

'Inter-country adoption is in decline. Discuss. What is your point of view about this statement?'

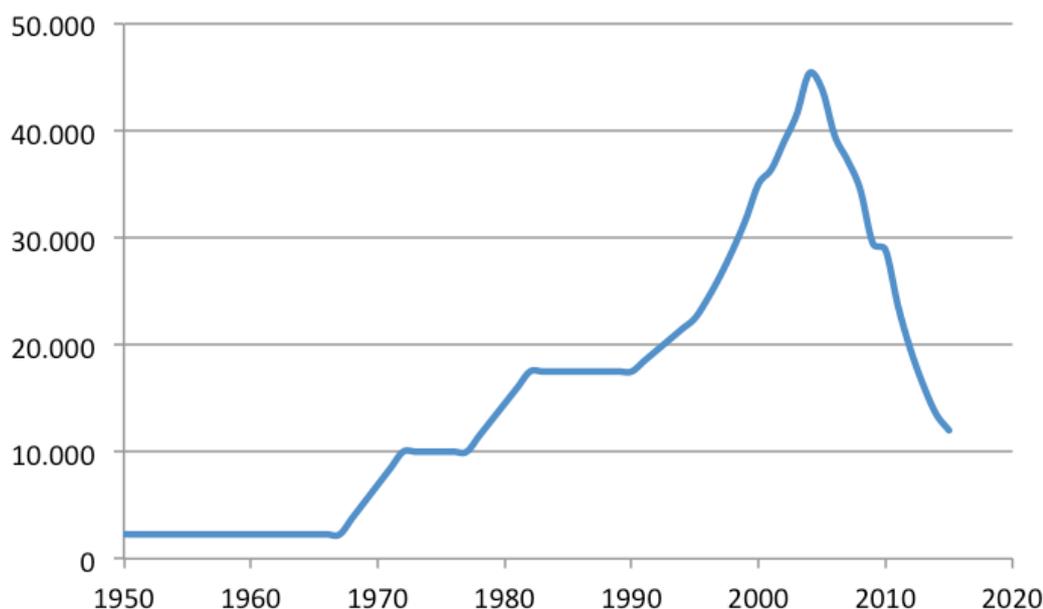
Introduction

Inter-country adoption (ICA) is the process by which a child, habitually resident in one country, is adopted by an individual(s) habitually resident in another country.¹ The country of origin is often referred to as the 'sending country', while the country of destination is often referred to as the 'receiving country'. The statistics are clear; ICA is in steep decline. The question is, why? The writer will address this question by drawing on the experiences of ICA lawyers from around the world, prominent academics in the field and Dr Peter Selman, a Specialist Advisor of Statistics to The Hague Conference on Private International Law (HCCH).

The statistics

In his 2012 report, Selman found that 'in 1998, there were just under 32,000 adoptions; by 2004 this number had risen to over 45,000; by 2009, the world total had fallen to under 30,000 ... and the decline continued in 2010'² (see Figure 1).

Figure 1³



¹'Inter-country Adoption and the 1993 Hague Convention', (HM Courts & Tribunal Service, 2016),

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717285/a21-eng.pdf> accessed 8 March 2022.

² Peter Selman, 'Global Trends in Inter-country Adoption: 2001-2010' (2012) 44 Adoption Advocate, PL 1.

³ Jean-François Mignot, 'Will international adoption be replaced by surrogacy?', *Niussp*, Fertility and Reproduction, 2017, <<https://www.niussp.org/fertility-and-reproduction/will-international-adoption-be-replaced-by-surrogacyla-gestation-pour-autrui-va-t-elle-replacer-ladoption-internationale/>> accessed 1 March 2022.

Selman's most recent report for the HCCH is dated February 2022. It provides comprehensive ICA statistics based on data from 24-28 receiving countries.

Selman's first table illustrates the steep decline of ICA amongst *all* receiving countries (see Figure 2).

Figure 2⁴

Table 1: RECEIVING STATES 2004-20 - Ranked by total adoptions in period

8-2-2022	25 Receiving States 2004-2020																	
COUNTRY	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2004-2020
USA	22.988	22.735	20.671	19.605	17.467	12.753	12.149	9.320	8.668	7.094	6.441	5.648	5.372	4.714	4.059	2.970	1.622	184.276
Italy	3.402	2.874	3.188	3.420	3.977	3.964	4.130	4.022	3.106	2.825	2.206	2.216	1.872	1.439	1.394	1.205	669	45.909
Spain	5.541	5.423	4.472	3.648	3.156	3.006	2.891	2.573	1.669	1.191	827	801	574	542	456	375	195	37.340
France	4.079	4.136	3.977	3.162	3.270	3.017	3.508	2.003	1.569	1.343	1.069	815	956	685	615	421	244	34.869
Canada	1.949	1.858	1.568	1.715	1.614	1.695	1.660	1.516	1.162	1.243	905	895	790	621	658	576	416	20.841
TOP FIVE	37.959	37.026	33.876	31.550	29.484	24.435	24.338	19.434	16.174	13.696	11.448	10.375	9.564	8.001	7.182	5.547	3.146	323.235
Sweden	1.109	1.083	879	800	793	912	728	630	542	450	408	400	342	297	262	170	92	9.897
Netherlands	1.307	1.185	816	782	767	682	705	528	488	401	354	304	214	210	156	145	70	9.114
Germany	744	720	661	783	716	606	513	624	452	288	227	200	196	96	91	85	81	7.083
Norway	706	582	448	426	304	344	343	304	239	144	152	132	126	125	95	89	40	4.599
Denmark	528	586	450	426	395	496	419	338	219	176	124	97	84	79	64	46	23	4.550
TOP TEN	42.353	41.182	37.130	34.767	32.459	27.475	27.046	21.858	18.114	15.155	12.713	11.508	10.526	8.808	7.850	6.082	3.452	358.478
Belgium	470	471	383	358	364	439	388	351	260	178	156	137	121	124	104	75	52	4.431
Switzerland	567	389	410	394	259	288	293	238	194	159	92	92	73	75	52	62	35	3.672
Australia	370	434	421	405	270	269	222	217	157	138	114	83	82	69	65	57	37	3.410
Ireland	398	366	313	392	422	307	201	188	117	72	34	82	54	53	41	33	29	3.102
UK	333	369	363	356	225	200	173	153	120	124	68	58	64	60	71	52	53	2.842
Finland	289	308	218	176	157	187	160	163	175	141	142	93	58	70	54	67	27	2.485
Israel	226	191	176	218	150	120	114	115	88	69	42	37	22	17	17	11	6	1.619
N.Zealand	339	30	20	49	39	16	13	19	25	42	22	12	22	23	18	13	12	714
Malta	46	39	60	64	53	34	42	50	57	19	11	18	6	45	53	31	n/a	628
Luxembourg	56	41	45	23	28	36	32	25	32	17	13	18	19	16	12	18	5	436
Iceland	29	41	19	18	13	17	18	19	17	8	11	20	5	6	5	5	5	256
Slovenia		3	15	3	6	14	21	18	35	15	14	15	11	14	14	15	5	218
Cyprus	3	3	0	19	16	12	4	12	1	2	2	4	0	0	0	0	n/a	78
Andorra	3	1	4	6	5	7	9	2	1	4	2	0	2	2	0	3	0	51
Monaco	n/a	0	0	1	3	4	1	2	1	4	1	3	0	1	1	0	3	22
TOTAL	45.482	43.868	39.577	37.248	34.466	29.421	28.736	23.428	19.393	16.143	13.436	12.177	11.065	9.382	8.356	6.524	3.718	382.420
No. of states	23	24	23	25	25	25	25	25	25	25	25	24	23	24	23	23	22	22-25
% To USA	50,5%	51,8%	52,2%	52,6%	50,7%	43,3%	42,3%	39,8%	44,7%	43,9%	47,9%	46,4%	48,5%	50,2%	48,6%	45,5%	43,6%	48,2%

⁴ Peter Selman, 'Statistics based on data provided by 24-28 receiving States' (*Hague Conference on Private International Law*, February 2022) <<https://assets.hcch.net/docs/a8fe9f19-23e6-40c2-855e-388e112bf1f5.pdf>> accessed 21 February 2022.

Selman's second table illustrates the steep decline of ICA amongst *nearly all* sending countries (see Figure 3).

Figure 3⁵

Table 2: TOP 20 STATES OF ORIGIN 2004-20 - Ranked by number adopted to 27 States

1-2-2022	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2004-2020
China (Mainland)	13.412	14.484	10.765	8.749	5.879	5.004	5.427	4.371	4.136	3.405	2.943	3.059	2.678	2.211	1.798	1.065	250	89.636
Russia	9.450	7.569	6.837	4.926	4.169	4.061	3.424	3.420	2.674	1.838	1.058	766	486	355	284	228	45	51.590
Ethiopia	1.534	1.799	2.184	3.041	3.917	4.564	4.385	3.446	2.734	1.997	1.056	676	330	485	245	22	13	32.428
Guatemala	3.425	3.870	4.230	4.851	4.172	784	58	36	11	27	32	13	7	4	1	5	0	21.526
Colombia	1.749	1.500	1.681	1.643	1.613	1.404	1.815	1.591	931	570	536	522	485	552	565	607	387	18.151
TOP 5	29.570	29.222	25.697	23.210	19.750	15.817	15.109	12.864	10.486	7.837	5.625	5.036	3.986	3.607	2.893	1.927	695	213.331
Ukraine	2.119	2.035	1.077	1.623	1.601	1.500	1.097	1.068	722	640	608	381	399	277	328	365	277	16.117
South Korea	2.239	2.118	1.813	1.225	1.366	1.395	1.127	950	815	219	506	433	376	401	321	259	266	15.829
Viet Nam	492	1.199	1.363	1.691	1.719	1.500	1.265	700	214	296	407	428	405	380	307	240	108	12.714
Haiti	1.169	949	1.108	822	1.313	1.215	2.496	229	374	552	556	276	396	399	389	252	209	12.704
India	1.067	864	831	987	751	714	608	614	399	387	359	345	491	580	646	545	262	10.450
TOP 10	36.656	36.387	31.889	29.558	26.500	22.141	21.702	16.425	13.010	9.931	8.061	6.899	6.053	5.644	4.884	3.588	1.817	281.145
Philippines	410	509	483	568	581	545	494	491	411	538	454	391	363	332	248	222	111	7.151
Kazakhstan	899	849	735	817	768	682	516	218	5	28	63	34	20	17	9	10	3	5.673
Thailand	535	491	423	467	398	359	298	280	282	308	264	261	289	224	249	233	114	5.475
Brazil	487	488	529	490	490	458	375	347	328	238	129	137	120	117	67	64	55	4.919
Poland	407	406	393	371	399	393	315	292	244	303	303	296	328	153	53	14	7	4.677
TOP 15	39.394	39.130	34.452	32.271	29.136	24.578	23.700	18.053	14.280	11.346	9.274	8.018	7.173	6.487	5.510	4.131	2.107	309.040
Bulgaria	395	149	112	100	140	228	237	311	357	413	414	426	374	302	303	273	173	4.707
China (Taiwan)	186	242	269	273	373	397	416	326	299	199	188	180	170	156	121	154	122	4.071
South Africa	241	268	263	255	272	307	220	202	170	221	219	217	147	162	131	141	59	3.495
Congo RD	15	45	61	69	62	153	190	353	521	599	241	384	635	54	47	32	3	3.464
Nigeria	100	102	105	82	221	184	268	246	266	243	183	196	161	216	213	148	118	3.052
TOP 20 >	40.331	39.936	35.262	33.050	30.204	25.847	25.031	19.491	15.893	13.021	10.519	9.421	8.660	7.377	6.325	4.879	2.582	327.829
USA	132	168	176	181	261	257	177	250	232	171	172	174	175	109	159	82	89	2.965
Hungary	70	67	100	142	118	131	139	157	151	112	135	163	174	235	244	241	158	2.537
Nepal	269	227	452	261	413	22	170	157	3	0	4	2	5	1	1	1	3	1.991
Peru	117	173	189	171	153	139	175	135	111	109	97	81	100	66	58	67	32	1.973
Uganda	17	22	16	59	61	74	80	225	249	296	211	237	208	60	29	35	26	1.905
TOP 25 >	40.936	40.593	36.195	33.864	31.210	26.470	25.772	20.415	16.639	13.709	11.138	10.078	9.322	7.848	6.816	5.305	2.890	339.200
All States	45.482	43.868	39.577	37.244	34.486	29.412	28.732	23.428	19.393	16.143	13.436	12.177	11.065	9.382	8.356	6.525	3.718	382.424

The statistics are clear; ICA is in steep decline.

Why is ICA in steep decline?

The writer has identified the following reasons for the decline (and in no particular order):

1. Strengthening of domestic policy and legislation;
2. Shift in focus towards domestic adoptions;
3. The greater ability to have a genetically related child;
4. Ratification of the Convention;⁶
5. Scandals, bad press and politics; and
6. Miscellaneous.

The writer will explore each of these reasons below.

⁵ ibid.

⁶ Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993 (The Hague Convention).

Strengthening of domestic policy and legislation

The strengthening of domestic policy and legislation has made ICA harder. It is becoming increasingly difficult for prospective foreign adopters to find a child, and the available children tend to have 'special needs'.

Many countries have placed moratoriums on their ICA programs, which has caused numbers to plummet. In some cases moratoriums are voluntary, and in others, they are forced, largely due to concerns of child trafficking, transfer of custody without approval, questionable practices by adoption service providers and fraud.⁷ Moratoriums on ICA from Cambodia were established by several countries, including the USA in 2001.⁸ In Guatemala, a moratorium was introduced in 2008 due to concerns over the sale of children, illegal payments to birth mothers and abduction.⁹ ICA fell from 4,172 in 2008 to 0 in 2020 (Figure 3). In Romania, a moratorium was imposed in 2001, and then again in 2004, '*making international adoption virtually impossible*'.¹⁰ In 2007, Nepal introduced a moratorium whilst it made changes to its processes, intending to resolve serious issues of malpractice.¹¹ Today, ICA in Nepal has virtually stopped; 261 children were sent in 2007, whilst only 3 were sent in 2020 (Figure 3). In 2011, Ethiopia announced that it would drastically reduce ICA and in 2017, the country introduced a moratorium; 1,534 children were sent in 2004, while only 13 were sent in 2020 (Figure 3).

Countries have increasingly imposed stringent eligibility requirements on prospective foreign adopters, making it harder for them to adopt. China requires prospective adopters to sign statements that they are not gay or lesbian, and China does not allow single people to adopt, or those who are obese, taking psychotropic drugs, over the age of 50, or who are poor.¹² The writer interviewed Roll Chunchakasikarn who explained that in Thailand, only married heterosexual couples may apply for ICA, along with single women who can only adopt special needs children. In addition, the adopter must be at least 25, and if they wish to adopt a special needs child they must be healthy, have no criminal record or psychological problems.¹³

A change in political ideology can increase ICA, or cause numbers to dramatically fall. O'Halloran explains that the one-child policy in China introduced in 1980, coupled with the preference for male children, led to many unwanted female children being absorbed through the ICA process.¹⁴ In 2004, China ranked as the highest country of origin sending 13,412 children, but in 2020, it sent just 250 (Figure 3). This decline is partly due to the two-child policy introduced in 2015 and the three-child policy introduced in 2021. In Romania, abortion was outlawed in 1966 for women under 40 with less than four children, resulting in many children being abandoned in orphanages. The

⁷ Kelly Weisberg, *Modern Family Law: Cases and Materials* (Wolters Kluwer 2020) 848.

⁸ Simon Springer, *Violent Neoliberalism, Development, Discourse, and Dispossession in Cambodia* (Palgrave Macmillan 2015) 50.

⁹ Karen Rotabi and Nicole Bromfield, 'The Decline in Intercountry Adoptions and New Practices of Global Surrogacy: Global Exploitation and Human Rights Concerns' (2012) 27(2) *Journal of Women and Social Work* 129.

¹⁰ Kerry O'Halloran, *The Politics of Adoption, International Perspectives on Law, Policy and Practice* (4th edn, Springer 2021) 661.

¹¹ 'Adoptions: restricted list' (*Department for Education*, March 2021)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/965905/Restricted_List_2021.pdf> accessed 24 March 2022.

¹² O'Halloran (n 10) 169.

¹³ Interview with Roll Chunchakasikarn, Partner and Family Lawyer, Chun & Chun Law in Thailand, Fellow of the International Academy of Family Lawyers (email, 14 March 2022).

¹⁴ O'Halloran (n 10) 168.

ban was removed in 1989 and by 1991, Romania was a major sending country for ICA. In 2015, Romania changed its adoption laws and now, ICA is only possible for Romanian citizens living outside of Romania and for foreign citizens who are residents in Romania.¹⁵

The elimination or restriction of private adoption intermediaries has also impacted ICA numbers. Bartholet argues that this has been the '*death knell*' for ICA in many countries, particularly in South and Central America.¹⁶

It is not just sending countries that have strengthened their domestic policy and legislation making ICA harder, but also receiving countries. In February 2021, ICA was suspended in the Netherlands. The writer interviewed Selman¹⁷ who explained that '*The Dutch government failed to observe its duty of care for many years by looking the other way and failing to take action in cases of malpractice and abuse*'.¹⁸ A similar enquiry has been called in Sweden, while Norway and Denmark are also questioning their ICA programs.

Domestic adoptions

O'Halloran points out that many present-day adopters are interested in babies, preferably healthy and voluntarily relinquished, rather than children simply in need of a home. This has presented countries with difficulties:

*It removes the most adoptable children from their own country, culture and kin, it pre-empts any possibility of meeting the needs of their own adopters and it leaves behind those children who are statistically less likely to be adopted and who will therefore probably be consigned to institutional care.*¹⁹

For these reasons and those set out below, there has been a noticeable shift from ICA to domestic adoption.

Countries have introduced legislation or policy requiring them to prioritise domestic adoptions. In South Korea, the Special Adoption Act came into effect in 2012 prioritising domestic adoptions and endeavouring to reduce the number of South Korean children adopted abroad. In 2004, 2,239 children were sent and in 2012, 815 were sent; this dropped sharply in 2013 to 219 (Figure 3). In the UK, O'Halloran notes that domestic adoptions have remained amongst the highest in Europe, '*probably due to local authority policy of looking first to family members in accordance with the Children Act 1989*'.²⁰ Domestic adoptions have also steadily grown in Canada, largely due to '*more assertive policies to increase adoptions from care*'.²¹

¹⁵ O'Halloran (n 10) 661.

¹⁶ Elizabeth Bartholet 'International Adoption: The Human Rights Position' (2010) vol 1 Global Policy 91, 93.

¹⁷ Interview with Dr Peter Selman, Specialist Advisor of statistics to The Hague Conference on Private International Law and Independent Research Professional (Microsoft Teams, 7 March 2022).

¹⁸ 'Minister Dekker suspends intercountry adoption with immediate effect' (*Government of the Netherlands*, 8 February 2021)

<<https://www.government.nl/latest/news/2021/02/08/minister-dekker-suspends-intercountry-adoption-with-immediate-effect>> accessed 23 March 2022.

¹⁹ O'Halloran (n 10) 164.

²⁰ O'Halloran (n 10) 227.

²¹ O'Halloran (n 10) 409.

It is arguable that as a country becomes more prosperous, ICA declines; countries want to hold on to their children, particularly the 'healthy' ones. The writer interviewed Stephen Page who explained that *'the side effect of countries becoming more prosperous is that children are not being exported for ICA anymore. Instead, people within those countries who cannot have children have become more inclined to adopt domestically.'*²² Page gave the example of India, a country with one of the fastest-growing economies in the world; ICA fell from 1,067 in 2004 to 262 in 2020 (Figure 3). Similarly, Page explained that *'China is hanging on to the children who are fit'*; China tends to send disabled children to Australia aged 2-5. China is not alone in this regard, with several countries almost exclusively sending children with *'special needs'*, or older children, including Brazil, Latvia, Lithuania and Poland.²³ Selman explains that these children are *'expensive'* to look after domestically.²⁴ That said, prosperous countries such as South Korea are still sending children for ICA. Selman believes that this is due to the concept of diaspora; South Korea favours the idea of sending children around the world to *'spread the message of the goodness of Korea'*.²⁵

Linked to prosperity is national pride. Bartholet argues that national pride has led to calls to stop selling, or giving away, *'our most precious resource [children]'*, and for countries to *'take care of our own'*.²⁶ This concept is particularly prevalent in Asian countries, where domestic adoptions by relatives are seen as a *'means of strengthening bloodlines'*; in China, this is called *'qinqi'*.²⁷

Genetically related child

The desire to have a genetically related child, and the greater ability to achieve this through assisted reproduction, has led to a decline in prospective adopters and therefore contributed to the decline of ICA. Indeed, O'Halloran suggests that where prospective adopters have a choice between having a genetically related child versus adopting a child in need of a family, they are likely to choose the former.²⁸

In 2004, when ICA began its steep decline, surrogacy began to take off. Gestational surrogacy rates stood at 738 in 2004; by 2013, the number of children born by surrogacy was higher than the number of ICAs.²⁹ O'Halloran describes how as ICA becomes a much slower, more complicated and uncertain process, which tends to deliver older children or those with physical or mental health issues, many would-be parents are instead considering commercial surrogacy.³⁰ O'Halloran puts it bluntly, stating *'where choice rather than altruism is in play, some prospective adopters may simply decide that surrogacy offers better value'*.³¹

²² Interview with Stephen Page, Family Lawyer and Director at Page Provan, Fellow of the International Academy of Family Lawyers and a Fellow of the Academy of Adoption and Assisted Reproduction Attorneys (Microsoft Teams, 3 March 2022).

²³ Peter Selman, 'The Global Decline of Intercountry Adoption: What Lies Ahead?' (2012) vol 11 Social Policy and Society 381, 386.

²⁴ Interview with Dr Peter Selman (n 17).

²⁵ Interview with Dr Peter Selman (n 17).

²⁶ Bartholet (n 16) 92.

²⁷ O'Halloran (n 10) 821.

²⁸ O'Halloran (n 10) 997.

²⁹ Kim Armour, 'An Overview of Surrogacy Around the World' (*Growing Families*, 2012) <<https://www.growingfamilies.org/wp-content/uploads/2015/12/Overview-of-Surrogacy-Around-The-World.pdf>> accessed 10 March 2022.

³⁰ O'Halloran (n 10) 997.

³¹ O'Halloran (n 10) 358.

Surrogacy has become increasingly popular with the LGBT+ community, due to prospective parents facing '*numerous attitudinal and institutional obstacles in the adoption process*'.³² Whilst the Convention neither prohibits nor requires nations to place children for adoption with LGBT+ individual(s), it leaves the matter open for each country to decide. This has led to many sending countries prohibiting LGBT+ individuals from adopting, including countries that recognise same-sex marriage.

The writer interviewed Janaína Albuquerque.³³ Albuquerque considers that '*It is not possible to talk about ICA without talking about surrogacy. ICA has definitely gone down. Surrogacy is going up*'. When asked why, Albuquerque explained that surrogacy is viewed as a quicker and sometimes cheaper process, with adoptions potentially taking 3 to 4 years. In addition, people want to have a baby of their own; '*a baby comes without baggage and offers a clean slate, unlike adoption*'.³⁴ Chunhakasikarn explained '*The development and success rate of IVF and surrogacy processes have increased, while the cost has decreased*', and this has had a direct impact on the trajectory of ICA.³⁵

In summary, and as O'Halloran points out, the '*correlation between falling rates of domestic adoption and ICA and rising rates of surrogacy tourism and successful IVF is unmistakable*'.³⁶

The Hague Convention

The Convention came into force in 1995. By 2022, 104 states had contracted to the Convention.³⁷ Whilst the objects of the Convention include establishing safeguards to ensure that ICA takes place in the best interests of the child, and to prevent the abduction, sale of or traffic in children,³⁸ arguably, the Convention is '*actually depressing intercountry adoption due to resulting increased bureaucracy, delays, and costs*'.³⁹

Article 4 of the Convention requires Members to give '*due consideration*' to placing the child within the country of origin; this is the principle of subsidiarity.⁴⁰ O'Halloran states that the '*requirements to give first preference to domestic adoption and to confirm orphan status before releasing children*' led to the radical decline of ICA in China.⁴¹ Albuquerque worked with the team responsible for the Convention. She explained that when discussing the Convention, the experts considered that '*the more the child stays within their cultural context or routes, the better it would be for them*'.⁴²

³² Gretchen Wrobel, Emily Helder and Elisha Marr (eds), *The Routledge Handbook of Adoption* (Routledge 2020) 167.

³³ Interview with Janaína Albuquerque, international Family Lawyer registered in the Brazilian and Portuguese Bar Associations (Microsoft Teams, 1 March 2022).

³⁴ *ibid.*

³⁵ Interview with Roll Chunhakasikarn (n 13).

³⁶ O'Halloran (n 10) 213.

³⁷ 'HCCH MEMBERS' (*Hague Conference on Private International Law*), <https://www.hcch.net/en/states/hcch-members> accessed 21 February 2022.

³⁸ The Hague Convention (n 6), Article 1.

³⁹ Robert Ballard and others, *The intercountry adoption debate: Dialogues across disciplines* (Cambridge Scholars Publishing 2015) 200.

⁴⁰ The Hague Convention (n 6), Article 4

⁴¹ O'Halloran (n 10) 826.

⁴² Interview with Janaína Albuquerque (n 33).

The costs and delays from ratification of the Convention have further contributed to the decline of ICA. The safeguards put in place by the Convention can be ‘*crippling*’ to a sending country that will bear the cost of implementing them.⁴³ The writer interviewed Victoria Nabas.⁴⁴ Referring to the Convention, Nabas explained ‘*it is so complicated to adopt that individuals or couples who would like to adopt have no choice but to give up*’. Nabas spoke of adoption costs as high as £50,000. Indeed, a recent study by the European Commission on Adoption found that ‘*the cost of adoption is an important issue and sometimes forces the prospective adoptive parents to give up the procedure*’.⁴⁵

After joining the Convention, some countries have seen a sharp decrease in ICA, whilst others have seen a sharp increase. Selman points out that amongst others, Italy, Belgium, the U.S and Ireland (receiving countries) all experienced a decrease after joining, as did Sri Lanka, Brazil, Madagascar, China and Chile (sending countries).⁴⁶ That said, Selman believes that ICA ‘*has not declined in Hague countries particularly faster than non-Hague countries*’.⁴⁷ He points out that ‘*The ten years after the Convention came into force saw the largest rise in ICA in the 70 years since WW2*’. For example, Spain, Sweden and Switzerland (receiving countries) saw an increase after joining, as did Romania, South Africa, Mali and Guatemala (sending countries). Instead, Selman argues that the Convention has ‘*exposed more and more where ICA has gone wrong*’.⁴⁸

Scandals, bad press and politics

ICA scandals, bad press and politics have helped contribute to the decline of ICA and as discussed above, the shift in focus towards domestic adoptions.

There have been many high-profile cases involving children being hurt or killed by their foreign adoptive parents. Albuquerque informed the writer that ‘*one of the biggest problems with adoption is that parents give the child back. It happens a lot*’.⁴⁹ This is what happened to Artyom Savelyev, who was rejected by his American mother and sent back to Russia alone. On 1 January 2013, Vladimir Putin banned the adoption of Russian children by U.S. citizens; perhaps he was embarrassed, or perhaps this was retaliation for the Magnitsky Act⁵⁰ that sanctioned Russian officials and nationals for human rights abuses.⁵¹ In Romania, it was deemed politically expedient to cease ICA in 2005, as a result of ongoing allegations of malpractice that threatened to compromise accession to EU treaties.⁵²

As Bartholet puts it,

⁴³ Ballard (n 39) 221.

⁴⁴ Interview with Victoria Nabas, Partner and Head of Immigration, qualified in Brazil, Portugal and England & Wales, Gunnercooke, (Microsoft Teams, 24 February 2022).

⁴⁵ Ballard (n 39) 289.

⁴⁶ Interview with Dr Peter Selman (n 17).

⁴⁷ *ibid*

⁴⁸ *Ibid*.

⁴⁹ Interview with Janaína Albuquerque (n 33).

⁵⁰ Global Magnitsky Human Rights Accountability Act 2012.

⁵¹ Weisberg (n 7) 848.

⁵² O'Halloran (n 10) 994.

*The media reflect and exacerbate the hostility to international adoption, featuring stories of baby buying and kid-napping, fueling the idea that ICA is an inherent violation of human rights, depriving children of their heritage birthright.*⁵³

Celebrity adoptions have not helped this hostility; 67 organizations filed amicus briefs in court opposing Madonna's first adoption of a child from Malawi, with The Human Rights Consultative Committee, representing 85 such organisations, opposing the second adoption.⁵⁴

An interesting case study is that of Australia. As a result of historic failings, Australia is sometimes described as 'anti-adoption'. Page explained that Australia's height of adoption was in the 1960s, when forced adoptions by churches and adoption agencies were widespread and when thousands of Aboriginal Australians were forcibly separated from their families.⁵⁵ This ultimately led to a formal apology from the Government. Page explained that '*as a result of this guilt, the adoption authorities in Australia are very rigid*'.⁵⁶ Other countries with similar tainted histories may feel the same way. Selman considers that the British "Home Children" migrant program '*may explain why ICA is so low in the UK*'.⁵⁷

Miscellaneous

Perhaps parenting has become more feasible in sending countries? Perhaps this has led to fewer children being given up for adoption, thereby contributing to the decline of ICA. War and natural disasters are also factors to be considered.

We cannot ignore the worldwide decline in mortality rates, rising standard of living, wider availability of effective birth control, the emergence of family planning centres, weakening of stigma around abortions and increased support for single parents. Pösö and Skivenes argue that one reason for the decline of ICA is '*fewer unwanted pregnancies*' and '*social measures supporting parents*'.⁵⁸ The writer interviewed Doreen Brown; Doreen explained that '*Parents are allowing their daughters to be on the pill much younger than in the past. Abortions have become easier ... life, in general, is evolving and we see many single-parent families today*'.⁵⁹ In Selman's view, these factors may also explain the decline in domestic adoptions. Selman points to the impact of The Abortion Act 1967⁶⁰ in the UK which legalized abortions on certain grounds, along with increased support for single parents in the 1990s.⁶¹

O'Halloran states that war and natural disasters have '*impacted upon established flow patterns*' of ICA.⁶² For example, by 2008 and following several tropical storms and hurricanes, Haiti had

⁵³ Bartholet (n 16) 92.

⁵⁴ Bartholet (n 16) 92.

⁵⁵ 'Forced Adoption Practices' (Australian Government Department of Social Services, 8 October 2021) <<https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/forced-adoption-practices>> accessed 9 March 2022.

⁵⁶ Interview with Stephen Page (n 22).

⁵⁷ Interview with Dr Peter Selman (n 17).

⁵⁸ Tarja Pösö and Marit Skivenes, *Adoption from care: international perspectives on children's rights, family preservation and state intervention* (Policy Press 2021) 4.

⁵⁹ Interview with Doreen Brown, Family Attorney, Green Glazer in Canada, Member of Academy of Adoption and Assisted Reproduction Attorneys, (email, 10 March 2022).

⁶⁰ Abortion Act 1967.

⁶¹ Interview with Dr Peter Selman (n 17).

⁶² O'Halloran (n 10) 412.

become a major source of children for France, Canada, the Netherlands and the USA. This peaked in 2010 after the earthquake.⁶³ ICA also increased after WW2, the war in Korea and the war in Vietnam. The impact of the armed conflict in Ukraine is yet to be seen. On 16 March 2022, The Permanent Bureau published an Information Note in light of the Ukraine conflict, stating:

*The conflict should not be used as a justification for expediting intercountry adoptions, or for circumventing or disregarding international standards and essential safeguards for safe adoption ... Adoption procedures should be prohibited from taking place.*⁶⁴

Conclusion

Once a rapid growth phenomenon, ICA is now in steep decline. There is no single cause for this, but rather an amalgamation of legal, social, political, cultural, economic and scientific changes. It is arguable that over the years, ICA has become somewhat lost, that it can no longer be seen solely in terms of an altruistic child rescue response but is more often a consequence of the '*demand-led pressure to satisfy the parenting needs of infertile couples in modern western societies*'.⁶⁵ Those that agree with this statement hope that as the world recovers from Covid-19, '*reformation of the ICA system will increase its focus on the best interest of the child*' and continue to look towards the preservation of natural families or domestic adoptions.⁶⁶ Whilst this is likely to further accelerate the decline of ICA, it will '*shift the transactional focus to a humanitarian effort to assist children more at risk*'.⁶⁷ However, where the preservation or domestic adoption is unavailable, the decline of ICA may mean that too many of these children will never realise their intrinsic right to a family.⁶⁸

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⁶³ Karen Rotabi, *Intercountry Adoption: Policies, Practices, and Outcomes* (Taylor & Francis 2016) 74.

⁶⁴ 'Children deprived of their family environment due to the armed conflict in Ukraine: Cross-border protection and intercountry adoption' (HCCH, 16 March 2022) <<https://assets.hcch.net/docs/0f9c08e9-75d0-4497-8ca0-12c595aa6845.pdf>> accessed 30 March 2022.

⁶⁵ O'Halloran (n 10) 157.

⁶⁶ Ambrosia Wilkerson, 'The Fate of intercountry Adoptions following COVID-19' (2021) vol 54 no. 3 *The International lawyer* 457, 482.

⁶⁷ *ibid.*

⁶⁸ Ballard (n 39) 301.