts with people living there and with people from there living in France. They also affirm being a multicultural family and defend their child's bicultural identity. A mother said "I think we must keep his origins for him, his personality, his culture".

Indeed, the loss of the heritage language is an obstacle for adoptees to be connected with their country of birth and their first family. The loss of the heritage language in the adoptee's upbringing is seen as an inevitable dimension of adoption, with the adoptee often being raised as a monolingual citizen in the second language. However, as demonstrated by Jacques Derrida, such monolingualism³⁴⁷ limits the reading of a shared world through the words and logic of the country of adoption language only. Hence, this dispossession of the child's heritage language conveys a violence as pointed out by Spivak³⁴⁸. Most of the time, adoptees are confronted with heritage language loss when meeting members of the diaspora with similar cultural origins. The unlearning of the heritage language obstructs return adoptees' opportunities for dialogic learning with their first families and communities, in this sense, Spivak³⁴⁹ refers to a 'violating dimension', which could also be associated with a cultural imperialism. Thus, Sacré et al. advocate in their article³⁵⁰ for institutional support for adoptees to learn their heritage language.

Harf et al.'s survey also reports another way adoptive parents approach their adopted child's cultural belonging. Parents in Group 3 reported maintaining links with the country of origin according to the child's questions and interests, accepting the multiplicity of their child's feelings of cultural belonging. Within this group, nineteen of twenty-one parents considered that it is necessary to talk with their children about racism and eleven acknowledged the importance of teaching children how to defend themselves when they experience racism. Six of them considered that a way to face racism for their children was to enhance the child's self-esteem, notably through pride in his or her culture of origin. A father said "It really matters to me that she be proud of the country she comes from".

While maintaining cultural ties with the country of origin has been recognised as being in the best interests of the child, the role of social welfare professionals should be rethought to provide better preparation to adoptive parents on this matter. Moreover, the Hague Guides to Good Practice³⁵¹ also recommends treating other core areas such as unresolved infertility issues, which could have a negative impact on the parents-child relationship. It is important that adoptive parents take into account the particularities of their parenting and that they let go of the impossibility of biological kinship. Receiving countries must provide systematic training for adoptive parents, to enable early prevention. Hence, the receiving states have a responsibility to bear to mitigate the negative consequences of transnational adoptions adoptees face. States should better ensure the adoptee's right to access to information, notably information regarding his or her medical history. They also should provide better post-adoption services, notably

³⁴⁷ Derrida, J. (1998). *Monolingualism of the other: Or, the prosthesis of origin* (1st ed.). Stanford University Press.

³⁴⁸ Spivak, G. C. (2013). *An aesthetic education in the era of globalization*, reprint edition. Harvard University Press.

³⁴⁹ Ibid.

³⁵⁰ Sacré, H. P. A., Cawayu, A., & Clemente-Martínez, C. K. (2022). *Adoptees relearning their heritage languages: A Postcolonial reading of language and dialogue in transnational adoption*. Journal of Adolescent & Adult Literacy, 00, 1–6. <https://doi.org/10.1002/jaal.1275>.

³⁵¹ HCCH. (2008). *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention*. ISBN: 978 1 84661 144 5 (English). <https://www.hcch.net/en/publications-and-studies/details4/?pid=4388>.

regarding the adoptee's mental health, by providing a psychological aid with professionals trained on transnational adoption issues. States legislations have thus an impact on the construction of adoptee's identity, they either can make this construction difficult due to a complex access to information, or by imposing the systematic loss of the nationality of birth, or either facilitate this construction. For instance, a bilateral agreement between Sweden and Ecuador includes an obligation for adoptive parents to make sure that the adopted child acquires adequate basic knowledge of the Spanish language, as well as of the history and geography of Ecuador³⁵². That is why the State legislation should take into account the adoptees' standing points to better fit their needs.

3. Adoptees' empowerment

If transnational adoption is deemed to be in the best interests of the child, the point of view of adoptees must be taken into account to shape this system. Transnational adoption is imbued with paternalism, as countries of origin are considered enabled to provide care for children but also because it involves the fact to make decisions for children enabled to make decisions for themselves. However, it is often forgotten that adopted children become adopted adults whose experiences and voices should be taken into account to enlighten decision-making, legislation, on intercountry adoption. However, adoptees have no agency within the system of intercountry adoption, compared to adoptive parents and so-called professionals. This lack of space prevents adoptees from making their voices heard and their interests represented, and maintains the dominant position of adoptive parents whose demand drives this system.

One of the mechanisms contributing to their lack of agency within the system is the fact that they are mainly considered as objects of study or analysis thought of from the outside, conveying their passivity. While 'professionals' make decisions for themselves when they are children, the status of eternal children supposedly incapable of holding a rational discourse is perpetuated, delegitimizing the speech of adoptees. It is an adultist system of domination, oppressing non-adults persons or persons not considered as adults, linked with the colonial mechanisms. Such representation of adoptees' can be exemplified by Elizabeth Bartholet's claims³⁵³:

"...while unparented children are generally invisible and silent, hidden away in institutions, growing up on the streets segregated from normal social and political life, often too young to speak out or to demonstrate. We have to stand strong for these children and speak out for their right to grow up with loving parents. We have to reject the false romanticism surrounding birth and national heritage."

She is a Harvard Law School professor and child advocacy expert, which gives her a supposed legitimacy to state what is the best for children. However, such discourses, first vehiculate a miserable narrative, but mainly avoid the fact that adopted children grew up and then, can speak out for their own rights. The expert discourse should not necessarily be put upon those who are directly concerned. In her articles, Bartholet strongly advocates to maintain the system of intercountry adoption and justify her position through testimonies valorizing the effects of international adoption. However, she only relies on testimonies from actors who benefit from this system, e.g adoptive parents or intermediaries, yet she never relies on testimonies of adoptees or parents of birth. Those actors, considered as Periphery's periphery actors in our analysis, are invisibilized and silenced. Indeed, media and knowledge spaces mainly relay the points of view of

³⁵² Van Loon, J.H.A., p.314.

³⁵³ Bartholet, E. (2011). *Permanency Is Not Enough: Children Need the Nurturing Parents Found in International Adoption*, Volume 55 N.Y.L., p.785.

adoptive parents and adoption “specialists” monopolizing the space of speech. This communication imperialism legitimate discourses and interests of center actors.

For a long time, adoptees, while being at the center of the adoption system, have been treated more as objects than subjects, silent and silenced actors. This marginalization is partly due to the nature of what we can consider as the ‘adoptive community’: a dispersed diaspora, often too fragmented to organize itself collectively. The concept of diaspora was initially applied to the Jewish people. It comes from a Greek word meaning ‘to disseminate’³⁵⁴. Usually, this dissemination comes after a traumatic event which is at the origin of this diasporic process of the community. In this sense, adoptees could be considered as a diaspora, being dispersed across the world after humanitarian crises or due to the burden of underdevelopment which contributed to their relinquishment. However, Manning argues that the disseminate people conserves a strong consciousness of unity and maintain ties with the motherland. It is often not the case for adoptees who retain weak ties with their country of birth in addition to the blood roots because they have been assimilated to their adoptive family’s country culture. While the adoption often occurs at a very young age the child did not have time to learn its culture of birth. Moreover, contrary to communities who migrated together abroad and regrouped themselves in their country of arrival, transnational adoption is a particular form of migration while the adoptee - despite sibling adoptions - migrates alone and rapidly are integrated in their family. Adopted children hence do not identify themselves as migrants, and do not have a sense of belonging to the community of their birth country, while not sharing the same cultural norms. This fragmentation and this distance reduces the class consciousness of adoptees prevented from defending their common interests. Moreover, this organization is prevented by the feudal center-periphery structure (cf. *Fig.3*). Galtung’s schematization³⁵⁵ is interesting to capture the idea Centers are able to cooperate to maintain their domination. In our case, receiving countries cooperate within intergovernmental institutions they tend to have the upper hand on. On the other hand, Peripheries are isolated from one another and are thus prevented from cooperating while they depend on relationships with Centers.

Fig.3: A feudal center-periphery structure

A Structural Theory of Imperialism

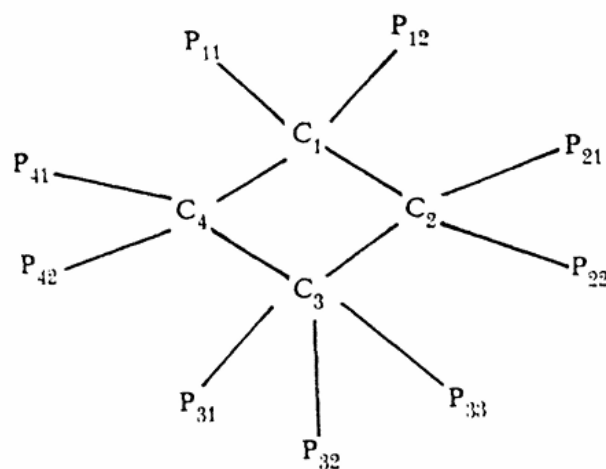


Fig. 2. A feudal center-periphery structure

³⁵⁴ Manning, P. (2009) *The African Diaspora, a history through culture*, Columbia University Press.

³⁵⁵ Galtung, J. (1971). *A Structural Theory of Imperialism*, Journal of Peace Research, Vol. 8, No. 2, p.89.

This domination is perpetuated within institutions. For instance, the Higher Council for Adoption (Conseil Supérieur de l'Adoption) in France, placed under the Ministry of Family, is composed of 30 members and only one of them is a member of adoptees associations, while this council aims at issuing opinions on adoption legislation, including international adoption. Indeed, adoptees' organizations are not very often consulted at the institutional level. In France, adoption reforms have been debated in 2005 to create the Agence Française de l'Adoption (AFA), and in 2020 to reform the law on adoption, giving rise to the Loi n° 2022-219 of the 21st of February 2022, without involving any adoptee or adoptees' associations. There is thus a lack of descriptive representation³⁵⁶ of adoptees within the institutions, preventing them from defending their interests which may conflict with those of parents. As conceptualized by Pitkin, the descriptive representation refers to a type of representation in which representatives resemble the people they represent in terms of identity criteria, e.g race, ethnicity, class, and share the same experience to some extent.

For a long time in France, the identity of birth parents, when the birth was declared anonymously (under 'X'), was not retained by the state, thereby legally considering that the child had no biological parents or was born to adoptive parents. However, this legal framework prioritizes the right of parents over those of children, undermining their right to identity³⁵⁷ and their right to have access to information³⁵⁸ concerning the identity of his or her parents. After adoptees' mobilizations, in 2002, Ségolène Royale, Minister of Family, changed the administrative management of the anonymous childbirth and created the National Council for Access to Personal Origins (Conseil National pour l'Accès aux Origines Personnelles, CNAOP)³⁵⁹.

While the structuration of adoptees' mobilization is quite difficult while being isolated, some initiatives arise. For instance, the organization *Global Overseas Adoptees' Link* (GOAL) created in Seoul in 1998 by 11 adoptees aims at helping adoptees to find their first families and facilitate a living in South Korea, notably through language classes³⁶⁰. In France, the first association of adoptees, *Racines coréennes*, was founded in 1995, while the first association of adoptees from diverse origins is *La Voix des Adoptés* created in 2005. Progressively, adopted people gain agency and mobilize themselves to speak out and defend their interests. Those mobilizations permit them to commonly raise their voices on the public stage³⁶¹, and legitimize their position as adoption experts.

Adoptees' voices started to emerge and to challenge the dominant narratives on intercountry adoption. Those voices are crucial to shed light on the grey areas of the system and address some

³⁵⁶ Pitkin, H. (1967). *The Concept of Representation*. 1st ed. University of California Press.

³⁵⁷ UN. General Assembly. (1989). *Convention on the Rights of the Child*. (Resolution 44/25). Article 8.

³⁵⁸ HCCH. (1993). *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*. Art. 30.

³⁵⁹ Roux, p.181.

³⁶⁰ Sacré, H. P. A., Cawayu, A., & Clemente-Martínez, C. K. (2022). *Adoptees relearning their heritage languages: A Postcolonial reading of language and dialogue in transnational adoption*. Journal of Adolescent & Adult Literacy, 00, 1–6. <https://doi.org/10.1002/jaal.1275>.

³⁶¹ Laffitte, H. (2019). *Expressions et organisation des personnes adoptées d'origine étrangère en France, depuis les années 1980*. École doctorale Sociétés, temps, territoires (Angers).

issues, such as access to archives³⁶² and medical past, citizenship rights, reparations, the need to break with myths and fictive narratives romanticizing adoption (Bourgain, 2021), etc. It can be through academic productions, as Amandine Gay³⁶³ did, while this analysis is also part of this approach. As Gay demonstrates in her thesis, the adoptees' mobilization can take several forms, notably artistic productions³⁶⁴. She herself realized the documentary "*Une histoire à soi*" based on transnational adoptees' archives. She also launched an initiative '*Le Mois des Adoptés*', to dedicate one month to allow transnational adoptees to speak out and sensitize through various events. In this same line, Joohee Bourgain wrote an essay to deconstruct the myths around transnational adoptions. Movies approaching adoption through adoptees' gaze start to emerge, such as *Return to Seoul* (2022) directed by Davy Chou. It tells the story of Freddie, a twenty-five years old French woman adopted from South Korea, who decides to come back to her country of origin. This movie moves away from the idealized narrative of transnational adoption as mentioned in Chapter 1 (cf. Section 3.2). It addresses identity issues faced by the protagonist, interrogations related to relationships with her adoptive parents and her parents of birth. The adoptee is the main character, having an agency, which differs from movies solely portraying passive adopted children.

All those productions contribute to enhancing the adoptees' empowerment, enabling them to challenge the dominant narratives around intercountry adoptions and defend their interests and their rights. The adoptees' empowerment is the only way to struggle against the imperialist violence imbued within the system of transnational adoption. Legislation and children's rights protection can only be improved by consulting adopted persons and their experiences. Indeed, despite the decrease in the number of transnational adoptions, the practice is still existing. As long as the system persists, it is crucial to be aware of its flaws and try to mitigate those negative impacts to ensure the adoptions realized are in the 'best interests of the child'. There is thus a huge need to increase a descriptive representation of adoptees within institutions treating the matter of transnational adoption. I argue there is also a real need to increase studies on the matter of transnational adoption made by adoptees themselves, instead of experts who, beyond the theory, lack empirical experience on the matter. By increasing the number of studies conducted from adoptees' perspectives, and by promoting legal texts made by a major part of adoptees for adoptees, we could move closer to practices in accordance with children's rights and well-being. I hence would incite adoptees to follow this path.

³⁶² Roux, S. (2021). 'Leurs archives', *Sang d'Encre, Enquête sur la fin de l'adoption internationale*, Vendémiaire.

³⁶³ Gay, A. (2018). *La mobilisation politique des adoptés transnationaux ou transraciaux adultes : du groupe affinitaire au groupe de plaidoirie*, Mémoire. Montréal (Québec, Canada), Université du Québec à Montréal, Maîtrise en sociologie.

³⁶⁴ Ibid, p.35.

CONCLUSION

This analysis retraced the rise of the practice of transnational adoption in history. At first, intercountry adoption arose as a humanitarian aid to rescue children from wars, or natural disasters. The practice emerged mainly at the end of the Second World War, after the Korean (1950-1953) and Vietnamese (1955-1975) wars, and was justified under the ground it was in the children's best interests. The emergency context also served to justify intercountry adoptions. At first, transnational adoption was intended to be a solidaristic answer repairing the consequences of the imperialist and colonialist violence perpetrated. It fit with the White Savior complex that vehiculated paternalistic behaviors. Indeed, the cultural imperialism imposed by the use of media, movies, songs, etc, conveyed an idealized image of transnational adoption as a way to 'rescue children in need'.

However, by analyzing the phenomenon of transnational adoption through Neo-Marxist lenses, we saw that this system is rooted in inequalities between states, explaining the one way dynamic of transnational adoption from Periphery nations to Center nations. Indeed, Western imperialism and colonialism fostered economic domination which underdeveloped Periphery nations. Poverty is however one of the main drivers of transnational adoption.

Additionally, the Neo-Marxist theory helped us to understand that transnational adoption is embodied within asymmetric power dynamics that perpetuate themselves, thus, maintaining a system of domination. The maintenance of this system relies on the harmony of interest between center actors, and the disharmony of interest of periphery actors. On the one hand, there is a harmony of interest between Center's center actors (e.g by agencies and institutions of adoption and adoptive parents) who desire to start a family through transnational adoption and Periphery's center actors who perceive the economic profits of transnational adoption. On the other hand, there is a conflict of interest between center and periphery actors, e.g between the prevalent discourse of adoptive parents over the adoptees' one, and between agencies, institutions or intermediaries in sending countries and parents of birth whose distress is exploited. At a larger scale, there is a conflict of interest between Center nations able to adopt children to respond to infertility, the decline in population growth rates and the decrease of domestic adoptable children, and Periphery nations prevented from developing their children welfare systems of protection to enable children to remain in their family of birth. Due to the disharmony of interest between Periphery's center actors, benefiting from the system and Periphery's periphery actors, who suffer from the violence of the system, and the dependence of sending countries to receiving countries fostered, the practice of transnational adoption is perpetuated. Therefore, transnational adoption became a lasting response to the protection of children's rights in countries facing extreme poverty, rather than directly addressing the issue of poverty and economic inequalities.

Due to the constant increase of intercountry adoptions since the end of the Second World War, and the beginning of illicit practices reported, international regulations to frame the practice and protect children's rights were needed to fill this legal gap. Conventions to frame the practice of intercountry adoption started to arise, such as the Hague Adoption Convention of 1965 or the European Convention on the Adoption of Children adopted by the Council of Europe in 1967. On the other hand, concerns about the children's rights and welfare spawned multilateral declarations and conventions, such as the 1959 Declaration on the Rights of the Child, the 1986 UN Declaration on the Social and Legal Principles Relating to the Protection and the Welfare of

Children, or the 1989 UN Convention on the Rights of the Child (CRC). However, it was only in 1993 that a regulation intended to protect children's rights in intercountry adoption, e.g. the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, was adopted. However, the 1993 Hague Convention presents several limits, notably by failing to outlaw independent adoptions that more easily do not respect children's rights and by not preventing member states from continuing to adopt from non-member states who do not respect Hague standards. Indeed, after having exposed an overview of those legal instruments, we pointed out the legal gaps and inconsistencies that prevent the effectiveness of the legal framework intended to protect children's rights in intercountry adoption. Ambiguity around the interpretation and application of the best interests of the child, which are a core principle for decision-making in intercountry adoption, stresses out the need for a clearer guidance to avoid misuse of this principle. Indeed, the 'best interests' concept used to be used in a paternalistic manner before its incorporation in human rights. Thus, a consensus around the best interests of the child determination (BID) should be found and become binding to prevent the instrumentalization of this principle.

Moreover, a major issue is that the subsidiarity principle of intercountry adoption fails to be in practice respected due to the incentives, mainly economic, pushing to prioritize this option rather than other solutions of care. Such failure contradicts the child's rights to be maintained in their family and be raised by their parents. Despite the designation of intercountry adoption as a solution for children's care and children's rights protection, the legal framework fails to address structural weaknesses of the system that undermine the purpose of intercountry adoption. Ultimately, the system of transnational adoption is rooted in economic inequalities between countries of origin and receiving countries. Hence, to fully ensure children's rights to not be separated from their parents, the question of poverty at the roots of relinquishment must firstly be addressed. Since the system is biased by inequalities maintaining it and encouraging intercountry adoption instead of developing domestic solutions, and that profits create an incentive for illicit practices and child laundering, intercountry adoption cannot be an adequate solution to protect children's well-being and their rights. Furthermore, the international legal framework of intercountry adoption intended to protect children's rights cannot properly do so while expressing the interests of the Center due to the Western domination of international institutions. Indeed, the upper hand of the Center to design those regulations has been stressed out in this analysis. Thus, those regulations are mainly the expression of center interests, evidenced by the fact that the 1993 Hague Convention solely retain the Western conception of parenthood and implies the fact that an intercountry adoption triggers the termination of a pre-existing legal relationship between the child and his or her mother and father, which is replaced by the new legal relationship with adoptive parents. The imperialist violence imposed by the system of transnational adoption is notably conveyed, legitimized and legalized by such juridical fiction. As legal instruments are relays of the center actors' interests, they are flawed by too many gaps to properly protect children's interests.

This asymmetry confirms that the system of transnational adoption is more driven by the Western demand of adoptive parents to start a family, rather than the fulfilment of children's interests. It however undermines the purpose of transnational adoption which is to find a family for children in need to protect their rights. Instead, babies corresponding to prospective parents' will are sought to fit this demand, e.g. young and healthy children. This preference for certain profiles of children to be adopted not merely undermines the purpose of transnational adoption but also creates an incentive for illicit practices to find 'adoptable' children. Thus, the adoptive

families' demand maintains the system of transnational adoption which responds to the demand to found families, generating many negative consequences. It creates an incentive to resort to transnational adoption generating economic gains, instead of privileging domestic adoption and improving welfare systems, and it also increases the pressure on birth mothers to relinquish their children, and creates an incentive to illicit practices.

However, the legal framework fails to prevent those abuses. While one of the purposes of the 1993 Hague Convention was to prevent irregularities in intercountry adoption, because many cases of illicit practices started to be reported, new cases continued to arise. It evidences the structural problem of illicit practices in transnational adoption, driven by the perverse role of economic profits rooted in the economic inequalities between sending and receiving countries. Hence, since the legal framework fails to properly struggle against illicit practices, it should be more precise and leave less discretion in regard to the important matters of fees and consent to strengthen safeguards. It should outlaw independent adoptions that more easily infringe children's rights, and should prevent states parties from adopting from non-states parties. While the legal framework allows such permissions, it reinforces the evidence that the system mainly fits the interests of adopters. It is very inconsistent to allow a Hague member state to adopt from a state non compliant with the Hague standards. Thus, the legal regulations' failure to prevent illicit practices and child laundering in intercountry adoption contributes to establish violence upon parents of birth, mainly birth mothers and adoptees. Aside from the lack of safeguards to prevent abuses, there are also inconsistencies between the different legal sources regarding the placement of the child after an illicit adoption is discovered. There is thus a need to provide clearer guidance in the case of illicit adoptions, and to provide appropriate legal instruments for reparations for violation of human rights due to illicit intercountry adoptions. Although illicit adoptions represent a high stage of violence vehiculated within the system of transnational adoption through the gaps existing in the legal framework, regular adoptions do not escape the imperialist violence of the system.

As long as transnational adoption continues to be driven by power asymmetries, it cannot serve as a genuine tool for children's rights protection. While transnational adoption is presented as an international solidaristic aid, it finally reveals power dynamics. The dominant countries institutionalized this practice, serving their interests, instead of addressing responses to the causes at the roots of transnational adoptions, e.g mainly underdevelopment. The perpetuation of this system is thus the expression of the prevalence of adoptive parents' interests, embodying the Center's center. Their demand for parenting drives the system of transnational adoption shaped to respond to this demand.

The adoptive parents' desire to raise a family often lacks taking into account the particularities of their parenthood, and impose a symbolic violence upon their adopted children. They often change the name of their adopted child, symbolizing their denial of his or her background. Moreover, many adoptive parents provide a monocultural education to their adopted child and do not retain links with the child's culture of birth and its community, which is a form of cultural imperialism. Additionally, it is important to recall that transnational adoptions are also transracial adoptions. However, the adoption does not cancel the race - in a sociological sense, meaning that it conveys inequalities. Racism is thus an undeniable violence inherent to the system of transnational adoption. First, the child adopted can face the deliberate racism of their adoptive parents, but their parents could also adopt a colorblind approach which also has negative consequences for the child's identity. Some adoptive parents choose to raise their child without

mentioning racist discrimination issues, but the child will interiorize White norms and build his or her identity solely through the White gaze. By not having received an education permitting the adopted child to be aware of his or her racial differences, the child will discover them through racism. Unprepared, the offense will be even more impactful and hurting. Thus, the ruptures with several elements of the adoptees' identity, the lack of knowledge regarding his or her culture of birth, the lack of education to face racism and the isolation with his or her ethnic community or a community of other adoptees represent forms of symbolic violence within transnational adoption that raise identity issues.

Those negative effects of transnational adoption could be mitigated by providing better training for adoptive parents to enable them to address the specificities of their parenting. The importance of bicultural socialization should be better promoted. To facilitate adoptees' reconnection with their culture of birth, binational programs should be provided, such as language courses. Indeed, the loss of the heritage language is one of the forms of symbolic violence imposed by transnational adoption, preventing the adoptees from being connected with their country of birth and their first family. Moreover, post-adoptions services should also be improved by providing adequate psychological aid.

In sum, this analysis ultimately advocates for the end of the system of transnational adoption which fails to protect children's rights and is inevitably flawed by illicit practices. We argue that this system cannot be justified since it is built on structural inequalities between sending and receiving countries that are not properly addressed. Solidarity could only exist if equality is firstly ensured. However, the one-way dynamic of transnational adoptions evidences the power dynamics at stake in this system. More broadly, this analysis is part of a wider critique toward capitalism that fosters the development of underdevelopment and reinforces structural inequalities between Center and Periphery countries. By generating economic dependency and exploitation, the capitalist system impedes any genuine effort to redress inequality. In this sense, transnational adoption must be understood as part of a larger matrix of domination; an intersectional perspective is inevitable to approach this system.

However, as long as transnational adoption exists, it is necessary to implement reforms designed through an adoptee-centered approach to fulfill the adoptees' needs and interests. Indeed, it is often forgotten that adopted children become adopted adults whose experiences and voices should be taken into account to enlighten decision-making, legislation, on intercountry adoption. Legal frameworks should not be a relay of imperialist violence, thus, reforms are needed to mitigate the flaws of the system. For this purpose, there is a need for more descriptive representation of adoptees within institutions involved in intercountry adoption matters. A growing awareness among adoptees of their shared interests to be defended is necessary to foster their mobilization to challenge dominant oppressive structures, and allow adoptees' empowerment. The adoptees' empowerment is the only way to struggle against the imperialist violence imbued within the system of transnational adoption. There is thus a need to increase studies on the matter of transnational adoption made by adoptees themselves, instead of experts lacking empirical experience. By increasing the number of studies conducted from adoptees' perspectives, and by promoting legal texts made by a major part of adoptees for adoptees, we could move closer to practices in accordance with children's rights and well-being. This analysis is therefore part of this effort to raise awareness, and advocates for further adoptee-centered research and initiatives.

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LIST OF APPENDICIES

APPENDIX 1

Fig.1: the structure of imperialism

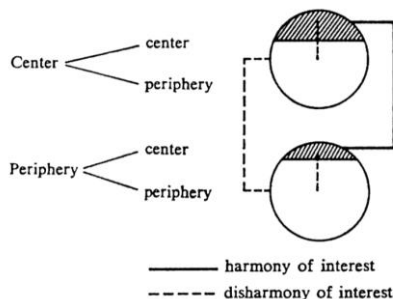
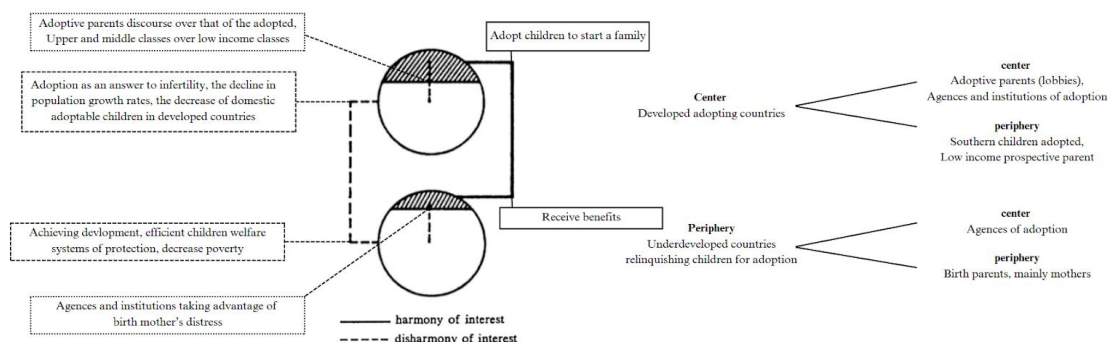


Fig. 2: the structure of imperialism in the system of transnational adoption



APPENDIX 2

Tab. 1

Table 4. Adoption from Vietnam 1998 to 2012. Nine countries receiving more than 500 children during the period; peak year in bold.

Country	1998	2001	2004	2005	2008	2010	2011	1998–2011	% of All	2012
USA (FY)	603	737	21	7	751 ^a	9	0	6181	34%	0
France	1343 ^b	44	363	790	284	469	264	5904	32%	76
Italy	0	36	6	140	313	251	142	1769	10%	41
Canada	79	131	6	3	111	171	90	1159	6%	43
Sweden	186	78	16	92	50	7	0	1009	5%	0
Ireland	0	10	16	92	182	10	0	773	4%	0
Denmark	58	62	13	72	39	34	23	634	3%	3
Spain	0	9	0	0	65	320	178	606	3%	41
Germany	51	120	13	9	6	8	2	582	3%	3
TOTAL ^c	2471	1300	488	1198	1739	1279	704	19,204		214

Source: Numbers are calculated from data on countries of origin in statistics provided by those states, which received children from Vietnam between 1998 and 2012.

^aThe highest annual total for the USA was 828 in 2007.

^bIn 1998 54% of adoptions were to France.

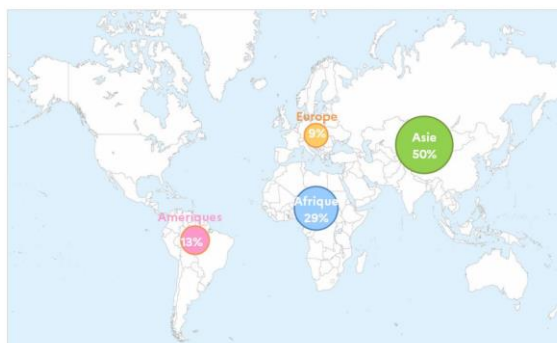
^cTotal includes adoptions to Belgium (279) and Switzerland (250) with smaller numbers going to the UK, New Zealand and the Netherlands.

Source: Selman, P. (2014) *Intercountry adoption of children from Asia in the twenty-first century*, Children's Geographies, p.8

APPENDIX 3

Map.1 : Geographic repartition of intercountry adoptions realized in France in 2024

RÉPARTITION GÉOGRAPHIQUE DES ADOPTIONS INTERNATIONALES RÉALISÉES EN FRANCE EN 2024



Source: MAI (Mission de l'Adoption Internationale) Annual Report, 2024. 'Statistiques de l'adoption internationale en 2024', p.2
see: <https://www.diplomatie.gouv.fr/fr/adopter-a-l-etranger/la-mission-de-l-adoption-internationale/les-chiffres-de-l-adoption-internationale/>

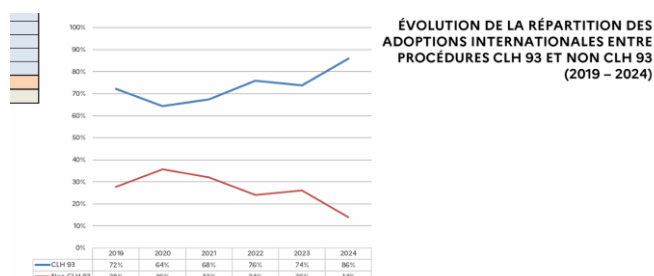
Tab.2: 10 first sending countries for intercountry adoptions realized in France in 2024

10 PREMIERS PAYS D'ORIGINE DES ADOPTIONS INTERNATIONALES RÉALISÉES EN FRANCE EN 2024	TOTAL adoptions 2024	
	103	
VIETNAM	21	
THAÏLANDE	20	
COLOMBIE	11	
MADAGASCAR	9	
INDE	7	
CAMEROUN	6	
BULGARIE	5	
TUNISIE	4	
HONGRIE	3	
TOGO	3	
TOTAL 10 premiers pays d'origine	89	86%

Source: International Adoption Statistics in 2024. Directorate for French Nationals Abroad and Consular Administration International Adoption Mission (MAI). p.2.
see: <https://www.diplomatie.gouv.fr/fr/adopter-a-l-etranger/la-mission-de-l-adoption-internationale/les-chiffres-de-l-adoption-internationale/>

APPENDIX 4

Graph 1: Evolution of the distribution of international adoptions between Hague Convention (1993) procedures and Non-Hague procedures (2019-2024)



Source: International Adoption Statistics in 2024. Directorate for French Nationals Abroad and Consular Administration International Adoption Mission (MAI). p.5.
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APPENDIX 5

Table 1: Proposed checklist for a best interests assessment and determination process on intercountry adoption

	Key issues to be covered	Considerations	Outcome
1	The child's freely expressed opinions and wishes about a range of possible and realistic outcomes, including adoption abroad, taking into account the child's ability to understand the nature and evaluate the full ramifications of each option presented.	Fulllest possible information needs to be provided to the child on the nature and implications of each potential option, taking account of the child's maturity. Consider not only verbal but also non-verbal responses (e.g. drawings) and expert observation of behaviour, including body language.	An insight into the child's feelings about cutting ties with parents, siblings and the wider family and community, and into his or her attitudes that might need to be taken into account and/or affect the success of any given option, including, but not limited to, adoption abroad.
2	The situation, attitudes, capacities, opinions and wishes of the child's family members (parents, siblings, adult relatives), other caregivers and any other key persons in the child's life, and the nature and quality of their emotional relationship with the child.	Ideally, meet close family as a group and also observe their interaction with the child. If possible and appropriate, meet the mother and father individually as well. Emphasize the perceptions of siblings, according to whether they may or may not also be the subject of a potential change in their care setting. Check their understanding of the ramifications of each future care option.	An understanding of the real reasons behind the willingness of the parents and wider family to part with the child, and thereby gauge the potential to prevent that separation.
3	The level of stability and security provided by the child's day-to-day living environment (whether with parents, in kinship or other informal care, or in a formal care setting): a) currently (immediate risk assessment) b) previously in that environment (overall risk assessment) c) potentially in that environment (e.g. with any necessary support and/or supervision) d) potentially in any other in-country care setting that could realistically be considered e) potentially with adoptive parents abroad.	This requires discussion with family, professionals and others who have been involved in or are familiar with the care of the child, as well as on-site visits. Clearly, the child's own perceptions and experiences are also critical on this question.	An informed evaluation of the degree to which the child could find necessary levels of security and support in his or her current care setting or in others available in the community or country.
4	As appropriate, the potential to keep or reintegrate the child with the parent(s) or within the wider family, including consideration of the current or future availability of any family strengthening and/or support measures this would require.	This involves setting the findings under Issues 1 to 3 against the possibility of reintegration with the parents or within the family.	An assessment of the nature, extent and reasonable prognosis of necessary family support, and a determination of whether and how such support can be provided through current services or mobilized in the near future, including through outside assistance.

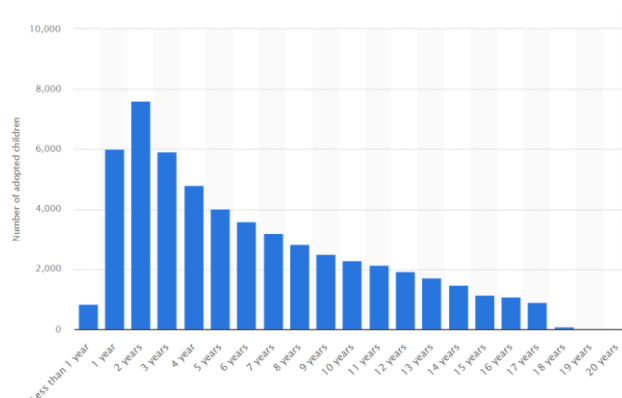
Table 1, continued

	Key issues to be covered	Considerations	Outcome
5	Requirements and possibilities to realize the child's right to education.	This evaluation needs to take account of the context, notably of opportunities available to the child's peers in his or her community.	A determination of which care option(s) are likely to offer the educational opportunities corresponding to this right, domestically or abroad.
6	The child's physical and mental health, compared with the overall health and health-care implications of each possible care setting.	This requires a professional evaluation of the child's health needs, bearing in mind his or her right to enjoy the highest attainable standard of health and access to services. Again, this should be a contextualized evaluation. It also requires assessment of the potential health consequences of removal to, and living in, a new care setting.	A determination of which care option(s) are likely to ensure the realization of the child's right to physical and mental health and/or which options might jeopardize that right, by their nature or by their consequences, domestically or abroad.
7	Any special developmental needs of the child related to: a) a physical or mental disability b) other particular characteristics or circumstances that create vulnerability.	This requires a professional evaluation of any special needs, including behavioural problems or vulnerabilities resulting from the child's previous or current experience (e.g. separated from parents, victim of abuse, living or working on the streets).	A set of conditions that should be met by any future care setting or arrangement to cater appropriately to the particular needs of the child.
8	The child's potential to adjust to new care arrangements and settings.	A psychosocial evaluation is needed to establish the child's propensity to adapt to new circumstances.	The elimination of any arrangements and settings to which the child is unlikely to adjust.
9	Other issues as appropriate, such as: a) how each option would provide continuity with the child's ethnic, religious, cultural and/or linguistic background b) preparation for transition to adulthood and independent living.	This involves identifying the kinds of arrangements and settings, and the conditions required within them to take appropriate account of the child's origins or of any other factor specific to that child's needs or situation (e.g. demonstrable sensitivity on the part of foreign adopters).	The selection of the arrangements, settings and other conditions that best preserve key elements of the child's identity. For an older child, the establishment of the potential for a successful transition into adulthood.
10	Best interests determination (BID) phase; a review of the suitability and advantages and disadvantages of each possible care option for meeting the child's overall needs and respecting his or her rights, in light of all the considerations listed above.	All of the findings of the assessment should be collated and examined by an inter-disciplinary team, and their discussion should lead to a preliminary recommendation on which option(s) complies with the child's best interests.	A determination of whether or not the best interests of the child lie in intercountry adoption compared with any other option overall, and in specific relation to their rights. If so, an agreement on the conditions. If not, an agreement on the other avenues to be pursued.

Source: Cantwell, N. (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. p.58-59

APPENDIX 6

Grap. 2 : Number of children adopted with public agency involvement in the United States in FY 2021, by age.



Source: Statista, see: <https://www.statista.com/statistics/633415/age-distribution-at-time-of-adoption-us/>

APPENDIX 7

Tab. 3: Themes found on the representation of internationally adopted children's cultural identity in the three groups of adoptive parents respondents

Table 1. Themes found in the three groups.

	GROUP 112 parents	GROUP 218 parents	GROUP 321 parents
Choice of country	Chance or Minimize the difference in the child's and parents' physical appearance	Attraction to the country and/or Seeking a visible difference between child and parents	Compromise between affective factors and practical constraints
Experience of racism	Denial or trivialization	Talk to the child about racism	Talk about racism Teach self-defense strategies against racism
Child's cultural belonging	Refusal of cultural belonging other than French	Actively defend the child's bicultural identity	Promote links with the country of birth and its culture, when the child so requests
Child's history before adoption	No research	No research	Active research
Contacts with adoptive parents	No contacts	Adoptive-parent associations, internet groups	Support from adoptive-parent groups
Travel to the country of birth	No plan for a trip	Trip already made or being planned	Trip if child asks for it

doi:10.1371/journal.pone.0119635.t001

Source: Harf, A., Skandrani, S., Sibeoni, J., Pontvert, C., Revah-Levy, A., & Moro, M. R. (2015). *Cultural identity and internationally adopted children: qualitative approach to parental representations*. PLoS one, 10(3), e0119635.

<https://doi.org/10.1371/journal.pone.0119635.p.2>

Fig.3: A feudal center-periphery structure
A Structural Theory of Imperialism

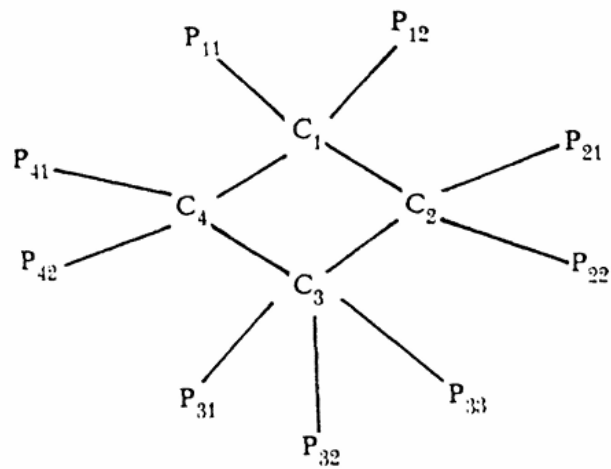


Fig. 2. A feudal center-periphery structure

Source: Galtung, J. (1971). *A Structural Theory of Imperialism*,
 Journal of Peace Research, Vol. 8, No. 2, p.89.