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China's Attempt to Promote Domestic Adoptions: How Does China's One-Child Policy Affect Recent Revisions in China's Adoption Law and Measure Up to the Hague Convention

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China's Attempt to Promote Domestic Adoptions: How Does China's One-Child Policy Affect Recent Revisions in China's Adoption Law and Measure Up to the Hague Convention?

Rachel A. Bouman*

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* J.D., University of the Pacific, McGeorge School of Law, to be conferred May, 2001; B.A., Sociology, Calvin College, May 1998. I would like to thank my husband, Michael, for his endless love and support; Professor John Myers for his invaluable critiquing skills; Professor John Sims for his helpful insight. Also, I would like to dedicate this comment to my parents, Peter and Lois Raap, for the love and time they generously give to the numerous children they welcome into their home. Above all, I praise God for His unconditional faithfulness to me through all my endeavors.

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"Administer true justice, show mercy and compassion to one another. Do not oppress the . . . fatherless"¹

I. INTRODUCTION

In an effort to satisfy their desires to have a family, Americans are adopting children from other countries at unprecedented rates.² China has become one of the favored places for Americans to locate a child to adopt.³ In 1999 alone, 4,101 children were adopted from China by United States citizens.⁴ Chinese children have become a familiar sight on school playgrounds around the United States.⁵ These children are taken out of the overcrowded orphanages in China and are placed with warm, doting families in the United States.⁶

1. Zechariah 7:9-10.

2. See *China Opens Doors for Foreign Parents Nation Makes it Easier to Take in Abandoned Babies* [hereinafter *China Opens Doors*], ORLANDO SENTINEL, Jan. 17, 1999, at A13 (commenting that in 1998, American parents adopted 13, 621 foreign children, two times more than the number of children adopted internationally twenty years earlier).

3. See *id.* (mentioning the top five countries permitting United States parents to adopt children are first Russia, then China, South Korea, Guatemala, and Romania).

4. See *Immigrant Visas Issued to Orphans Coming to the U.S.: Top Countries of Origin* tbl. FY'99 (visited Feb. 4, 2000) <http://travel.state.gov/orphan_numbers.html>; see also *China Eases One-Child Policy*, (visited Sept. 27, 1999) <<http://www.adoption.about.com/library/blchinanew.htm?pid=2803&cob=home>> (remarking the one-child policy (OCP) is a major factor for the increase from 201 adoptions by U.S. citizens of Chinese babies in 1981, to 4,206 in 1998).

5. See Janny Scott, *Hundreds of Adopted Chinese Girls have Made Their Mark on New York*, DALLAS MORNING NEWS, Aug. 23, 1997, at 7C (noting in the New York area alone, there are about one thousand Chinese adopted children).

6. See Stacey Rase, *Adopting Chinese Girls Discussed at Seminar*, NEW ORLEANS TIMES-PICAYUNE, Aug. 12, 1999, at H3 (estimating there are roughly eight hundred orphanages in China which house more than two million children).

American adoptive parents' interest in adopting from China has been peaked by a number of factors both domestically and abroad.⁷ In the United States, a general instability surrounding domestic adoption has progressed.⁸ For Example, U.S. birth parents are given the chance to reclaim their rights to the child even after the development of emotional attachment between the child and adoptive parents.⁹ Also, the number of children put up for adoption domestically has drastically declined, due to the social acceptance of single parenting and the increase in the instances of abortion and infertility.¹⁰

Turning to China, American adoptive parents find a country that is unable to support its growing population. One tactic the Chinese government uses to control the population is a family planning policy that limits a family to one child.¹¹ Under the One Child Policy (OCP), families are persuaded, even coerced, not to have more than one child whether by birth or through adoption.¹² Since the OCP often fails, Chinese orphanages swarm with children awaiting adoption.¹³ As a result, the Chinese government enacted adoption laws it hopes will be favorable to domestic and international adoptive parents.¹⁴ Through these laws, China strives to relieve the unpleasant living conditions that exist in its orphanages.¹⁵

This Comment addresses China's One Child Policy in relation to China's Adoption Law Amendments and its interplay with the Hague Convention on Intercountry Adoption (Hague Convention or Convention). Part II focuses on the development and enactment of the OCP in urban and rural China.¹⁶ This section then examines the progression of international adoption in the United States and the reasons American adoptive parents turn to China.¹⁷ Part III provides an overview of the requirements of the Hague Convention,¹⁸ a description of China's Adoption

7. See *infra* note 72 and accompanying text (explaining the United States became interested in international adoption after World War II for various reasons).

8. See R.A. Sheehan, *Tempo Southwest: From a Distance Chinese Children Find Homes and Love in the Southwest Suburbs*, CHI. TRIB., Apr. 21, 1996, at 1 (indicating well-publicized custody battles such as the Baby Richard case caused many parents to believe international adoption would be a safer decision).

9. See *infra* note 76 and accompanying text; see also Sheehan, *supra* note 8 (citing Michaelyn Sloan, international program coordinator for Bethany Christina Services' Evergreen Park office, as saying the international adoption process does not involve the legal battles adoptive parents in the United States often face).

10. See *infra* notes 74–75, 78 and accompanying text.

11. See discussion *infra* Part II.A (discussing the events leading up to the implementation of the OCP).

12. See discussion *infra* Part II.B (addressing the tactics the Chinese government used in order to mandate compliance with its family planning policy).

13. See *infra* note 84 (estimating more than 100,000 children reside in orphanages awaiting adoption).

14. See discussion *infra* Part IV.A (presenting the Chinese government's goals in amending the Adoption Law).

15. See *id.*

16. See *infra* notes 32–70 and accompanying text (discussing China's proposed need to implement a family planning policy in order to control population growth).

17. See *infra* notes 71–89 and accompanying text (addressing the changes in American society that lead to adoptive parents looking abroad, particularly to China in order to obtain an adoptable child).

18. See *infra* notes 90–167 and accompanying text (providing an analysis of the first five chapters of the Hague Convention on Intercountry Adoptions).

Law, and an explanation of recent amendments.¹⁹ In addition; completing the adoption under U.S. law is briefly analyzed.²⁰ Part IV evaluates China's new Adoption Laws in achieving the government's proposed goals and whether the Hague Convention's "best interests of the child" requirement can be met when children are forced out of their country of origin.²¹ Finally, Part V summarizes the need for China to relax its OCP in order to achieve the goal of promoting domestic adoption.²²

II. HISTORY OF CHINA'S ONE CHILD POLICY AND INTERNATIONAL ADOPTION BETWEEN CHINA AND THE UNITED STATES

After the People's Republic of China (China) was established in 1949,²³ the population surged as the government supported China's need for more people to sustain its agrarian society.²⁴ Due to the resulting growth in population, China realized the land required to provide staples for the population was depleting. As a result, they implemented the goal of zero population growth²⁵ by the year 2000.²⁶ This policy initially curbed the growth rate of China's populace, but the Chinese government was not satisfied and consequently, modified its goal to include the OCP.²⁷

19. See *infra* notes 168–226 and accompanying text (explaining the adoption process under China's Adoption Law and the recent amendments).

20. See *infra* notes 233–276 and accompanying text (defining the federal and state requirements the adoptive parents must satisfy in order to legally adopt the child in the United States).

21. See *infra* notes 177–323 and accompanying text (presenting the reasons China is unable to achieve the goals of the Adoption Law Amendments). Also addressing the difficulties China will have in satisfying the Convention's requirements due to the OCP. *Id.*

22. See discussion *infra* Part V.

23. See Elisabeth Croll, *Introduction: Fertility Norms and Family Size in China*, in CHINA'S ONE-CHILD FAMILY POLICY 1, 3 (Elisabeth Croll et al. eds., St. Martin's Press, 1985) (mentioning the formation of the new Communist rule in 1949 began a change in family size and fertility rate in China).

24. See Lisa B. Gregory, Note, *Examining the Economic Component of China's One-Child Family Policy Under the International Law: Your Money or Your Life*, 6 J. CHINESE L. 45, 48 (1992) (addressing the modern change from government controlled farms to privately owned farms as being a major reason why more hands are needed); see also LAURA A. CECERE, MSW, JD, LL.M., *THE CHILDREN CAN'T WAIT: CHINA'S EMERGING MODEL FOR INTERCOUNTRY ADOPTION* 22, 139 (2d ed. 1999) [hereinafter Cecere, *THE CHILDREN CAN'T WAIT*] (explaining in the fifties, the Chinese government objected to birth control and supported procreation). The goal of the government was to build a large, powerful China through large numbers of people. *Id.*

25. See H. Yuan Tien, *Redirection of the Chinese Family: Ramifications of Minimal Reproduction* 3 (Working Paper No. 67, 1984) (addressing the zero population growth as a means to reduce the rate of population increase). Under a two-child policy, China would increase at a rate of nine to ten births per every one thousand people. This rate was not sufficient, so China implemented the goal of zero population growth where the death and birth rate would balance each other out. *Id.*

26. See *id.* (adding the idea for zero population growth was derived from foreign demographic literature).

27. See M. Elizabeth Vonk et al., *Political and Personal Aspects of Intercountry Adoption of Chinese Children in the United States*, 80 FAM. SOC.: J. CONTEMP. HUM. SERV. 496 (1999); see also Croll, CHINA'S ONE-CHILD FAMILY POLICY, *supra* note 23, at 27–28 (defining the OCP in the government's published rules as one child is recommended, and the birth of a third child is absolutely prohibited). The government implemented

Although there have been talks about relaxing the OCP, its future is still uncertain.²⁸ Recent debates in China have centered around a goal of 1.6 billion people by 2045 rather than a complete relaxation of the OCP.²⁹ As China continues to struggle to reach zero population growth, children are more readily available for international adoption.³⁰ As a result, U.S. residents turn to China for adoptable children.³¹

A. Evolution of China's One-Child Policy

Prior to the establishment of the People's Republic of China, the population growth rate was low.³² After 1949, China experienced rapid population growth³³ as the government expressed, "of all things in the world, people are the most precious."³⁴ China's leader, Mao-Tse-Tung, encouraged this growth because children were needed to support China's agrarian society.³⁵ Parents were encouraged to have more children because each child was a pair of hands that would eventually enhance production in the agricultural industry.³⁶ China viewed agriculture as a necessary solution to feeding the population, employing the masses, and improving the living standard of the population.³⁷ Children were important in

measures to strongly control the birth of second children. *Id.*; Cecere, *supra* note 24, at 22 (presenting families were less concerned about the overpopulation than they were about having a male child who would support his parents as they got older).

28. *See id.* (comparing the mention by China of possible relaxation of the OCP in September of 1999 with a statement in October of 1999 that population control measures will remain in full force).

29. *See China Will Continue One-Child Policy*, MILWAUKEE J. SENTINEL, Oct. 13, 1999 at 8 (mentioning China's long term goal is remains just one child per family). Even with this goal, the population of China will still continue to increase by one percent each year which equates to ten million new births annually. *Id.*

30. *See* Renee Schoof, *Adopting Overseas: China Foreign Adoptions Soaring as Americans Open Their Hearts to Kids Around Globe*, DESERET NEWS, Jan. 14, 1999 [hereinafter Schoof, *Adopting Overseas: China Foreign Adoption Soaring*] (proposing the population control policies China has implemented lead to abandonment of many children, often girls). The increased abandonment of children has resulted in more children in China being available for adoption. *Id.*

31. *See id.* (affirming the adoption process in China has been open and positive, thus United States families are drawn to China to adopt).

32. *See* Vonk, *supra* note 27, at 497 (stating that China had a low growth rate before 1949 due to high mortality and birth rates).

33. *See id.* (discussing the rapid population growth of China after 1949 as a result of improved health care leading to a decline in infant mortality rates).

34. *See* Tien, *supra* note 25, at 4 (quoting a statement made by Mao-Tse-Tung).

35. *See* Gregory, *supra* note 24, at 48 (noting that eighty percent of China's current population lives in rural areas and the family receives more benefits with more people working the land); *see also* Jessica L. Singer, *Intercountry Adoption Laws: How Can China's One-Child Policy Coincide with the 1993 Hague Convention on Adoption?*, 22 SUFFOLK TRANSNAT'L L. REV. 283, 290 (1998) (remarking Chairman Mao-Tse-Tung encouraged family growth).

36. *See* Tien, *supra* note 25, at 1 (presenting the statistics of per capita output of certain products in relation to the change in population size).

37. *See id.* (reiterating that the "supply-side" perspective reflects the notion that the more people in society, the increase in the number of hands available to work, and thus the greater the production).

China's agricultural society because they learned early in life to care for their siblings so their parents could work in the fields, resulting in a means for the family to increase the household economy.³⁸ Children could also participate in routine tasks such as feeding the animals and maintaining the garden.³⁹

By 1970 China realized that there was a problem with the increasing population size.⁴⁰ As a result of the rapid increase in population, China implemented the "wan, xi, shao" campaign, or the "Later-Longer-Fewer" policy, which required couples to wait until later in life to marry, to have children further apart, and to have a maximum of two children.⁴¹ At first, China hoped couples would limit their family size to two children as the government admonished "one [child] is not too few, two are good, and three are too many."⁴² This approach was based on China's awareness that the growing population had detrimental effects both on the living conditions of the people and on the education of the children.⁴³ Soon, the Chinese government realized change was needed when the two family policy failed to decrease the population growth.⁴⁴

38. See Delia Davin, *The Single-Child Family Policy in the Countryside, in CHINA'S ONE-CHILD FAMILY POLICY* 37, 40 (1985) (acknowledging these are fairly basic tasks, but they are still a necessary contribution to the household).

39. See *id.* (noting children are an investment for peasants).

40. See Tien, *supra* note 25, at 1 (stating the population growth between 1964 and 1970 was the highest since 1949 at an average of over 2.6 percent per year). By 1970 China's population reached eight hundred million. The problem China faced with the population growth encouraged by Mao-Tse-Tung was that the younger generation grew to the extent that forty six percent of the population during the 1970s were under fifteen years old. Also, there was a depletion of the amount of arable land to just one forth of an acre per head as a result of an increase in the birth rate. If the population could be held to 1.2 billion by the year 2000, China would be able to have one acre of arable land per person. For a society that relied on agriculture to feed and support its people, the decrease in land was an important factor the Chinese government considered when adopting its population control policies. *Id.*

41. See Vonk, *supra* note 27, at 497.

The 'wan, xi, shao' campaign that China inaugurated in 1970 employed for the first time a more definitive model of population planning with respect of individual behavior. Its immediate objectives were to promote: 1) late marriage and, thus, late childbearing—wan; 2) intervals of four years or longer between births—xi; 3) and small family size—shao. This definition of reproductive norms covered childbearing in all its important aspects—timing, spacing, and number of children.

Tien, *supra* note 25, at 3.

42. See Tien, *supra* note 25, at 3 (stating this was a reflection of the two child family ideal).

43. See Cindy Starr, *Adoption of Chinese Girls Increases Families: Abandoned for Social and Economic Reasons, Baby Females from China are Finding Homes in the United States*, ORANGE COUNTY REG., June 25, 1999, (remarking the reason China implemented laws to slow its population growth was in part to improve education and housing); see also Tien, *supra* note 25, at 3 (mentioning China became anxious about its future when statistics revealed the population was quite young in the early 1970s as forty-six percent of the population was under the age of fifteen). Also, the reduction of arable land to one forth of an acre per person in 1979 reinforced the Chinese government's desire to stop the population growth. *Id.*

44. See Tien, *supra* note 25, at 3 (proposing the problem with the two child approach was that it still permitted more births, although two were recommended).

Chinese population specialists ultimately aimed for a rate of zero population growth by the year 2000, making the two child family model no longer adequate.⁴⁵ In an effort to ensure zero population growth, China adopted the OCP in 1979, which permitted only one child per married couple.⁴⁶ The National Family Planning Group⁴⁷ determined "[o]ne birth be considered the best, two births the maximum, and a third strictly regulated."⁴⁸ The purpose of the OCP was to raise the standard of living by ensuring the nation's ability to feed its people, provide sufficient clothes, and furnish adequate shelter for the masses.⁴⁹ China has now abandoned the goal of zero population growth⁵⁰ and replaced it with one child. The target is to have a population not exceeding 1.2 billion people in the year 2000.⁵¹

B. Implementation of the One-Child Policy in China

When first considered, the OCP was enacted uniformly throughout China; however, it was changed to accommodate concerns of rural farmers.⁵² In the country, officials permitted a one-son-or-two-child⁵³ plan in order to ensure that a

45. See *id.* (admitting that a two child plan would not produce a zero population growth, because the children during the baby boom of 1962 to 1972 were just entering childbearing age).

46. See Vonk, *supra* note 27, at 497 (stating the modification of the "Later-Longer-Fewer" Policy between 1971 and 1979 and the eventual replacement of this policy with the "One-Child Policy"); see also Liz Sly, *China Marks 5 Decades of Leaps, Lurches the Anniversary of Mao's Revolution Finds Many with Fading Dreams After a Decade of Breakneck Growth*, CHI. TRIB., Sept. 29, 1999, at 1 [hereinafter Sly, *China Marks 5 Decades of Leaps*] (listing the history of events in China leading up to the implementation of the OCP).

47. See Croll, CHINA'S-ONE CHILD FAMILY POLICY, *supra* note 23, at 32 (noting the National Family Planning Association is a government agency with the duty of convincing families to adopt the one-child policy for themselves, thereby eliminating a need for governmental pressure to comply).

48. See Tien, *supra* note 25, at 3 (specifying that in the city, eighty percent of the yearly births were to be first births and in the country, fifty percent of annual births were to be first births).

49. See *id.* at 6 (expressing the OCP was designed to preclude any couple from encroaching on the rights and welfare of other people).

50. See *id.* at 3 (basing the change on a need for a more positive focus). China realized there were negative overtones to the zero population growth policy as it focused on adjusting the frequency of births rather than establishing a positive goal the population could reach. *Id.*

51. See *id.* (remarking the change in population goals gives a more positive image to the policy and accomplishment is more easily measured and understood by using a numerical goal rather than an expression of the distance from zero population growth).

52. See Kay Johnson et al., *Infant Abandonment and Adoption in China*, POPULATION AND DEV. REV., Sept. 1, 1998, at 469, 472 (stating the government's implementation of the OCP with strict compliance was met with great protest in the countryside); see also Vonk, *supra* note 27, at 497 (noting in the country, a fine of 20% of the couple's income is rendered and family allowances of grain and land are withheld when the second pregnancy is discovered). The fine can be recovered, however, if the couple agrees to an abortion. Despite the strict consequences, some rural families still have children that are not permitted by the OCP regulation. The reason for families desiring to have more children reflects the traditional values about families expressed by the Chinese culture. *Id.* Antoaneta Bezlova, *China: Curbing Population Growth Still an Uphill Battle*, INTER PRESS SERV., Oct. 13, 1999 (quoting a doctor as saying, "No one can pay [the fines] of course, but if you resist the officials will pull down your house and take away all your possessions, including pigs and oxen").

53. See Johnson, *supra* note 52, at 505 n.1 (explaining the one-son-or-two-child policy as permitting a second birth if the first child is a girl). If the first child is a boy, however, no subsequent births are permitted. *Id.*

family would always have a child to work the land.⁵⁴ In contrast, however, the OCP was strictly enforced in the city as living quarters were much smaller.⁵⁵

The government's goal in implementing the OCP was to ensure compliance of ninety five percent in urban areas and ninety percent in rural areas.⁵⁶ Many rural areas relaxed the policy to allow for a one-son-or-two-child plan⁵⁷ which only allowed peasant workers two chances for a son.⁵⁸ The one-son-two-child policy allows a second birth only if the family's first born is a daughter.⁵⁹ In the urban areas, officials had an easier time implementing the OCP because the government furnishes housing, jobs, and benefits to the people.⁶⁰ The government stated that

54. See *id.* at 475 (mentioning sons are a fixed member of their parents' household). They provide support for their parents in old age. Daughters, on the other hand, get married and become a part of the husband's family. As part of her spouse's family, she is required to support his parents, not her own. *Id.*; see also John Leicester, *WHO Urges China to Tackle Suicides*, ASSOCIATED PRESS, Nov. 11, 1999 (substantiating the notion that boys are needed to work the family farm or continue the family business).

55. See Starr, *supra* note 43, at E6 (exclaiming one reason for enforcing economic sanctions on urban residents is to provide better housing for the people); see also *China Vows 'Historical Leap' in Birth-Control Measures Stamping Out Speculation That They'd Relax the One-Child Policy, Leaders said They'll Strive to End Population Growth*, STAR TRIB. (Minneapolis-St. Paul), Oct. 13, 1999, at 7A [hereinafter *China Vows 'Historical Leap' in Birth-Control Measures*] (revealing there are over 900 million people living in villages and small towns). Such a large number of people living in small areas is a reason for the overcrowded living conditions; see also Vonk, *supra* note 27, at 497 (noting urban couples face a five to ten percent deduction of their total income for up to sixteen years after a second child is born). With the birth of more children, the percentage of income retained by the employer increases. *Id.*

56. See Tien, *supra* note 25, at 3-4 (admonishing the requirement that urban couples must obtain special approval if they desire a second child). Rural parents can have a second child under proof of difficult circumstances. *Id.*

57. See Johnson, *supra* note 52, at 469, 505 n.1 (stating the government was to implement the one-son-or-two-child policy just as strictly in the countryside as the OCP was implemented in the city).

58. See *id.* at 472 (reasoning when the OCP was implemented, it was heavily resisted by the rural areas, so many local governments agreed to the one-son-or-two-child policy). A small number of rural areas agreed to allow couples to have two children irrespective of gender, but the government insisted the children be born several years apart. *Id.*; see also Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 25-26 (presenting when the government relinquished its control over farms to private farmers, rural residents could no longer rely on the government for food, housing, jobs, or other government handouts in order to live). This resulted in farmers needing to till their own property and provide for their families. Through hard work, farmers become financially successful rather quickly. With this success came a sense of power and freedom from the government that farmers used to resist family planning policies. *Id.*

59. See Johnson, *supra* note 52, at 472-73 (commenting although the OCP was relaxed, the government staged plans to ensure compliance with the lenient policy). The plan known as "opening a small hole to close a large hole," involves monitoring a couple's reproduction habits, persuading or at times coercing the couple to follow the established regimen, enforcing strict fines, and imposing sterilization on couples who have more than the allotted number of births. *Id.*; see also Amy Klatzkin, *An Overview of Adoption in China in the 1990s* (visited Oct. 25, 1999) <<http://www.bcadoption.com/fcc/NewsletterArticles/AnOverviewOfAdoptionInChina.htm>> (defining the one son or two child policy as requiring a waiting period between births, usually about four years). Although the one son or two child policy was more permissive than the OCP, it was enforced very stringently in the country. *Id.*

60. See Liz Sly, *China's Voluntary One-Child Policy Birthing New Revolution*, CHI. TRIB., May 24, 1998, at 1 [hereinafter *Sly, China's Voluntary One-Child Policy*] (addressing the compliance with the OCP by urban citizens, but noting the potential problems in the near future as a law adopted in 1989 permits children from a one child family to have two children). Many of these children reside in cities and are nearing adulthood. *Id.*, see also

although the OCP is not carried out uniformly for urban and rural families, there was no situation that would permit a family to have a third child.⁶¹

More recently, China has hinted that it will relax its one child policy because it appears population growth is now under control in China.⁶² The Chinese government discussed plans for China to completely phase out the OCP by 2003.⁶³ This intention does not appear certain because China has recently indicated that it would not relax its OCP, thus making it unclear whether enforcement or relaxation of the OCP is really best for the country.⁶⁴

In October of 1999, China denied any notion that it would relax the OCP for the next century.⁶⁵ Government officials met in Beijing promising to implement more stringent birth control measures.⁶⁶ Once again, China will attempt to use the OCP to produce limited population growth by the middle of the 21st century.⁶⁷ The ultimate goal is 1.6 billion people by the year 2045.⁶⁸ It remains to be seen whether China will meet this goal, especially as it faces ramifications of a law adopted in

China: Population Control Programs (visited Oct. 25, 1999) <[http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+cn0055\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+cn0055))> (reporting the one child family was given incentive not to have more children as they were provided with priority in housing allocation and received government pensions to secure their future in retirement). The gender of the child was not as important to a couple who could rely on the government for financial protection via a pension later in life rather than having to count on a child. *Id.*

61. See Tien, *supra* note 25, at 4 (fearing that the permission of some exceptions to the OCP may be seen as a grant of permission of more births).

62. See Lionel Barber and James Harding, *China Relaxes One-Child Policy*, FIN. TIMES, Sept. 11, 1999, at 1 (discussing the impact of the stringent OCP on the children). Beijing officials are concerned about the future affects of the OCP on the aging population. Beijing still upholds a rigid family planning policy, but agrees that population growth is under control. *Id.*; see also Sly, *China's Voluntary One-Child Policy*, *supra* note 60, at 1 (noting the population goal of China at the time the OCP was implemented was 1.2 million by the year 2000). After a realization that this goal would probably not be met, the target was changed to 1.3 million by the year 2000. According to Zhang Yu Chin of the State Family Planning Commission, China is realizing population growth will continue to be a problem, but wants to educate people about the benefits of smaller families and have them choose to have only one child rather than be forced to comply with the OCP. United States Embassy officials are pleased with the relaxation of the OCP, because it reflects China's effort to address some of the international community's concerns about coercion. Also, the permissive policies adopted in some rural areas totally contravene the purpose of the OCP and make the policy unnecessary. *Id.* But see *infra* note 65.

63. See *China Eases One-Child Policy*, *supra* note 4; see also Daniel Kwan, *Hopes for Orphans as Adoption Law Relaxed*, S. CHINA MORNING POST, Aug. 25, 1998 (quoting Robin Munro, Hong Kong director of Human Rights Watch in Asia expressing his excitement regarding the relaxation of the OCP as it will permit many children to finally have families).

64. See *China Vows 'Historical Leap' in Birth-Control Measures*, *supra* note 55 (remarking Chinese officials agreed they would not relax the OCP, rather they would set a new goal of halting all population growth in China's population through the implementation of birth control measures).

65. See *China Will Continue One-Child Policy*, *supra* note 29 (confirming China released the statement it would not relax the OCP on the very day the six billionth birth was recorded in the world).

66. See *id.* (noting China's lead officials realized the population was not controlled and needed more rigorous means to reduce population growth).

67. See *id.* (revealing the limited population growth will be achieved by implementation of new birth control measures).

68. See *id.* (mentioning China's population grows by ten million people each year, even with the OCP in place).

1989 which permits children born under the OCP to have two children.⁶⁹ Although China estimates that the OCP has prevented 330 million births over the past three decades, it still perceives a growth of twelve million in the population per year over the next few years even with the continued enforcement of the OCP.⁷⁰

C. Progression of International Adoption in the United States

While China struggles to maintain its population growth and the overcrowded conditions in the orphanages, United States adoptive parents are increasingly interested in adopting internationally.

1. The Development of International Adoptions in the United States

Prior to World War II, U.S. families seldom adopted children from foreign countries due to the abundance of children available for adoption in the United States.⁷¹ Several changes in the United States since the war has led to a greater interest in international adoption by prospective parents in the United States.⁷²

One change is the number of infants given up for adoption in the U.S., which is due to several factors.⁷³ First, birth control and legalized abortions have become more available.⁷⁴ Second, the increased acceptance of single parent families placed

69. See Sly, *China's Voluntary One-Child Policy*, *supra* note 60 (mentioning most of the children who benefit from the 1989 law are from urban families and have yet to reach adulthood and fulfill their two-child quota). With rural families permitted to have two children under the one-son-or-two-child plan and urban families falling under the 1989 law, the OCP could soon become irrelevant. *Id.*

70. See Bezlova, *supra* note 52 (explaining China realizes the difficulty in stabilizing its population growth, but intends to continue its OCP in full force). The government's goal is to reduce the population growth and provide a sufficient supply of food for the Chinese people. *Id.*

71. See Robert S. Gordon, *The New Chinese Export: Orphaned Children an Overview of Adopting Children from China*, 10 *TRANSNAT'L LAW* 121, 124 (1997); see also Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 88 (explaining international adoptions developed primarily as a response to war disasters and a growing sentiment to help the orphaned children).

72. See Vonk, *supra* note 27, at 498 (noting several conditions that have impacted the availability of babies in the United States for adoption and increased international adoption); see also Peter F. Dodds, *The Case Against International Adoption* (visited Jan. 12, 2000) <<http://www.adoption.org/books/html/dodds.html>> (indicating the aftermath of World War II brought many children who were orphaned or abandoned to the United States after being sent from one European Country to another and finally to the United States). Less than 1,000 international children came to the United States to be adopted between 1947 to 1957. The Korean and Vietnam wars resulted in numerous youngsters, often fathered by American citizens in Korea and Vietnam, being adopted by United States families. As of the middle of the 1950s, over 130,000 international adoptions by United States families have occurred. *Id.*

73. See Vonk, *supra* note 27, at 498 (mentioning how the greater availability and effectiveness of birth control and legalized adoption have limited the number of adoptable children).

74. See *id.* (explaining the various conditions present in the United States that led to the decline in the number of children given up for adoption since the 1970s).

a limit on one of the sources of potentially adoptable babies.⁷⁵ Third, the development of open adoptions, allowing the birth parents to select the adoptive parents, hindered the certainty of the adoption because the birth parents are permitted to reinstate their rights to the child even after it has been placed with the adoptive family.⁷⁶ Fourth, in many adoptions, birth mothers are given great lengths of time to decide relinquishment of parental rights.⁷⁷ Fifth, as the number of babies available for adoption is on a decline, the occurrence of infertility is on a rise.⁷⁸ This increase has impacted the waiting period required to adopt a healthy American baby and has driven many adopting couples to turn to intercountry adoption to locate an adoptable baby.⁷⁹ As a result, international children adopted by U.S. families have more than doubled.⁸⁰ In 1990, U.S. families adopted 7,093 children from other countries and by 1998, the number of adopted children reached 15,774.⁸¹

75. See *id.* (revealing the near elimination of social stigmas against unmarried mothers); see also Mara Lee, *A Long Journey into Parenthood-With Few Babies Available to Adopt Here, Couples Like Gina and John Dunn Increasingly Turn to China*, DAYTON DAILY NEWS, Aug. 15, 1999, at 1A (discussing how only one percent of single mothers in the United States relinquish their babies for adoption); see also Laura Meckler, *Overseas Adoption on Rise in U.S.: Fewer American Single Moms are Giving up Babies*, DESERET NEWS, Nov. 24, 1999 (commenting that many unmarried white women, especially are keeping their children). Where one in five single Caucasian women put their babies up for adoption in the 1970s, fewer than one percent relinquish their babies now. *Id.*

76. See Michelle Van Leeuwen, *The Politics of Adoption Across Borders: Whose Interests are Served? (A Look at the Emerging Market of Infants From China)*, 8 PAC. RIM L. & POL'Y J. 189, 198 (1999) (mentioning the lenient consent laws of many states which grant the birth mother long durations of time in order to determine whether or not to terminate all parental rights to the child).

77. See *id.* at 198 & n.57 (noting the legal bias that exists in favor of the birth parents which is proven by courts agreeing to permit challenges by birth parents against adoptive parents). Further, the media coverage of such cases creates more worries for adoptive parents when in reality only about one percent of all United States adoptions involve parental rights asserted by birth parents. *Id.*; see also Meckler, *supra* note 75 (revealing many prospective parents prefer not to adopt children in the United States, because "[t]hey say, 'I don't trust the courts, I don't trust the American system. I want to adopt from another country.'").

78. See Van Leeuwen, *supra* note 76, at 198 (stating ten percent of women who attempt to conceive have difficulty becoming pregnant or carrying the baby to term). This increase may be a result of women waiting longer to have children while they pursue their careers. *Id.*

79. See Vonk, *supra* note 27, at 499 (reporting the fundamental reason for international adoption is that it gratifies the needs of the couple and the child); see also Lee, *supra* note 75 (stating there is not only a shortage of children, but also a decrease in children under the age of one). This fact was supported by reports from the state of Ohio that of the 1,771 children adopted from county care in 1998, only thirty-six children were under a year old. Private adoptions throughout the United States are also influenced by this problem. *Id.*

80. See Starr, *supra* note 43 (estimating there were very few adoptions in 1991, but they have continued to increase rapidly over time).

81. See *id.* (commenting that 500,000 people in the United States are waiting to adopt a child at any given time, and for every adoption that occurs, there are approximately five to six people still wanting to adopt).

2000 / China's Attempt to Promote Domestic Adoptions

2. The Development of International Adoptions Between China and the United States

One country where parents turn for intercountry adoption is China. Of the 16,369 children adopted by U.S. families in 1999, 4,101 were from China.⁸²

Immigrant Visas Issued to Children Coming to the United States in 1999 ⁸³	
Countries	Number of Visas
Russia	4,348
China	4,101
S. Korea	2,008
Guatemala	1,002
Romania	895
Vietnam	712
India	500
Ukraine	323
Cambodia	248
Columbia	231
Bulgaria	221
Phillippines	198
World Total: 16,369	

82. See *Immigrant Visas Issued to Orphans Coming to the U.S.: Top Countries of Origin*, *supra* note 4, at tbl. FY'99; see also Starr, *supra* note 43 (giving the statistics for 1998). Of the 4,206 children adopted from China in 1998 by American families, ninety five to ninety eight percent were female. Approximately 13,000 children from China have been adopted by United States families since 1992. *Id.*; see also Lee, *supra* note 75 (supporting the reported statistic of 4,206 adoptions of Chinese children by United States families in 1998). China was the second country of choice for American families with Russia leading with 4,491 adoptions. Interest of Chinese adoptions by American families soared in 1995 from 787 in 1994 to 2,130 in 1995. For the past four years, China and Russia have traded places for the country of first choice for American families. *Id.*

83. See *Immigrant Visas Issued to Orphans Coming to the U.S.: Top Countries of Origin*, *supra* note 4, at tbl. FY'99.

China is an increasingly popular country for U.S. families who wish to adopt internationally because Chinese children are fairly healthy and the Chinese adoption system is rather well-defined.⁸⁴ Another advantage for U.S. parents in adopting Chinese children is security because most of the children placed for adoption in China are abandoned and their parents are unknown.⁸⁵ Along with adoption security, China has also become increasingly popular for older Americans looking to adopt because of the Chinese cultural reverence for age.⁸⁶

The age requirement has become an even greater concern in recent years as U.S. women are waiting until later in life to start a family, and thus, are older when they begin their search for an adoptive baby.⁸⁷ The efficiency of the adoption process in China is another draw for Americans. Generally, the adoption process lasts about six months.⁸⁸ In contrast, parents wanting to adopt a healthy, American child can wait up to two years before beginning the required home study, and then they may be placed on a waiting list for another three years before actually being able to adopt a child.⁸⁹

84. See Lee, *supra* note 75 (noting the abundance of healthy children in Chinese orphanages is appealing to many U.S. families). It is estimated by Chinese adoption experts that 100,000 children wait in orphanages. *Id.*; see also Gordon, *supra* note 71, at 130 (commenting on the infrequent abuse of alcohol or tobacco by pregnant mothers as being an important factor in the large number of healthy babies available for adoption in China). Chinese children are also less likely to have disabilities such as autism and retardation, and they infrequently suffer from developmental delays. *Id.*

85. See Lee, *supra* note 75 (revealing the U.S. adoption process has developed a bad reputation as fears about the birth mother changing her mind later has become reality). In China, however, this is reduced, due to the inability to locate birth parents; see also Sheehan, *supra* note 8 (specifying the Baby Richard custody case as one of the tragedies the media has heavily publicized, causing Americans to believe that international adoption would be a more certain choice).

86. See Sheehan, *supra* note 8 (stating China embraces adoptive parents who are unable or would otherwise be restricted from adopting in the United States). In the United States, at least one of the adoptive parents often must be under the age of thirty five. China has a reverence for age that is ingrained in their culture. *Id.* But see Johnson, *supra* note 52, at 496 (arguing the age requirement was not based on a reverence for age but was an attempt for the government to ensure the couple was infertile by the time they elected to adopt).

87. See Vonk, *supra* note 27, at 498 (mentioning women are becoming established in their careers before deciding to start a family).

88. See Sheehan, *supra* note 8 (pointing out the six month process is not only faster than the U.S. adoption process, but also quicker than many other foreign adoptions). But see *International Adoption-China (update)* (visited Jan. 12, 2000) <http://travel.state.gov/adoption_china.html> (arguing the adoption process takes about ten to twelve months from the time the U.S. adoption agency sent paper work to the China Center of Adoption Affairs (CCAA) to the first referral sent by CCAA to the prospective adoptive parents). After the parents consent to adopt the child, it is another four to eight weeks before China grants the parents a right to travel to China.. Once the parents arrive in China the CCAA attempts to complete the process within fifteen days. However, obtaining the child's Chinese passport, exit permit, and U.S. visa can require another seven to ten days. *Id.*

89. See Vonk, *supra* note 27, at 498 (remarking the purpose of the home study is to decide whether the prospective parents are eligible for adoption). If successful, the prospective parents are then put on a wait list from which a birth mother can select the parents of her child. *Id.*

III. INTERNATIONAL ADOPTION LAWS

The Hague Convention governs the procedure and sets out the general principles of international adoption. The participating states at the Hague Conference adopted the Convention by a unanimous vote in 1993.⁹⁰ Both the U.S. and China participated in the drafting and voting process.⁹¹ Although the U.S. has signed the Convention, it has yet to ratify it.⁹² Similarly, China offered proposals and comments to the working drafts of the Convention, but it has neither ratified nor signed the Convention.⁹³

90. See *Hague Conference on Private International Law: Final Act of the Seventeenth Session, Including the Convention on Protection of Children and Co-Operation in Respect of Inter-country Adoption*, May 29, 1993, reprinted in 32 I.L.M. 1134 [hereinafter *Hague Convention or Convention*] (mentioning the country states who participated in the Convention consisted of nearly all thirty eight Hague Conference member states and more than thirty invited states who were not members). The member states included Argentina, Australia, Austria, Belgium, Canada, Chile, China, Cyprus, the Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay, and Venezuela. *Id.* The Invitees who participated were Albania, Belarus, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Colombia, Costa Rica, El Salvador, Ecuador, Haiti, the Holy See, Honduras, India, Indonesia, Kenya, the Republic of Korea, Lebanon, Madagascar, Mauritius, Nepal, Panama, Peru, the Philippines, the Russian Federation, Senegal, Sri Lanka, Thailand, and Vietnam; see also *1993 Hague Convention on Inter-country Adoption: Briefing Paper*, (revised May 1995) (visited Jan. 12, 2000) <<http://www.webcom.com/%Ekmc/adoption/law/un/ica-briefing.html>> [hereinafter *Briefing Paper*] (addressing the purpose in inviting non-member states to participate in the drafting of the Convention was to guarantee broad approval). In anticipation of the Hague Conference, a Permanent Bureau prepared research on the law of international adoptions. It submitted a 100 page in-depth analysis of the legal institution of intercountry adoption, reviewing its history and adaptations to different legal and social systems. The paper also addressed relevant national laws and dilemmas that the Convention should tackle. *Id.*

91. See Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 144, 151 (listing the delegates representing the United States and China who participated in the Hague Conference).

92. See *Hague Convention on Inter-country Adoption: Major Advantages of the Convention and its Implementation* (visited Sept. 26, 1999) <http://travel.state.gov/adoption_invo_sheet.html> [hereinafter *Major Advantages of the Convention*] (providing the steps the United States has taken in the approval process of the Convention). President Clinton submitted the Convention to both houses of Congress on June 19, 1998, where it awaits Congressional approval. *Id.*

93. See Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 145-51 (discussing the contributions China offered to the drafting of the Hague Convention).

The following is a chart comparing the international adoption procedure under the Hague Convention with the international adoption process currently in place between China and the United States.

Comparison of the International Adoption Process Between China and the United States	
Under the Hague Convention	Under the Adoption Laws of China and the United States
1) Prospective parents petition Central Authority in their country to adopt internationally.	1) Parents submit an adoption application to the CCAA. ⁹⁴
2) Report on parents is reviewed to determine their eligibility to adopt.	2) CCAA reviews the home study to determine if the parents are eligible to adopt.
3) Sending state compiles information to determine adoptability of the child.	3) The CCAA determines if the child is adoptable.
4) Report on child is sent to the adoptive parents for approval.	4) Information about the child is sent to the adoptive parents for approval.
5) After parents accept the child, the adoption is completed by transferring the child to the parents.	5) The parents travel to China and register the adoption with the Civil Affairs Bureau.
6) Adoption is valid in all contracting states.	6) When the Civil Affairs Bureau grants approval, the adoption is complete in China.
No Comparison Available.	7) The parents petition the INS to gain approval for the child to enter the United States.

94. See *infra* note 189 (defining the CCAA as the agency governing the adoption process in China).

Comparison of the International Adoption Process Between China and the United States	
	8) The INS determines if the child is adoptable.
	9) The INS reviews the home study to determine if the parents are eligible to adopt.
	10) If the INS approves the parents and child for adoption, a Visa is issued for the child to enter the United States.
	11) Parents then re-adopt in the court of their home state.
	12) The state court determines if the child is adoptable.
	13) The state court reviews the home study to determine if the parents are eligible to adopt.
	14) When the state court approves the adoption, a decree is entered and the adoption is complete.

By ratifying the Convention, China and the United States can take advantage of the Convention's benefits and assure an easier adoption process for foreign adopters.⁹⁵

A. *The Hague Convention on Intercountry Adoption*

The Hague Convention's advantages include a minimum level of uniform requirements for international adoptions in order to protect the rights of

95. See Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 151 (arguing China should ratify the Convention to facilitate "broader and easier recognition of the many adoption decrees it has been and will be granting").

internationally adopted children⁹⁶ and a process that strives to preserve the rights of their birth and adoptive parents.⁹⁷ To ensure protection of these rights, the Convention sets out adoption procedures.⁹⁸

1. Scope of Convention

Chapter 1 states the objectives of the Convention and the types of adoptions to which the Convention applies. Article 1's goals include,

a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law; b) to establish a system of co-operation amongst contracting states to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;⁹⁹ c) to secure the recognition in contracting states of adoptions made in accordance with the Convention.¹⁰⁰

The preamble further reiterates the "best interests of the child" standard in adoption proceedings.¹⁰¹

96. See Singer, *supra* note 35, at 298.

97. See *The White House, Office of the Press Secretary* (visited Sept. 26, 1999) <http://travel.state.gov/white_house.html> (stating the purpose of the Convention is to promote the "best interest of the child" in intercountry adoptions and to dissuade trafficking in children).

98. Hague Convention, *supra* note 90 at 1139. Although the Convention is comprised of seven chapters, only the first five will be discussed here as they define the actual adoption process and considerations pertinent to this comment.

99. See *infra* Parts III.A.2-3.

100. See *infra* Part III.A.5.

101. Hague Convention, *supra* note 90, at 1139. The preamble asserts that the signatories to the Convention agree in:

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

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,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking 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, and the United Nations Declaration on Social and Legal Principles relating to the Protection Internationally (General Assembly Resolution 41/85, of 3 December 1986).

The "best interests of the child" standard makes other adopting interests secondary.¹⁰² In determining best interests, the Convention's primary aim is to locate a loving family in the child's country of origin.¹⁰³ If this cannot be achieved, then a permanent family in another country can be considered.¹⁰⁴ The goal here is to find a suitable family well matched to the youth.¹⁰⁵ The placement of the child with a nurturing family in another country would better serve the interests of the child than a temporary placement with a foster home or institutional facility in the child's native country.¹⁰⁶

The Convention applies to all international adoptions between ratifying states.¹⁰⁷ "[It] applies regardless of whether the adoption is parent-initiated, facilitated by public or private adoption agencies, or private adoption providers, such as lawyers and social workers."¹⁰⁸ Further, the Convention governs adoptions by married couples or by single adoptive parents.¹⁰⁹ Many of the states which are highly involved in international adoptions as either sending¹¹⁰ or receiving¹¹¹ states

102. See Rosanne L. Romano, Comment, *Intercountry Adoption: An Overview for the Practitioner*, 7 TRANSNAT'L LAW. 545, 574 (1994) (remarking that it can be inferred from Article 1 that the goal of the Convention is not to provide babies to families who wish to adopt, rather it is to locate a suitable family for the child).

103. See Hague Convention, *supra* note 90 at 1139; see also Romano, *supra* note 102, at 575 (noting parents who are financially and emotionally able to provide for a child should be permitted to rear the child); see also Elizabeth Bartholet, *International Adoption: Propriety, Prospects, and Pragmatics*, 13 J. AM. ACAD. MATRIM. LAW. 181, 184 (1996) (presenting those who oppose international adoption believe children deserve to be raised within their own culture). The author argues, however, that if the birth parents are unable to rear the child, international adoption is a very good alternative to in-country institutional care. See generally *id.*

104. See Hague Convention, *supra* note 90, at 1139; see also Van Leeuwen, *supra* note 76, at 205 (mentioning the goal of providing the child with an intercountry family over domestic foster or institutional care is a realization that a permanent home is better for the child). Interrupted relationships can develop from being shuttled from one facility to another within the child's country of origin. *Id.*

105. See Deborah Kay, *The 1993 Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption: Potential for Success or Failure*, NEW ENG. SCH. LAW.: INT'L & COMP. ANNUAL (1996), § II(A) (explaining the Convention is not intended to provide a family with a child, but to find a family for the child).

106. See *id.*; see also *Briefing Paper*, *supra* note 90 (acknowledging the preference for international adoption over foster or institutional supervision in the child's country of origin is a "very welcome and important endorsement" provided the conditions of the Hague Convention are satisfied); see also Van Leeuwen, *supra* note 76, at 205-06 (commenting the best interests of Chinese children residing in institutions are best served by being placed with an international adoptive family rather than remaining in institutional care). The reason provided is that institutional care does not provide enough emotional stability as a permanent family would provide. *Id.*

107. See Hague Convention, *supra* note 90, art. 2.

108. See Romano, *supra* note 102, at 572 (stating the Convention only applies to states who have ratified the agreement).

109. See Peter H. Pfund, *Intercountry Adoption: The 1993 Hague Convention: Its Purpose, Implementation, and Promise*, 28 FAM. L.Q. 53, 57 (1994) [hereinafter Pfund, *Intercountry Adoption*] (explaining the ability of each contracting state to determine for itself whether it will permit single parents to adopt a child).

110. See Singer, *supra* note 35, at 297 (defining the "sending state" as the country that sends a child to another country).

111. See *id.* (defining the "receiving state" as the country that receives the children to be adopted).

were a part of drafting and approving the Convention.¹¹² Thus, the Convention could become the leading law for international adoptions as these states ratify the agreement and use it as a basis for interaction with other contracting states.¹¹³ The Convention, however, does not become effective until each state has individually ratified it.¹¹⁴ Also, Article 3 provides that the Convention does not apply once a child reaches the age of eighteen and certain conditions have not been satisfied.¹¹⁵

2. Requirements for Intercountry Adoptions

The Convention sets out some of the requirements for intercountry adoptions between participating states.¹¹⁶ By requiring each state to undertake certain duties discussed below, the Convention reduces the possibility of duplication in the adoption process.¹¹⁷ Under the Convention, the state of origin has the obligation to

establish: (1) the child is adoptable; (2) (after first considering placement in the country of origin) intercountry adoption is in the child's best interest; and (3) necessary consent is preceded by counseling, is in writing, has not been induced by payment, and in the case of a mother, is given only after birth.¹¹⁸

112. See Bartholet, *supra* note 103, at 192 (implying the major participants in international adoption will be more interested in protecting the child during the international adoption process, as these countries invested time and money in drafting the Convention).

113. See *id.* (stating the Convention, once ratified by each country that participated in the Conference, is an important advancement as it will establish precise requirements to be followed under international law).

114. See Romano, *supra* note 102, at 572–73; see also *Hague Conference on Private International Law: Status Sheet Convention # 33* (visited Feb. 4, 2000) <<http://www.hcch.net/e/status/adoshte.html>> (indicating the United States is one of twelve countries who have signed the Convention, but have not ratified it yet). To date, twenty eight states have ratified the Convention including: Mexico, Romania, Sri Lanka, Cyprus, Poland, Spain, Ecuador, Peru, Costa Rica, Burkina Faso, Philippines, Canada, Venezuela, Finland, Sweden, Denmark, Norway, the Netherlands, France, Colombia, Australia, El Salvador, Israel, Brazil, Austria, Chile, Panama, and Italy. *Id.*

115. See Hague Convention, *supra* note 90, art. 3 (requiring the Central Authorities of the sending and receiving state must concede that the adoption can continue under Article 17 (c)).

116. See *The White House, Office of the Press Secretary, supra* note 97 (presenting the interaction between the contracting states will protect the interests of the child in the international adoption process). The states will also be able to decrease the trafficking in children through established standards. *Id.*

117. See Kay, *supra* note 105, § III (stating that once the sending state has satisfied its duties, the receiving state will no longer be obligated to undertake the same actions). The designation of responsibilities to different states assures the participating states will not be repeating the same functions. *Id.*

118. See *id.*; see also Hague Convention, *supra* note 90, art. 4; see also Susan M. Bisignaro, Comment, *Intercountry Adoption Today and the Implications of the 1993 Hague Convention on Tomorrow*, 13 DICK. J. INT'L L. 123, 141–42 (1994) (arguing the consent requirement is feeble, because it does not specify which “persons, institutions, and authorities” must provide consent).

Essentially, the sending state is responsible for guaranteeing that the adopted child has been properly relinquished by the birth parents,¹¹⁹ and that there is no suitable placement for the child within the country of origin.¹²⁰ The counseling requirement ensures that parents giving approval can appreciate the consequences of their decision.¹²¹ It further assures that the relinquishing parents are making an informed and voluntary decision¹²² which does not result in payment to these parents.¹²³

The receiving state has the duty to provide assurances that the prospective parents are properly selected.¹²⁴ The Convention provides that receiving states must "establish that the adoptive parents are eligible and suitable, that they have been counseled, and that the child will be authorized to enter the receiving state."¹²⁵ This duty provides assurances to the sending state that a proper home awaits the child.¹²⁶ The Convention mandates adoptive parents undergo counseling to educate them about the feelings involved during the process.¹²⁷ It is further hoped that counseling will reduce the possibility of prospective parents backing out of the process once it has begun.¹²⁸ Finally, to further protect the child during adoption, the receiving state must procure permission for the child to immigrate.¹²⁹

3. Central Authorities and Accredited Bodies

The Convention requires each contracting state to establish a Central Authority to carry out the Convention's requirements.¹³⁰ Article 7 provides duties of the

119. See Bartholet, *supra* note 103, at 193 (mentioning the Central Authorities of the sending state are responsible for making determinations about the child).

120. See Singer, *supra* note 35, at 299.

121. See Kay, *supra* note 105, § III (implying counseling reduces the chance of parents changing their mind after the adoption process has begun).

122. See *id.* (mentioning the precautions the sending state must take in order to secure the appropriate consent from the birth parents).

123. See Singer, *supra* note 35, at 299 (explaining adoptive parents cannot pay birth parents in an effort to entice the birth parents to relinquish their rights to the child).

124. See Bartholet, *supra* note 103, at 193 (adding parents must undergo screening procedures in order to assess their suitability to adopt).

125. See Kay, *supra* note 105, § III; see also Hague Convention, *supra* note 90, art. 5; see also Pfund, *Intercountry Adoptions*, *supra* note 109, at 58 (revealing the eligibility specification is based on considerations of the law and the suitability requirement is conditioned on the parents' circumstances).

126. See Kay, *supra* note 105, § III (mentioning that once the state of origin is reassured, it will be less likely to view intercountry adoptions as evidence of its shortcomings in providing care for its own children).

127. See *id.* (confirming the goal of counseling is to reveal to adoptive parents realistic expectations of the adoption and to diminish the likelihood the parents will change their mind during the adoption process).

128. See *id.* (advocating the birth parents should make a fully informed decision when deciding whether or not to relinquish the child).

129. See *id.*; see also discussion *infra* Part III.C.1 (establishing the steps required in order to ensure the child is capable of immigrating).

130. See Hague Convention, *supra* note 90, art. 6 (providing more than one Central Authority may be authorized to participate in international adoptions; however, one Central Authority must be selected as the location which will receive communication from other countries and disperse the information to the appropriate Central Authority within the country); see also Kay, *supra* note 105 (proposing the focus of the Central Authority

Central Authority which are not delegable to other bodies.¹³¹ The Central Authority is responsible for communicating the adoption laws of their state¹³² and will update other participating states about the operation of the Convention.¹³³ Central Authorities are further obliged by Article 9 to disseminate information about the child and prospective parents in order to facilitate the adoption.¹³⁴ They must fulfill the necessary steps to complete the adoption and encourage the progression of adoption counseling and post-adoption services in their states.¹³⁵ Central Authorities are further required to exchange with each other information assessing the adoption experience, and to answer, with as much knowledge as state law permits, a request by another Central Authority for details regarding a specific adoption.¹³⁶ Although

is to facilitate the international adoption process). Skeptics are apprehensive about the ability of the Central Authority to expedite the process. Rather, they fear these agencies will add one more unnecessary step to an adoption and eventually force the smaller adoption agencies out of business. The Convention, however, strives to promote Central Authorities that are expedient in order to reassure prospective parents and dissuade them from locating children through illegal means, such as the black market. *Id.*; see also Romano, *supra* note 102 (arguing the Central Authorities also promote cooperation between contracting states and eliminate abuse of the international adoption process). Concerns have been raised, though, regarding the price and obstacles involved in developing a Centralized Authority. *Id.*; see also *Hague Convention on Intercountry Adoption U.S. Federal Implementing Legislation* (visited Jan. 12, 2000) <<http://www.webcom.com/%7Ekmc/adoption/law/un/ica-issues.html>> (advising an application fee be charged to agencies who wish to be accredited). This fee would eliminate some of the costs feared by critics of the Convention. *Id.*

131. See Romano, *supra* note 102, at 577 (listing Articles 7 and 8 as comprising duties the Central Authority cannot commit to other agencies). Article 8 requires Central Authorities to take necessary steps to preclude inappropriate financial gain in international adoptions. See also Hague Convention, *supra* note 90.

132. See Bisignaro, *supra* note 118, at 143 (relating the interaction between Central Authorities will ease the irritation of prospective adopting parents as the information and forms required by other states will be readily accessible). Lowering the frustration of prospective parents may permit them to be better able to satisfy the adoption requirements in an efficient manner. *Id.*

133. See Hague Convention, *supra* note 90, art. 7 (specifying the focus of the Central Authorities is to safeguard the children and promote the other goals of the Convention). In order to fulfill these requirements, the Central Authorities are directed to work with each other. *Id.* This joint participation by contracting states will reduce possibilities of hindering the application of the Convention. *Id.*; see also *Briefing Paper*, *supra* note 90 (noting the establishment of Central Authorities in each country promotes consensus in the international adoption laws and procedures disseminated from each country). The Central Authority also provides one location for other countries to contact for dependable information about how the contacted country carries out its international adoption system. *Id.*; see also *Major Advantages of the Convention*, *supra* note 92 (proposing the Convention "[e]stablishes a Central Authority in each country to ensure that one authoritative source of information and point of contact exists in that country. In the United States, authorities of other party countries and members of the American public will be able to look to the United States Central Authority for reliable information and assistance.").

134. See Hague Convention, *supra* note 90, art. 9(a).

135. See *id.* art. 9(b)-(c).

136. See Hague Convention, *supra* note 90, art. 9 (mentioning these requirements can either be carried out by the Central Authorities, public authorities, or properly accredited bodies); see also Bisignaro, *supra* note 118, at 142 (proposing that having one agency to deal with intercountry adoptions will assist in promoting the Convention). "By funneling all intercountry adoptions through one Central Authority per state, it is hoped that legitimate adoptions will be facilitated and illegal activity suppressed." *Id.*

the rules set forth in Article 7 are non-delegable, the Central Authority may entrust the duties listed in Article 9 to a properly accredited body.¹³⁷

Central Authorities can create accredited bodies to assist them with their tasks.¹³⁸ Accredited agency personnel must meet ethical requirements and undergo training or have experience in working with intercountry adoptions.¹³⁹ These conditions make accredited agencies accountable for the services they provide.¹⁴⁰ As the Convention does not provide details about the accreditation process, each state determines the precise requirements.¹⁴¹ The guidelines should, however, aim to promote only those agencies carrying out legitimate adoption practices.¹⁴²

4. Procedural Requirements in Intercountry Adoption¹⁴³

The international adoption process requires the prospective parents to petition their state for authorization to adopt a child. The child's state of origin must determine whether an intercountry placement is in the "best interests of the child." If both the adoptive parents' state and the child's state of origin agree to the adoption, the child is permitted to travel to the parents' state of origin.¹⁴⁴

The first requirement in international adoption is for prospective parents to apply to their Central Authority.¹⁴⁵ The Central Authority of the receiving states

137. See *Briefing Paper*, *supra* note 90 (commenting the elements listed in Article 9 can be entrusted by the Central Authority to either a public authority or accredited bodies).

138. See Hague Convention, *supra* note 90, art. 10 (requiring accreditation only be given to those bodies that demonstrate their ability to perform their delegated responsibilities with accuracy); see also Kay, *supra* note 105, § V (explaining accredited bodies can be private adoption agencies that are screened to determine if they measure up to the Convention's standards). If an accredited body meets the requirements established by the Convention, it can place children in adoptive families. *Id.*

139. See Hague Convention, *supra* note 90, art. 11 (expressing accredited bodies can only seek non-profit goals which are to be determined by the proper authorities of the state granting accreditation). The maintenance and finances of the accredited bodies are also to be supervised by state authorities. *Id.*

140. See *Statement of Senator Jesse Helms, Introduction of the Intercountry Adoption Act, March 23, 1999* (visited Sept. 19, 1999) <<http://www.holtintl.org/senhelms032399.html>> [hereinafter *Statement of Senator Jesse Helms*] (arguing the Convention will empower the Secretary of State in guaranteeing the homes that are located for children are facilitated in an ethical manner).

141. See *Hague Convention on Intercountry Adoption, U.S. Federal Implementing Legislation*, *supra* note 130 (distinguishing between the federal and state accreditation processes that would occur within the United States if the Convention is ratified by the United States).

142. See Bisignaro, *supra* note 118, at 143 (asserting the promotion of accredited bodies will eliminate the possibility of illegitimate adoptions through baby brokers as the unaccredited agencies will be unable to fulfill the adoption criteria).

143. See Peter H. Pfund, *Introductory Note to Hague Conference on Private International Law: Final Act of the 17th Session, Including the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption*, May 29, 1993, reprinted in 32 I.L.M. 1134, 1135 [hereinafter Pfund, *Introductory Note*] (noting the requirements expressed in Chapter four must be considered in light of Article 22 which states, "[t]he functions of a Central Authority under [Chapter IV] may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State").

144. See *infra* notes 156–57, and accompanying text.

145. See Hague Convention, *supra* note 90, art. 14.

reviews a report to determine whether or not the parents are permitted to adopt.¹⁴⁶ The report is prepared for the prospective parents and is sent to the sending state.¹⁴⁷ The report summary contains "information about [the parents'] identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care."¹⁴⁸ The receiving state must also make a final determination about whether or not the child will be permitted to live in its state permanently.¹⁴⁹

At the same time the receiving state is compiling its information, the child's state of origin is gathering data on the child and determining his or her eligibility for adoption.¹⁵⁰ The sending state must think about the child's "ethnic, religious, and cultural background."¹⁵¹ It must also determine whether a placement with the prospective parents is in the "best interests of the child"¹⁵² and whether consent to relinquish the child has been given in compliance with Article 4 of the Convention.¹⁵³ Once all of these considerations have been satisfactorily completed, the state of origin must compile a report containing "information about [the child's] identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child."¹⁵⁴ The report is then sent to the receiving state along with evidence of the necessary consents and the reasons the state is either accepting or rejecting placement of the child with the prospective parents.¹⁵⁵

146. See *id.*, art. 17(d).

147. See *id.*, art. 15(1).

148. See *id.*, art. 15(1); see also National Adoption Information Clearinghouse, *The Adoption Home Study Process* (visited Jan. 26, 2000) <<http://www.calib.com/naic/factsheets/homestudy.htm>> (defining the home study as a report that compiles information gathered over several visits with a social worker). The study usually takes about three to six months to complete. The report can include very personal information such as an adoptive parent's upbringing and important relationships the individual had during childhood. Attitudes towards disciplining the child will also be addressed. *Id.*; see also *infra* note 156 (describing the parents' ability to choose whether or not to adopt the child).

149. See Hague Convention, *supra* note 90, art. 17(d); see also *infra* notes 295-97 (discussing the importance of an early determination of whether the child will be able to immigrate).

150. See Hague Convention, *supra* note 90, art. 19(3) (proposing that the reports collected by the sending and receiving states are to be sent to the country from which they originated, if the adoption process does not culminate in the transfer of the child to the receiving state); see also Bartholet, *supra* note 103, at 193 (affirming the sending state's obligation to determine whether the child has been appropriately relinquished for adoption).

151. See Hague Convention, *supra* note 90, art. 16(1)(b); see also Romano, *supra* note 102, at 574-75 (adding the focus should be directed toward the environment the child needs, such as a loving, nurturing home).

152. See Hague Convention, *supra* note 90, art. 16(1)(d); see also *supra* notes 101-06 and accompanying text (discussing the considerations that must be made in determining the "best interests of the child").

153. See Hague Convention, *supra* note 90, art. 16(1)(c); see also *supra* notes 118-123 and accompanying text (presenting the requirements a state must make in order to determine whether the birth parents' consent was given without payment).

154. See Hague Convention, *supra* note 90, art. 16(1)(a).

155. See *id.*, art. 16(2) (cautioning the child's state of origin against disclosing information about the birth mother or father of the child if the state of origin does not permit this data to be revealed).

If the prospective adoptive parents agree to adopt the child,¹⁵⁶ both the sending and receiving states must then approve for the adoption to continue.¹⁵⁷ After agreement has been reached, the Central Authorities of both states obtain the required approval for transferring the child from the sending state to the receiving state.¹⁵⁸ The sending and receiving states then act jointly to assure the transportation of the child occurs in a safe and appropriate manner.¹⁵⁹

5. Recognition and Effects of the Adoption

The Convention and other contracting states recognize a competently processed adoption. According to Article 23, "[a]n adoption certified by the competent authority of the state of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other contracting states."¹⁶⁰ This provision eliminates the requirement of re-adoption in the receiving state, when the adoption has already occurred in the sending state.¹⁶¹ This will potentially decrease the amount of time and money expended if only one adoption needs to occur rather than two.¹⁶² If the public policy of a receiving state would be offended by recognizing the adoption, the state can withhold its recognition of the adoption, thereby resulting in the second adoption that the Convention aims to eliminate.¹⁶³

In recognizing an adoption, a state agrees to acknowledge the legal relationship that exists between the child and adoptive parents.¹⁶⁴ It also supports the idea of

156. See *id.* art. 17(a).

157. See *id.* art. 17(c); see also Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 142 (explaining the approval requirement is intended to avoid legal complications that could occur if the sending state terminated the child's citizenship and birth family rights, but the child was not permitted to enter the receiving state).

158. See Hague Convention, *supra* note 90, art. 18 (requiring the states to procure authorization for the child to permanently live in the receiving state). Article 19(1) permits the child to be relocated to the receiving state only after the parents have agreed to adopt, the receiving state has conceded to the adoption, the two participating states grant the adoption to proceed, and the considerations in Article 5 have been met. *Id.*

159. See *id.* art. 19(2).

160. See *id.* art. 23(1); see also Romano, *supra* note 102, at 580 (adding the recognition by other contracting states will occur if the adoption complies with the Convention).

161. See Pfund, *Intercountry Adoption*, *supra* note 109, at 58 (acknowledging that this requirement does not prevent readoption, however); see also Kay, *supra* note 105 (stating that once a child has been properly adopted according to the provisions as specified in the Convention, the need for re-adoption is eliminated because all parties have acquiesced in the same standards).

162. See Bisignaro, *supra* note 118, at 144 (proposing the recognition of the adoption by all participating states will also diminish the problems encountered in the adoption process).

163. See Hague Convention, *supra* note 90, art. 24 (permitting a contracting state to consider the "best interests of the child" when making the decision regarding a possible public policy violation); but see Van Leeuwen, *supra* note 76, at 211 (contending the lack of a definition of public policy provides a way around the recognition of adoptions for reasons other than public policy, such as political, social, or cultural considerations).

164. See Hague Convention, *supra* note 90, art. 26(1)(a); see also Romano, *supra* note 102, at 581 (arguing the recognition of the adoption in other states may not be as straightforward as it seems). The receiving state could choose not to grant full control of the child's adoptability consideration to the sending state. The procedure the

placing accountability for the child on the adoptive parents.¹⁶⁵ Finally, there is appreciation of the termination of a previous legal relationship that existed between the child and his or her birth parents.¹⁶⁶ These requirements, in effect, create a more stable environment and emotional relationship for the child with the adoptive parents as they terminate any threat of a birth parent attempting to reassert rights over the child.¹⁶⁷

B. China's Adoption Law

1. Addressing the need for an Adoption Law

Prior to China's population control regimes, there was little need for international adoption as extended families adopted the Chinese children.¹⁶⁸ Orphans¹⁶⁹ were raised by the Chinese government, because officials in China thought they were best equipped to care for the children and any new laws regarding adoption may reveal that the government was less than perfect.¹⁷⁰ In 1981, however, China implemented its first laws regarding adoption within the Marriage Law.¹⁷¹ By 1988, China allowed for limited international adoptions under its adoption requirements.¹⁷² These new requirements only resulted in the adoption of twelve children from China by American families in 1988 because the application process and adoption requirements were harsher for foreigners than the procedures governing the adoption of children by Chinese couples.¹⁷³

sending state follows could also be questioned. *Id.*

165. See Hague Convention, *supra* note 90, art. 26(1)(b); see also Bisignaro, *supra* note 118, at 144 (recognizing the adoption in the sending state terminates the child's relationship with the birth parents, thus the child becomes the adoptive parents' charge).

166. See Hague Convention, *supra* note 90, art. 26(1)(c).

167. See Bisignaro, *supra* note 118, at 144. The child is thus freely able to bond to the parents without worrying about the possible need to end the parent-child relationship. *Id.*

168. See Gordon, *supra* note 71, at 132-33 (expressing children were often given to couples in the extended family who were without children, but the process did not amount to adoption as it was usually done on a lending basis only).

169. See *International Adoption-China*, *supra* note 88 § II(A)(2) (defining an orphan as "a child whose parents are deceased or who have been declared deceased by a Chinese court"); see also Laura Cecere, *Adoption from the People's Republic of China* (visited Oct. 28, 1999) <http://www.autocyt.com/China_Seas/adopting.html> [hereinafter Cecere, *Adopting from the PRC*] (concluding the chance that a child will satisfy the definition of orphan is very rare). Therefore, many who do not meet certain requirements under the Adoption Law are only permitted to adopt a special needs child. *Id.*

170. See Gordon, *supra* note 71, at 151 n.100 (discussing the silence of the Chinese government regarding problems that may exist in the governmental structure).

171. See *id.* at 133 n.98 (describing the revision in the Marriage Law as including the adoption of children).

172. See *id.* at 133 (mentioning the law limited adoption to "foreigners of Chinese heritage, non-Chinese foreigners with strong ties to the country, or long-term foreign residents of China").

173. See *id.* at 133 n.102 (commenting that although the new law permitted international adoptions there were very few adoptions by American couples).

In 1992, China ratified the Adoption Law¹⁷⁴ which, according to Yang Yanyin, Vice Minister of Civil Affairs in China, provided for a more uniform policy on adoption while eliminating corruption and equalizing the requirements for foreigners and Chinese nationals.¹⁷⁵ There was also hope that the Adoption Law would eliminate the overcrowding in the social welfare institutions housing children awaiting adoption.¹⁷⁶

According to the Vice Minister of Civil Affairs in China, the Adoption Law improved China's adoption system, preserved the parent-child relationship established by the adoption, monitored the behavior of parents engaged in the adoption process, and protected the rights and interests of the participants.¹⁷⁷ Nevertheless, there was recognition of the Adoption Law's shortcomings by the Vice Minister.¹⁷⁸ The law seemed harsh in application. Many families capable of rearing a child were unable to adopt, and some orphaned and abandoned children could not be raised in the warmth of a home.¹⁷⁹ Furthermore, this continued the overcrowding in the Children's Welfare Institutions.¹⁸⁰

In an effort to remove the crowded conditions in the orphanages and permit more families to adopt, China enacted amendments to the Adoption Law in November 1998 which took effect on April 1, 1999.¹⁸¹ The government believed these amendments would make adoption requirements more reasonable and protective of the rights and interests of the children.¹⁸² China also hoped these

174. See Cecere, *Adopting from the PRC*, *supra* note 169 (noting adoption in China is controlled by the Adoption Law and is a civil, not a legal process). The effect is that an attorney is not required for an adoption, nor is a court appearance mandatory. *Id.*

175. See Gordon, *supra* note 71, at 134 (claiming the law gave no preference to the heritage of adoptive parents, the many foreigners, especially United States families, were inspired to maximize the opportunity to adopt children from China).

176. See Klatzkin, *supra* note 59 (describing the Chinese orphanages as under-funded and ill-equipped to accommodate the increasing rates of abandonment of mostly healthy infant girls). As a result, the institutions were becoming overcrowded and the living conditions were deteriorating. *Id.*; see also Starr, *supra* note 43 (confirming the overcrowded conditions of the Chinese orphanages).

177. See Interview by China Society News Correspondents with Yang, Yanyin, Vice Minister of Civil Affairs, China (April 1, 1999) (acknowledging the adoption law has permitted a great number of orphans and disabled children to be raised in a home). The law also has enabled the desires of many families to be satisfied by permitting them to adopt these children. *Id.*

178. See *id.*

179. See *id.*; see also Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 194 (proposing the Adoption Law Amendments will permit children who have not been legally adopted, but are residing with Chinese families, to be officially adopted).

180. See Kwan, *supra* note 63 (commenting the amendments permit Chinese couples with children to adopt children for the first time).

181. See *Who Can Adopt from China?* (visited Jan. 17, 2000) <<http://www.seedlings-inc.org/chinafaq.html>> (describing the Adoption Law Amendments as favorable for adoptive couples who were unable to adopt under the original requirements).

182. See Interview by China Society News Correspondents with Yang, Yanyin, *supra* note 177.

revisions would promote more adoptions by Chinese nationals¹⁸³ in order to permit more of the children to stay in the country.¹⁸⁴

2. Assessing the Requirements

The amendments apply uniformly to both foreign and Chinese adoptive parents.¹⁸⁵ One of the requirements under the new law is the criteria that prospective adoptive parents must meet in order to be eligible to adopt a child from China. The amendments require prospective adoptive parents to be childless, able to raise and educate the child, free of mental diseases that would deem the parent unfit to adopt, and to be at least thirty years of age in order to adopt a healthy, abandoned¹⁸⁶ child.¹⁸⁷ If the adoptive parent is a single male, he must be at least forty years older than a female child.¹⁸⁸ Although there is no upper age limit for prospective parents, the CCAA¹⁸⁹ seems to select older children for parents who are over the age of forty five.¹⁹⁰ Whereas previously, adopters who did not meet adoption age requirement¹⁹¹

183. See Maggie Farley, *China's Trying to Promote More Incountry Adoptions*, LOS ANGELES TIMES, Nov. 7, 1998, at A6 (stating that of the more than 4,000 Chinese infants adopted in 1997, ninety six percent of the adoptive parents were Americans); see also *China Relaxes its Policies on Children*, SEATTLE TIMES, June 28, 1999 (communicating a photo exhibition of Chinese adopted children was implemented in Beijing in an effort to publicize adoptions within China). The theme of the photo campaign is, "Adopted children go on to successful lives." The photos include adoptive children from China pictured with United States politicians. *Id.*

184. See *China Relaxes its Policies on Children*, *supra* note 183 (expressing the reason the government wants the children to remain in the country is to be able to look after the child and monitor its progress in the adoptive family).

185. See *China Opens Doors*, *supra* note 2; see also Laura A. Cecere, *Recent Amendment of China's Adoption Law—An Overview: Changes Broaden Opportunity for China's Abandoned Children to be Adopted* (visited Jan. 23, 2000) <<http://mh106.inf.net/~bcrawf/amendlaw.htm>> [hereinafter Cecere, *Recent Amendment of China's Adoption Law—An Overview*] (confirming the Adoption Law applies to all adoptions in China).

186. See ADOPTION LAW OF THE PEOPLE'S REPUBLIC OF CHINA, 1998, art. 4(2) [hereinafter ADOPTION LAW OF THE PRC (1998)] (defining an abandoned child as one whose parents cannot be located).

187. See *id.* art. 8.

188. See ADOPTION LAW OF THE PEOPLE'S REPUBLIC OF CHINA, 1991, art. 9 [hereinafter ADOPTION LAW OF THE PRC (1991)]; see also Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 194 (revealing this provision ensures the adopter is not acting on improper motives such as desiring a girl in order to raise a future bride or to have a live in servant).

189. See *Report on a Visit by The Director General of the China Center for Adoption Affairs* (visited Jan. 23, 2000) <<http://www.fwcc.org/ccaa598.htm>> (stating the CCAA is the only agency permitted to handle adoptions). The agency is a non-profit branch of the Ministry of Civil Affairs. *Id.* The CCAA is divided into two departments which perform different functions in the adoption process. *Id.*; see also *International Adoption-China*, *supra* note 88, § I(A) (presenting the formation of the CCAA as a means of unifying the adoption procedures in China).

190. See Laura A. Cecere, *The Approval Process at the China Center of Adoption Affairs in Beijing* (visited Jan. 23, 2000) <http://www.autocyt.com/China_Seas/process.html> [hereinafter Cecere, *The Approval Process at the CCAA*] (expressing the children placed with older couples are often over twelve months of age).

191. See ADOPTION LAW OF THE PRC (1991), *supra* note 188, art. 6; see also Interview by China Society News Correspondents with Yang, Yanyin, *supra* note 177 (discussing the purpose of the thirty five age requirement was to coincide with the Marriage Law which allowed adoption of a child ten years or more after the marriage to parents who could not have children).

were permitted to adopt a special needs¹⁹² or orphaned¹⁹³ child from China, under the amendments, no one under the age of thirty may adopt any kind of child at all.¹⁹⁴

Although Article 6 requires the adoptive parents to be childless, Article 8 permits parents who are not childless to adopt an abandoned child who has been raised in a social welfare institute.¹⁹⁵ This changes the previous law which only permitted adoption of orphaned or special needs children by adoptive parents with children.¹⁹⁶ The new law will permit more children to move out of welfare institutions into nurturing families.¹⁹⁷ Article 8 additionally allows an adopter to adopt more than one abandoned child at a time.¹⁹⁸ The CCAA, however, limited this provision by stating that it would determine the adoption of more than one abandoned child on a case-by-case basis.¹⁹⁹

According to the Adoption Law, only children under the age of fourteen who have been orphaned, abandoned, or relinquished by parents due to hardship can be adopted.²⁰⁰ If a child is abandoned, Chinese law requires authorities to search for two months for a child's parents before the child will be deemed abandoned and

192. See *International Adoption-China*, *supra* note 88, § II(A)(3) (expressing there has been no uniform consensus on the definition of a handicapped, also special needs, child). In the absence of a definition, the CCAA depends on the definition supported by the State Council. Under this definition, there are five categories of handicaps including, "1) defects in vision; 2) defects in hearing and language; 3) mental deficiency (such as low I.Q. and development); 4) handicap/impairment of arms and legs; and 5) mental illness." In determining whether the child qualifies under one of these categories, the CCAA assesses the child's difficulty or lack of social function. *Id.*

193. See *International Adoption-China*, *supra* note 169 (defining orphan as a child whose parents are both deceased).

194. See Cecere, *Recent Amendment of China's Adoption Law—An Overview*, *supra* note 185; see also Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 194 (presenting the Adoption Law revisions are silent on the issue of adoptive parents being under the age of thirty). The inference is that adoptive parents who are not thirty years or older will not be able to adopt a child at all.

195. See *ADOPTION LAW OF THE PRC* (1998), *supra* note 186, art. 8; see also Cecere, *Recent Amendment of China's Adoption Law—An Overview*, *supra* note 185 (discussing that prior to the amendment, the law only permitted orphaned and special needs children to be adopted by parents who were not childless).

196. See *ADOPTION LAW OF THE PRC* (1991), *supra* note 188, art. 8 "Orphans or disabled children may be adopted irrespective of the restrictions that the adopter shall be childless. . . ."

197. See Interview by China Society News Correspondents with Yang, Yanyin, *supra* note 177 (arguing many children remained in orphanages due to the strict requirements of the Adoption Law); see also Cecere, *Approval Process at the CCAA*, *supra* note 190 (mentioning many parents were once impacted by the issue of a definition of special needs, but with the amendments, the issue will be moot); see also *supra* note 131 (addressing the issue of orphaned children as being a rarity in China).

198. See Cecere, *Recent Amendment of China's Adoption Law—An Overview*, *supra* note 185 (noting the law previously permitted prospective adoptive parents who met the adoption requirements to adopt only one child at a time).

199. See *id.* Therefore, it is uncertain whether China will permit domestic or foreign adopters to adopt more than one child.

200. See *ADOPTION LAW OF THE PRC* (1991), *supra* note 188, art. 4.

available for adoption.²⁰¹ Children can only be relinquished for international adoption by the CCAA.²⁰²

3. *Completing the Paperwork*

The actual adoption process is governed by the Implementation Measures on the Adoption of Children by Foreigners in the People's Republic of China (Foreign Adoption Law).²⁰³ The Foreign Adoption Law is meant to operate in concert with the Adoption Law.²⁰⁴ The first step in the international adoption process with China is completing an adoption application²⁰⁵ with the assistance of an adoption agency.²⁰⁶ The application should specify whether the adopter desires a healthy or special needs child, a male or female child, and a younger or older child.²⁰⁷ A family report²⁰⁸ and certificates²⁰⁹ are required to accompany the application. In order for the certificates to be valid, they must be notarized and authenticated by the

201. See Cecere, *Adopting from the PRC*, *supra* note 169 (mentioning that the youngest an abandoned child can be adopted is three months of age).

202. See *International Adoption-China*, *supra* note 88, § II(A); see also Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 190 (explaining the CCAA is an office formed under both the Ministry of Justice and the Ministry of Civil Affairs). The CCAA was established in the early 1990s in an effort to monitor and unify the adoption procedures. *Id.*

203. See *Implementation Measures on the Adoption of Children by Foreigners in the People's Republic of China*, art. 4 (visited Oct. 28, 1999) <<http://www.freeyellow.com/members/bridges/measure.html>> [hereinafter *Adoption Measures for Foreigners in the PRC*]; see also Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 196 (mentioning the Adoption Measures for Foreigners in the PRC defines the exact procedure all foreign adopters must follow when adopting from China).

204. See *Adoption Measures for Foreigners in the PRC*, *supra* note 203, art. 1.

205. See *id.* "When a foreigner adopts a child in China, he should request his government to convey an adoption application and submit the family situation report and certificates to the adoption agency entrusted by the Chinese Government." *Id.*

206. See *International Adoption-China*, *supra* note 88, at § IV(1)(A)–(C) (reporting the CCAA will only permit an individual to apply for an international adoption without the use of an adoption agency if the adopter has been working and living in China for one year or more). If an adopter does not qualify as an individual applicant, he or she must select a U.S. adoption agency that is state-licensed and has sent the appropriate documentation of its credentials to the CCAA. An adoption agency that is not appropriately licensed by the CCAA may not be able to finalize the adoption in China which is required for the child to be transported to another country. *Id.*

207. See *International Adoption-China*, *supra* note 88, § III (noting a specific age preference can be included in the application, as well as a desired geographic region within China). Although the preferences are reflected in the application, there is no guarantee the child will fulfill every condition. *Id.*

208. See *Adoption Measures for Foreigners in the PRC*, *supra* note 203, art. 4(8) (specifying a family status report includes, "the status of the adoption applicant, the qualification and appropriateness of the adoption, family background, health history, adoption motive and features suitable for the care of the child.").

209. See *id.* art. 4(1)–(8) (requiring the following certificates from the prospective adoptive parents: birth; marital status; profession, income and property; health examination; criminal record; child adoption approval by the appropriate government authorities of the prospective parent's country; and the family situation report).

U.S. government, and then they are to be authenticated²¹⁰ by the Chinese Embassy in the United States.²¹¹

Once all of the paperwork has been compiled, the next step is to submit it to the CCAA for consideration.²¹² The CCAA contends it reviews the applications in the order in which they have been received.²¹³ In the initial office of the CCAA, the application is either translated, or if it has already been translated, it is verified.²¹⁴ The initial office also assesses the child requested by the applicant, but does not engage in matching the child to the adoptive families at this time.²¹⁵

The application is then relinquished to Department I for an initial evaluation of documents and credentials.²¹⁶ If the application is incomplete, the CCAA will either contact the adoption agency or the adopters directly and request the necessary documents or authentication.²¹⁷ After approval of the application, it is transferred to Department II where a child is matched to a prospective adoptive parent.²¹⁸ A letter is then sent from the CCAA to the adoptive parents via the U.S. adoption agency.²¹⁹ The correspondence contains an introduction of the child, photographs

210. See *International Adoption-China*, *supra* note 88, § II (defining authentication as carrying the official seal of the Embassy of China in the United States).

211. See *Adoption Measures for Foreigners in the PRC*, *supra* note 203, art. 4.

212. See *International Adoption-China*, *supra* note 88, § The Adoption Process III (relating all authenticated and translated documents must accompany the adoption application).

213. See Cecere, *The Approval Process at the CCAA*, *supra* note 190 (contending the CCAA tries to treat all applications fairly). Instead of providing certain applications with preferential treatment, the CCAA reviews the applications according to the date they are received. Their hope is to lower the amount of time some families have waited in the past. *Id.*

214. See *id.* (relating this review process could take about two months). At this stage, the CCAA confirms that they have received an application fee from the adopter. *Id.*

215. See *id.* (admitting the application can remain in Department I for up to two months before being transferred to Department II).

216. See *Report on a Visit by the Director General of the China Center for Adoption Affairs*, *supra* note 189; see also Cecere, *The Approval Process at the CCAA*, *supra* note 190 (mentioning the Department I process could take up to two months as most of the CCAA's employees are unable to read or speak English). Thus, the CCAA depends on the translations of the applications. *Id.*

217. See *International Adoption-China*, *supra* note 88, § The Adoption Process III.

218. See *Adoption Measures for Foreigners in the PRC*, *supra* note 203, art. 5 (expressing the CCAA can match the requested child with the prospective parent as long as the act would not violate the Adoption Law). Article 7 requires the CCAA to acknowledge that the Adoption Law has been complied with during the matching process. *Id.*; see also Cecere, *The Approval Process at the CCAA*, *supra* note 190 (stating the matching process takes about one month); see also *Report on a Visit by the Director General of the China Center for Adoption Affairs*, *supra* note 189 (exclaiming the matching of the child to the parent must be approved and signed by eight different CCAA employees); see also *International Adoption-China*, *supra* note 88, § IV (asserting the child's information is obtained from a CCAA Civil Affairs Bureau in one of China's provinces).

219. See *Adoption Measures for Foreigners in the PRC*, *supra* note 203, art. 7-8 (permitting the CCAA to send the U.S. adoption agency information about the child once the matching process has been completed); see also *International Adoption-China*, *supra* note 88, § The Adoption Process IV (adding if the adoptive parents have any further questions not revealed in the correspondence from the CCAA, they can request more information directly from the CCAA).

of the child, and the health record of the child.²²⁰ The adopters then have the obligation to respond to the CCAA that the adoption is ready for finalization.²²¹ Either the Director or one of the Vice Directors of the CCAA must then approve the match and sign a letter of approval.²²²

4. *Traveling to China*

With the letter of approval, the prospective parents are permitted to travel to the city in China where the Children's Welfare Institute is located in which the child is living.²²³ If a couple is adopting the child but only one of them can visit China, Article 8 requires the parent who is traveling to obtain a power of attorney from the other spouse.²²⁴ In China, the process often takes about ten to fourteen days.²²⁵ The foreign prospective adoptive parents must register with the department of civil affairs in the province where the child is located.²²⁶

During the registration process, the adoption contract must be signed by the prospective adoptive parents.²²⁷ Prior to signing the contract, the parents can request to see the child and inquire into any health or personal concerns about the child.²²⁸ Once the questions have been satisfactorily answered, the prospective adoptive

220. See *International Adoption-China*, *supra* note 88, § The Adoption Process IV (remarking the adoptive parents are contacted by the CCAA for the first time, only after a child has been matched to the adopters).

221. See *id.* at § The Adoption Process V(A) (noting the correspondence from the adoptive parents accepting the child for adoption must be in writing).

222. See Cecere, *The Approval Process at the CCAA*, *supra* note 190.

223. See *International Adoption-China*, *supra* note 88, at § The Adoption Process V(A); see also *Adoption Measures for Foreigners in the PRC*, *supra* note 203, art. 8 ¶ 2 (discerning that the prospective adoptive parents are to register with the civil administration department of the local government). Upon registration, the adopter must present the person placing out the child for adoption with the notice of coming to China issued by the CCAA, the photo identification of the adopter, and the written agreement attained between the parent and the CCAA. *Id.* art. 9 ¶ 2(1)–(3); see also *Report on a Visit by the Director General of the China Center for Adoption Affairs*, *supra* note 189 (requiring parents to travel to China within three months of receiving notice of approval from the CCAA). If the parents do not arrive in China within three months, the CCAA will consider the adoption void in order to satisfy the “best interests of the child” by re-assigning the child to a desirable home in a timely manner. *Id.*

224. See *Adoption Measures for Foreigners in the PRC*, *supra* note 203, art. 8 ¶ 3 (imposing a notary and authentication process for the power of attorney).

225. See Gordon, *supra* note 71, at 140 (commenting adoptive parents are aided by a Chinese translator during their stay in China).

226. See Interview by China Society News Correspondents with Yang, Yanyin, *supra* note 177 (admonishing adopters from China to register with the department of civil affairs in the county where they reside).

227. See *International Adoption-China*, *supra* note 88, § The Adoption Process V(D) (addressing the adoptive parents sign the contract only after being permitted to see the child and inquire into any health conditions the child may have).

228. See *id.* § The Adoption Process V(C) (discussing the adopter may desire to take the child to a physician at the United States Embassy in China, but the child is not under the legal custody or guardianship of the adopter prior to finalizing the adoption, so the prospective parent may not be permitted to take the child anywhere).

parents will sign an adoption contract with the Children's Welfare Institute.²²⁹ The adoption is then registered with the Civil Affairs Bureau in China.²³⁰ When the Bureau grants its approval, the adoption is complete.²³¹ In order for the adopter to take the child back to the United States, the Children's Welfare Institute must obtain a Chinese passport and exit permit for the child.²³²

C. United States' Adoption Law

Once an adoption is complete in China, the adoptive parents must comply with the necessary requirements under both federal and state laws of the United States.²³³ The two layers of laws with which adoptive parents must comply protects the children and the rights of both the adoptive and natural parents.²³⁴ The first layer of requirements the adoptive parents must meet are those set forth at the federal level by the United States Immigration and Naturalization Service (INS).²³⁵ The INS standards must be satisfied before the child can be issued a visa to enter the United States.²³⁶ If the INS approves the adoptability of the child and the eligibility of the parents, the child is issued a visa in order to travel with the adoptive parent to the United States.²³⁷

The second set of standards the adoptive parents must satisfy are the requirements set forth by the state in which they reside.²³⁸ Although each state is permitted to compile its own list of criteria, all states consider two basic principles:

229. See *id.* at § The Adoption Process V(D) (remarking registration of the adoption must be done in person at the Civil Affairs Bureau in China).

230. See *id.* (stating the adopter must make a "donation" to the Children's Welfare Institute in order to complete the adoption). The required "donation" costs United States \$3,000 to \$4,000. *Id.*

231. See *Report on a Visit by the Director General of the China Center for Adoption Affairs*, *supra* note 189 (mentioning the approval granted to the adoptive parents to travel to China does not conclude the adoption).

232. See *Adoption Measures for Foreigners in the PRC*, *supra* note 203, art. 14; see also *International Adoption-China*, *supra* note 88, § The Adoption Process V(D), (E) (commenting the passport and exit permit can be obtained quicker if the adoptive parents are willing to pay a fee).

233. See Margaret Liu, Comment, *International Adoptions: An Overview*, 8 TEMP. INT'L & COMP. L.J. 187, 198 (1994) "The prospective adoptive parents must satisfy: 1) the law of the country of the child's birth; 2) U.S. immigration law, procedures and policies; and 3) the laws of the state where the adoptive parents reside." *Id.*

234. See Bisignaro, *supra* note 118, at 130 (revealing the U.S. adoption process creates unnecessary repetition of adoption procedures). The result is a well-intentioned system that only leads to inefficiency. *Id.*

235. See *id.*; see also discussion *infra* Part III.C.1 (discussing the federal requirements that must be met under the U.S. adoption process).

236. See *id.* (advising that the child must obtain an orphan's visa from the INS before he or she will be permitted to enter the United States). This is true, even if the child has successfully completed the adoption process in the foreign country. *Id.*

237. See Bartholet, *supra* note 103, at 187 (specifying the visa will be issued to a child once the adoptive parents prove that they have complied with the laws of the parent's country and the child's native country). The requirements set forth for the parents to follow are often repetitive. *Id.*

238. See discussion *infra* Part III.C.2 (presenting the state law requirements the adoptive parents must meet in order to complete the adoption).

the adoptability of the child and the suitability of the adoptive parents.²³⁹ Successful completion of the state's adoption procedures permits a state court judge to enter a final adoption decree to finish the international adoption process.²⁴⁰

1. Federal Law

Under federal law, the INS defines the requirements the adoptive parents must meet in order to bring the child to the U.S..²⁴¹ The INS permits immediate entry into the United States of relatives of U.S. citizens.²⁴² Although prospective adoptive children are not legally U.S. citizens, the INS will declare a foreign adopted child an immediate relative if INS requirements are fulfilled.²⁴³ The parents need to complete a petition in order to have the child deemed an immediate relative and to acquire an immigrant visa for the child.²⁴⁴ Even if the child was previously adopted in another country, he or she is not allowed to enter the United States without approval of an Orphan Petition which permits INS to issue a visa.²⁴⁵

The adoptive parents need to file the Orphan Petition with an INS office in China (Consulate).²⁴⁶ At the time of filing, both the child and adoptive parent must

239. See *infra* notes 271–72 and accompanying text (discussing the two requirements all states require adoptive parents to satisfy).

240. See *infra* note 276 and accompanying text (mentioning when a state court judge will enter a final adoption decree).

241. See *International Adoptions*, § II (visited Jan. 25, 2000) <<http://travel.state.gov/int'ladoption.html>> (recommending the process of completing all the requirements are necessary in order to secure the rights of the child, the adoptive parents, and the birth parents).

242. See Lisa K. Gold, Comment, *Who's Afraid of Big Government? The Federalization of Intercountry Adoption: It's Not as Scary as it Sounds*, 34 TULSA L.J. 109, 113–14 (1998) (adding that even though an adoptive child is not technically a United States citizen yet, the INS will still permit the child to enter the United States).

243. See *id.* at 114 (addressing the INS considers the processing of orphan cases a priority).

244. See *International Adoptions*, *supra* note 241, at §II (referring to the United States Immigration and Nationality Act (INA) as presenting the legal steps necessary for a national from another country to obtain a visa). These steps are to be followed by all nationals, including children who have been adopted in their country of origin through an intercountry adoption, or children who are traveling to the United States to be adopted by American parents. *Id.*; see also *International Adoption-China*, *supra* note 88, § VI(C) (establishing adoptive parents who have had custody of an orphaned child abroad for less than two years must petition for a U.S. immigrant visa in order for the child to enter the United States).

245. See *International Adoptions*, *supra* note 241 (revealing the petition required by the INS has two different forms, depending on whether or not a specific child has been selected for adoption). If a specific child has been selected for the adoptive parents, then form I-600 is to be used, but if a particular child has not been selected prior to filing, then form I-600A should be completed. Once a child is selected, however, the adoptive parents must then complete the I-600 form even if an I-600A has previously been filed. *Id.*

246. See *International Adoption-China*, *supra* note 88, § IV(B) (declaring the petition can be filed with an INS office in Beijing or Guangzhou, or with a United States Consulate General). Although the adoptive parents have a choice of offices, the Consulate General in Guangzhou permits the fastest process. All petitions must be sent to Guangzhou for processing, thus a petition that is filed directly at this office will not have to spend time in transit between Guangzhou and other offices. *Id.*; see also *International Adoptions*, *supra* note 241, § III (listing the documents that must be presented to the consular's office in order to complete the petitioning process). The documents include the orphan petition, final adoption decree, child's birth certificate, child's passport from the country of origin, completed and signed medical examination report, required photos of the child, and visa

be present at the Consulate.²⁴⁷ The child then will undergo a medical examination by a doctor approved by the American Consulate.²⁴⁸ This examination provides adoptive parents with any medical problems the child may have and permits the child to receive any vaccinations required by the United States.²⁴⁹

Once the medical examination has been completed, the INS reviews the petition in order to determine the child's adoptability.²⁵⁰ Although the child may have been deemed an orphan under Chinese law, the U.S. INA provides its own definition that must be met.²⁵¹ According to the INA, a child is deemed an orphan if, "the child's parents have died or disappeared; if the parents have unconditionally abandoned or deserted the child; or if the child is separated or lost from them."²⁵² The child must also be under sixteen years of age.²⁵³ If the orphan condition is met, the INS will then assess whether the child was appropriately relinquished for adoption.²⁵⁴

application. *Id.*

247. *See International Adoption-China*, *supra* note 88, § IV(B) (addressing the need to have the child and both parents present when filing). If only one parent travels to China to adopt the child, the INS advises leaving the original petition with the spouse in the United States who is not traveling. After the adoption has been completed, the information can be faxed to the United States where the non-traveling adoptive parent can complete the petition, sign it, and send it to the adoptive parent in China via international courier. *Id.*

248. *See id.*

249. *See id.* (mentioning the child may have to be vaccinated during the medical exam, even if he or she has already received a vaccine while residing in the orphanage); *see also International Adoptions*, *supra* note 241 (stating the primary purpose of the medical exam is to determine any serious contagious diseases or disabilities that could be a reason for visa ineligibility). Even if the examination reveals any medical problems, a waiver can be issued by the INS which would permit an issuance of a visa. A visa could also be granted after the illness is treated and no longer contagious. If an illness is detected, the adoptive parent is notified and asked whether the immigration process should proceed. As this medical examination does not guarantee the discovery of every possible medical problem, the adoptive parents may desire to have the child examined by another doctor if they are concerned. *Id.*

250. *See International Adoptions*, *supra* note 241, § III (commenting the Consulate is concerned about "1) the identity of the child, 2) the child's status as an 'orphan' as defined by the INA, and 3) that the release by the sole surviving parent, if necessary, is 'irrevocable and in writing'"); *see also* Richard R. Carlson, *Transnational Adoption of Children*, 23 TULSA L.J. 317, 347 (1988) (advising the determination of the adoptability of the child is the most frequently cited reason for denying an adoption petition).

251. *See International Adoption-China*, *supra* note 88, at §III(A) (mentioning the U.S. definition of orphan tends to be broader than other countries' definitions).

252. *Id.*; *see also* Bartholet, *supra* note 103, at 187-88 (admonishing the definition is restrictive as children may not qualify for adoption simply because they may have two living parents, even if the only proof of the father's existence is his name on the birth certificate). Also, a child whose parents are still alive but are unable to provide appropriate care, will not be permitted to be adopted under this definition. *Id.*; *see also* Carlson, *supra* note 250, at 348 (reflecting the history behind the rule that a child with two parents cannot qualify as orphaned is the idea that lawmakers felt only a single parent could be vindicated for releasing a child for adoption).

253. *See* Carlson, *supra* note 250, at 347-48 (adding the child must be orphaned, abandoned, or separated from his or her parents). The child may also be adopted if the birth parents are unable to provide proper care for the child and they have relinquished the child in writing. *Id.*

254. *See International Adoption*, *supra* note 241 at § II(B)(3) (proposing the child's eligibility for adoption is contingent on whether the consent of the birth parent is genuine or whether consent does not need to be given because of abandonment of the child or cessation of parental rights).

The parents have duly relinquished the child if their consent is voluntary, knowing, and without fraud.²⁵⁵ The parents can relinquish their rights either by voluntary agreement, by death of the parents, or by formal decree of a judicial proceeding in the foreign country.²⁵⁶ The release of parental rights must be written and irrevocable.²⁵⁷ Once a child is given to the Children's Welfare Institute, the U.S. relinquishment condition is satisfied.²⁵⁸ Satisfactory proof of proper relinquishment completes the assessment of the child's adoptability and turns the attention of the INS to the eligibility of the prospective adoptive parents.²⁵⁹

Under federal law, at least one prospective adoptive parent must be a U.S. citizen in order to adopt a child from another country.²⁶⁰ The INS also considers the report of a home study that has been completed in the prospective parents' state of residence.²⁶¹ The home study is an assessment of the financial, physical, mental, and moral eligibility of the parents for adoption.²⁶² The goal is not to assess the cleanliness of the house, rather it is to determine whether the child will be entering a safe and nurturing home.²⁶³ It also provides information about how the adoptive parents plan to integrate the new child into their life.²⁶⁴ When the home study is complete, the person preparing the report must approve the parents for adoption and

255. *See id.* (relaying consent must have been gained by fair practices and cannot offend the public policy of the receiving state).

256. *See* Gordon, *supra* note 71, at 148 (completing the adoption before leaving China fulfills the relinquishment requirement).

257. *See* Carlson, *supra* note 250, at 349 (advising that U.S. state laws often are much stricter than the federal standards of relinquishment).

258. *See* Gordon, *supra* note 71, at 148 (mentioning only children in orphanages can be adopted, thus parents meet the condition of voluntary surrender when they place their child in the Children's Welfare Institute).

259. *See* Bisignaro, *supra* note 118, at 131 (presenting the goal of reviewing the adoptive parents' eligibility through a home study assures the child's best interest is met and the parents are financially capable of rearing a child).

260. *See* Gordon, *supra* note 71, at 147 (presenting the condition if an adoptive parent is single, he or she must be at least twenty five years of age and a United States citizen).

261. *See* Gold, *supra* note 242, at 114 (requiring the state of residence to either designate a state agency or a licensed outside agency to conduct a home study); *see also* Carlson, *supra* note 250, at 346 (confirming that although some states may not require a home study, federal regulations do). The state court may choose not to accept the conclusions of the federally mandated home study as they are not binding on the state. *Id.*

262. *See* Carlson, *supra* note 250, at 346; *see also* National Adoption Information Clearinghouse, *supra* note 148 (arguing the home study is a written report offered by a social worker who has conversed with the adoptive parents over a period of about three to six months). The report includes information about the applicant's personal and family history, influential people in the applicant's life, marriage and family relations, reasons for adopting, goals for the child, style of parenting, medical history of the applicant, degree of education, place of employment, amount of finances, references who can be contacted, criminal background check, and suggestions from the social worker. *Id.*

263. *See* National Adoption Information Clearinghouse, *supra* note 148, at Interviews (mentioning the social worker wants to note the child's bedroom and safety precautions such as functional smoke alarms and an emergency evacuation plan).

264. *See id.* (stating a home that is too perfect may create an impression that it is not suitable for children and the parents may have difficulty adapting to the clutter children create).

submit a certified approval statement to the INS.²⁶⁵ Upon approval of the adoptability of the child and the eligibility of the parents, the INS will issue a visa which permits the child to enter the United States.²⁶⁶

2. State Law

Even though the child was adopted in China and was permitted to enter the United States on a visa, a state court does not have to honor a foreign adoption decree.²⁶⁷ Thus, adoption practitioners advise the child be re-adopted in his or her state of residence in the United States.²⁶⁸ In order to receive a U.S. adoption decree, the adoptive parents must satisfy state adoption requirements.²⁶⁹ Although each state establishes its own adoption standards, there are two general rules that all

265. See Gold, *supra* note 242, at 114 (proposing the home study report also presents an advised counseling schedule to take place both before and after the adoption).

266. See *International Adoption-China*, *supra* note 88, § III(B) (defining there are two different visas the INS can issue). An IR-3 visa is issued to a child if an adoption was completed in the foreign country and the parents complied with all INS and any state pre-adoption requirements. If the adoptive parents have failed to meet INS or state standards, an IR-4 visa will be issued. *Id.*

267. See *International Adoption*, *supra* note 132, § V (revealing the adoptive status of a child can be contested in any state court, unless an adoption judgment is registered with a state in the United States); see also Bartholet, *supra* note 103, at 189 "A foreign adoption decree is not entitled to the same 'full faith and credit' accorded a decree issued by courts within the United States." Adoption in the United States is required for a child who has not been issued a foreign adoption decree and is suggested even if the child has been granted foreign adoption status. The U.S. adoption provides the child with the legal rights of an adoptee. *Id.*; see also Stephanie Zeppa, Note, "Let Me In, Immigration Man": An Overview of Intercountry Adoption and the Role of the Immigration and Nationality Act, 22 HASTINGS INT'L & COMP. L. REV. 161, 176 (1998) (agreeing the federal government may have determined the child was adoptable and the parents satisfied their requirements, but state courts have the power to review the issues on their own). Further, determinations at the federal level do not impact the conclusions the state courts can reach. *Id.*

268. See *International Adoption*, *supra* note 241, § V (noting there are some instances where re-adoption of the child is mandatory). If the adoptive parent did not see the child before the adoption was granted abroad, the adoptive parents must complete the adoption process again in the U.S.. If a married couple is seeking to adopt and only one adoptive parent is able to see the child abroad, the INS will not consider the child to be adopted abroad, even if a foreign adoption decree was issued. *Id.*; see also *International Adoption-China*, *supra* note 88, § V (commenting China requires at least one of the adoptive parents to travel to China to adopt the child, so it is unlikely re-adoption would ever be mandatory in the case of a single parent adopting a child); see also Zeppa, *supra* note 267, at 176-77 (affirming the need to readopt the child in the U.S. state court in order to confirm the child's full rights under the law of the United States).

269. See Bartholet, *supra* note 103, at 189 (addressing the issue that foreign adoption decrees are not acknowledged by some of the states; therefore, the state adoption process must be followed); see also Zeppa, *supra* note 267, at 117 (estimating that fewer than two percent of all foreign adoptions are disapproved by state courts); see also Liu, *supra* note 233, at 208-09 (suggesting state courts usually do not overturn a foreign adoption, because the child has already been adopted abroad and has been permitted to travel to the United States). The federal immigration laws and the standards established by the child's birth country have already been met. The author goes on to reveal that about half of the states recognize foreign adoption decrees as binding on the state. These states include Alaska, Arkansas, Colorado, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Maine, Massachusetts, Missouri, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, and Vermont. *Id.*

states follow.²⁷⁰ The basic principles are that the birth parents' rights must be properly dissolved in order to consider the child adoptable and the adoptive parents must be suitable to adopt a child.²⁷¹ As with federal law, the U.S. state courts consider termination of the birth parents' rights proper if it occurs in one of three ways: relinquishment of rights by the birth parents, death of the birth parents, or severance of the rights by a judicial decree.²⁷²

The U.S. state will also review the adoptive parents' eligibility by reviewing the home study report conducted in conformity with the federal requirements.²⁷³ The home study will reveal whether the adoptive parents provide an adequate living environment for the adoptive child.²⁷⁴ The judge may postpone the issuance of an adoption decree until a home study report is submitted to the court approving the suitability of the adoptive family to the child.²⁷⁵ Once the judge is satisfied that the child has been appropriately relinquished by the birth parents and the adoptive family is eligible to adopt, an adoption decree will be entered, thus completing the entire international adoption process.²⁷⁶

270. See Liu, *supra* note 233, at 208 (revealing some states do not even have international adoption procedures).

271. See *id.* (specifying there is also one primary issue the state must consider prior to issuing an adoption decree). The issue is that a child can only be adopted if the birth parents' rights were properly relinquished. *Id.*

272. See *id.* at 209; see also *supra* note 254–59 and accompanying text (defining the federal requirements of relinquishment by the birth parents); see also Carlson, *supra* note 250, at 356 (cautioning that a birth parent has the right to contest the validity of the supposed termination of parental rights). Although a challenge is possible, it is uncommon as birth parents often do not have the finances or knowledge available to engage in a timely opposition to an adoption in a foreign country. *Id.*

273. See Gordon, *supra* note 71, at 149 (proclaiming state court judges give great deference to the suggestions of the social worker who conducted the home study, as the social worker is able to visit the adoptive parents' home and assess their mental stability and purpose for adopting); see also *supra* notes 261–265 and accompanying text.

274. See Gold, *supra* note 242, at 116–17 (presenting the possibility of another home study being conducted by the state): The purpose of the subsequent home study is to assess the relationship between the prospective parents and the child. The problem with this second home study could potentially lead to a state court rejecting an adoption petition based on the subjective findings of a social worker. *Id.*

275. See *id.* (addressing the state wants to protect the “best interests of the child” prior to administering an irreversible adoption decree). However, postponing the adoption proceedings can also adversely affect the psychological state of the adoptee and the adoptive parents. The child has already been permitted to enter the United States and reside with the adoptive family. Prohibiting an adoption would break strong emotional ties that have already developed in the “de facto” family. *Id.*

276. See Liu, *supra* note 233 (conditioning the completion of the international adoption on the issuance of a final judgment by the state judge).

IV. CAN CHINA COMPLY WITH ITS NEW ADOPTION LAWS AND THE HAGUE CONVENTION?

A. Do China's Amendments Achieve the Proposed Goals?

The greatest difficulty encountered in locating homes in China for children in orphanages has been the government's population control policy.²⁷⁷ Speculation has centered around the idea of whether relaxation of the OCP would significantly decrease the number of infants abandoned by Chinese families, consequently reducing the number of children residing in orphanages.²⁷⁸ As China realized relaxation of the OCP alone would not relieve the overcrowded conditions in the orphanages, the government amended the Adoption Law.²⁷⁹ Without removing the OCP, the Adoption Law revisions cannot measure up to the goals of the Chinese government.²⁸⁰

The first amendment allows parents who have children to adopt an abandoned child.²⁸¹ The Vice Minister of Civil Affairs in China suggested this amendment would enable children to leave the overcrowded conditions of the welfare institutions for a warm family environment.²⁸² The ultimate hope was that the amendment would enable more adoptions by Chinese families, rather than by international couples.²⁸³ With the OCP in place, however, only Chinese couples who are unable to conceive will be able to adopt.²⁸⁴ This notion is reaffirmed even in the recent amendments as Article 3 states, "[a]doption shall not contravene laws and

277. See Johnson, *supra* note 52, at 503 (revealing the Chinese culture has a positive view of adoption of non-relative children). Some couples have even continued to adopt children in the face of governmental sanctions. *Id.* Subsequently, China is quite different from other countries such as India and Korea where the government has difficulty locating families within the country to adopt the homeless children. The author, therefore, infers that the policy of the Chinese government is the greatest hurdle to locating adoptive families in China. *Id.*

278. See *id.* (proposing the relaxation of adoption requirements would also permit many, if not all, infants already in orphanages to locate a home).

279. See *China Eases One-Child Policy*, *supra* note 4 (discussing the relationship between the OCP and the number of children in Chinese orphanages). If the OCP is relaxed and the Adoption Law is revised, the overcrowded orphanage environment could improve over the next few years. *Id.*

280. See *infra* note 285 and accompanying text (requiring compliance with the government's family planning policies, even when participating in an adoption).

281. See Cecere, *supra* note 195 and accompanying text (describing the prior law and the recent amendments for adoptive couples with children).

282. See *supra* note 197 and accompanying text; see also Kwan, *supra* note 63 (criticizing the Welfare Institutions as inappropriate places to raise a child the conditions are inadequate to encourage the healthy growth and nurturing of the child). The appropriate requirements for rearing a child can only be found in a family home. *Id.*

283. See Farley, *supra* note 183 (acknowledging China is a large supplier of infants for couples adopting from the United States). With the change in the adoption law, though, the goal is to promote more adoptions within China rather than abroad. *Id.*

284. See Johnson, *supra* note 52, at 489 (relating the birth family policy prohibits couples who are not childless to adopt another child).

regulations on family planning.”²⁸⁵ As long as the OCP remains in full force, the more than 100,000 children in orphanages will not encounter the warmth of a family as easily as the Chinese government had hoped.²⁸⁶

The Chinese government envisioned promoting the interests of children awaiting adoption when it approved the amendment which lowered the age of the adopter from thirty-five to thirty.²⁸⁷ Although adoptive parents under the age of thirty-five could previously adopt an orphaned or special needs child, the new amendment does not permit any one under thirty to adopt, even if he or she is willing to adopt a special needs child.²⁸⁸ The government’s Adoption Law revisions have further reduced the likelihood of parents selecting special needs children, by expanding the number of available healthy children.²⁸⁹ Without any provisions in the amendment requiring adopters to take a special needs child, these children will continue to reside in orphanages.²⁹⁰ Therefore, the Chinese government, under the

285. See ADOPTION LAW OF THE PRC (1998), *supra* note 186; see also Schoof, *Adopting Overseas: China Foreign Adoption Soaring*, *supra* note 30 (affirming the inability of a Chinese family to get around the government’s family planning policy). “[T]he revision specifically forbids Chinese couples from giving a child up for adoption and having another, as a way of getting around family size limits.” *Id.*; see also *China Opens Doors*, *supra* note 2 (speculating whether the Adoption Law revisions could undermine the government’s enforcement of the OCP); see also Johnson, *supra* note 52, at 492 (mentioning Chinese parents who adopt a child when they are not childless face the same punishments as a couple who violated the OCP by having a subsequent birth child).

286. See Kwan, *supra* note 63 (relating the family planning experts were apprehensive that the amendments to the adoption law would not be stringent enough). As a result, the revisions would promote abandonment of undesired children and would endanger the OCP. *Id.*; see also Johnson, *supra* note 52, at 471 (contending the Chinese government estimates that about 100,000 to 160,000 children are abandoned each year). This estimate is likely to be conservative, however, as the data of the number of abandoned children is gathered from state run facilities. Not all abandoned children end up in state care. One Chinese publication proposed that perhaps only about twenty percent of children who are abandoned are cared for by the government. *Id.*

287. See Kwan, *supra* note 63 (stating the change in the adoption law would also ensure the safety of the child be considered a top priority).

288. See *supra* note 194 and accompanying text.

289. See Cecere, *Recent Amendments of China’s Adoption Law*, *supra* note 185 (noting that under the Adoption Law prior to the amendments, adoptive parents who had not attained the age of thirty five were still permitted to adopt an orphaned or special needs child); see *supra* note 151 and 167 and accompanying text (revealing parents who were only permitted to adopt orphaned or special needs children frequently had to accept a special needs child as very few children ever qualified as an orphan); see also *supra* notes 216–18, 279 and accompanying text (proposing the amendments permit adoptive parents over thirty to adopt abandoned children). Hundreds of thousands of children are abandoned each year. *Id.* By lowering the age to thirty, expanding the pool of adoptive children to include those who have been abandoned, and eliminating the possibility of adoptive parents who do not meet the adoption requirement to adopt special needs children, it is likely the special needs child will be passed up for a healthier infant.

290. See Johnson, *supra* note 52, at 505 (proclaiming the new adoption amendments will create disparity in the adoption of children, as disabled children are difficult to place with prospective adoptive families). Yet, it is also proposed that if the adoption amendments were implemented as intended, many healthy children would be permitted to reside with nurturing families. The Chinese orphanages would then be able to focus on the interests of the special needs children and increase their quality of life. *Id.*

new amendments, will only protect the interests of abandoned and orphaned children, not special needs children.²⁹¹

Finally, the amendments permit the adoption to be effective on the date it is registered, rather than on the date it is notarized.²⁹² China plans to reduce the expenses, confusion and stress of adoptions through unified adoption procedures that eliminate the notarization step.²⁹³ The problem, however, becomes evident in the United States, since the best way to go through the international adoption process is to obtain a court order and a notarization.²⁹⁴ Adoptive parents from the United States who are not aware of this difference may risk losing a child with whom they have already become attached.²⁹⁵ The relinquishment becomes even more difficult as the determination of whether the international adoption is valid does not occur until the state court reviews the adoption.²⁹⁶ Review by the state court takes place several months after the child has been permitted to immigrate to the United States and reside with the adoptive parents.²⁹⁷ Thus, the emotional pain the Chinese government planned to decrease may only be exacerbated under the new law.²⁹⁸

291. *See id.* (recognizing the amendments will promote the interests of children by permitting them to be raised in warm homes, but special needs children will continue to dwell in state run facilities).

292. *See* Adoption Law of the PRC (1998), *supra* note 186, art. 15.

293. *See* Interview by China Society News Correspondents with Yang, Yanyin, *supra* note 177 (projecting the Adoption Law has been perfected by this change); *see also* Sheehan, *supra* note 8 (calculating adoption costs for an international adoption with China). Prior to traveling to China, an adoptive parent can expect to spend about US\$6,000 in the United States to cover document preparation, legal counsel, home study, and post-adoption services. Once in China, US\$7,000 of fees will be paid to the orphanage, to various Chinese services, and to have documents translated. If the adoption progresses smoothly and the adoptive parents only need to remain in China for twelve days, the lodging and airfare will cost about US\$6,500. By eliminating a previously required step of notarization which lengthened the adoptive parents' stay in China, the hotel costs will be reduced. It would also reduce the adoptive parents' exposure to culture shock they may experience in a foreign country. China can be intimidating to U.S. adoptive parents who are not accustomed to the noisy and crowded conditions. *Id.*

294. *See supra* note 225 (commenting although the international adoption has been authorized in China, it will need to be approved by the U.S. government).

295. *See Lee, supra* note 75 (relating one adoptive couple's story of bonding that occurs as early as the first minute the child is placed in their arms). The first evening in the hotel, the parents begin developing a relationship as they take the child in the hotel swimming pool. *Id.*

296. *See supra* note 262 and accompanying text (agreeing the state court has the responsibility of reviewing the international adoption decree and does not have to grant the decree "full faith and credit").

297. *See* Carlson, *supra* note 162, at 250 (affirming the United States adoption process at the state level does not occur immediately after the child immigrates to the U.S.). While the adoptive parents and prospective child wait for finalization of the adoption, they build a relationship which is as firm as a birth family. *Id.* If the child is then taken away from the adoptive family because the adoption fails, both the child and parents would experience great emotional distress. *Id.*

298. *See supra* note 227 and accompanying text (addressing the change will centralize the adoption process in one location); *see also* Bartholet, *supra* note 103, at 188. "Adoptive parents must therefore go through the entire process of becoming the child's emotional and legal parents without knowing for sure whether at the end they will be permitted to bring the child home with them to the United States." *Id.*

B. Can China's One-Child Policy Measure Up to the "Best Interests of the Child" Requirement Under the Hague Convention?

The Convention benefits contracting states by offering a unified international adoption process which will eliminate the repetitious and sometimes conflicting procedures participating states encounter.²⁹⁹ The Convention also safeguards the children by putting their best interests at the forefront of the adoption process.³⁰⁰ To accomplish the objectives of the Convention, states must become a party through ratification.³⁰¹ Although China is one of the largest participants engaged in international adoption, it has yet to ratify the Convention.³⁰² Accordingly, China may express support for many international agreements that aim to promote and improve the interests of children, but China is not required to comply with the established standards.³⁰³ If China seeks to unify the adoption process and promote the interest of its children, China must become a party to the Convention.³⁰⁴

Ratification alone, however, will not achieve the goals of the Convention, because China still faces the consequences of its OCP. To fully act in accordance with the "best interests of the child" during the adoption process, it seems as though China must relax the OCP.³⁰⁵ This would allow a child to remain in his or her birth family or permit in-country adoptions before allowing international adoptions.³⁰⁶

The Convention provides the minimum requirements with which a contracting state must comply when participating in international adoptions.³⁰⁷ While states are permitted to expand the established laws, they are not allowed to detract from these basic standards.³⁰⁸ Under this contention, the Convention's principle aim of protecting the best interests and fundamental rights of the child are not to be

299. See Singer, *supra* note 35, at 309 (noting the importance of a unified adoption system and the existence of overlapping laws within the sending and receiving states).

300. See Bartholet, *supra* note 103, at 208 (acknowledging the guiding principle in international adoptions should be the interest of the child in being placed in and reared by a loving, nurturing family).

301. See Singer, *supra* note 35, at 305 (revealing that problems will exist as long as some states become a party to the Convention while others do not).

302. See *supra* note 100 (listing the countries who have ratified the Convention).

303. See Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 213 (proposing China's support for international policies that strive to safeguard children).

304. See Singer, *supra* note 35, at 306 (advocating China forces other countries to adopt its children as it is unable to encourage in-country adoptions due to the OCP).

305. See *supra*, notes 101-06 (discussing the criteria a country must consider in order to determine the "best interests of the child"). One of the goals is to permit the child to remain in his or her birth family, as this is thought to be the best placement for the child. *Id.*

306. See *id.* (marking domestic adoption of the child is considered the best and must come prior to an international adoption placement).

307. See Bisignaro, *supra* note 118, at 140 (mentioning the objective of the Convention is not to standardize international adoption laws, but to provide basic guidelines for the participating states to follow).

308. See Romano, *supra* note 102, at 574 (noting contracting states must at least integrate the minimum requirements into the international adoption process).

compromised.³⁰⁹ States must take care to accommodate the "best interests of the child" in remaining with his or her birth family.³¹⁰

Unfortunately, China's OCP does not enable hundreds of thousands of children to reside with their birth families, as parents are punished for over-quota births.³¹¹ The punishments are compelling enough to lead parents to comply with the policy or to abandon their children in order to avoid discipline.³¹² In effect, the government places compliance with the OCP above the interest of the child in residing with his or her family.³¹³ Therefore, by retaining the OCP in its current form, China does not appear able to satisfy the Convention's primary objective.³¹⁴

The Convention also strives to meet the "best interests of the child" by promoting in-country adoption before relinquishing the child to an international adoptive family.³¹⁵ The sending state must make reasonable attempts to locate a

309. See *id.* at 574 (relating under this provision, the focus should be on providing the child with a home that is best suitable to promote his or her social, educational, and emotional development); see also Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 213 (confirming the interests of the child are the top priority in the adoption process).

310. See Hague Convention preamble, *supra* note 90 (revealing the ability of the child to remain with the birth parents is top priority).

311. See *supra* note 281 (estimating the number of children abandoned each year); see also *China: Population Control Programs*, *supra* note 60 (commenting women who had more than one pregnancy were urged to have an abortion and to use contraception in the future). The government also employed incentives to compel parents to adhere to the OCP. For instance, a couple living in the city who only had one child were given preferential treatment in state allocated housing. Although Chinese officials acknowledged that psychological pressure and physical coercion have been used in implementing the OCP, they contend that these incidents are isolated. They did, however, admit that using persuasive and economic tactics were permitted under the government's plan. *Id.* But see Tom Hilditch, *Chinese Cultural Studies: A Holocaust of Little Girls* (visited Jan. 15, 2000) <<http://acc6.its.brooklyn.cuny.edu/~phalsall/texts/c-wnhol.html>> (reporting "coerced abortions, sometimes just days before the baby is due, are now commonplace, as are reports of enforced sterilization and of hospitals fatally injecting second babies shortly after their birth").

312. See Renee Schoof, *Abandonment of Baby Girls on Rise in China*, *Study Says*, *DESERET NEWS*, Apr. 21, 1999 [hereinafter Schoof, *Abandonment of Baby Girls on Rise in China*] (expressing abandonment is a consequence of the OCP). According to the Minister of Family Planning, Peng Peiyun, there has been a great increase in the rate of abandonment of children to welfare institutions between 1988 and 1998 due to the OCP. *Id.*

313. See Sly, *China's Voluntary One-Child Policy*, *supra* note 60 (describing other forms of coercion used by the government include ruining family homes, taking away employment, and denying government services). Women have also been forced to use birth control. *Id.*; see also Schoof, *Adopting Overseas: China Foreign Adoption Soaring*, *supra* note ? (advising the strict enforcement of the OCP in the 1980s lead to serious abandonment problems).

314. See Singer, *supra* note 35, at 306-07 (admonishing the OCP as being in direct conflict with the Convention's emphasis on promoting the child's right to be reared by the birth parents).

315. See Hague Convention preamble, *supra* note 90 (suggesting international adoptions should occur only after a search has been made for a nurturing family within the child's country of origin); see also Cecere, *THE CHILDREN CAN'T WAIT*, *supra* note 24, at 140 (remarking this provision of the preamble is intended to keep sending states from feeling ashamed of permitting their children to be adopted internationally). These countries would not feel as though they have failed by allowing international adoption, as long as a diligent search has been made for a suitable family within the country of origin. *Id.*

suitable, adoptive home within the country prior to looking for a family abroad.³¹⁶ China admitted a desire to promote domestic adoptions through the implementation of more lenient adoption requirements and exceptions to the OCP.³¹⁷ For a brief time, the Chinese government, through its amendments, seemed to indicate it would completely phase out the OCP over a period of a few years.³¹⁸ This would permit increased domestic adoption goals to become a reality.³¹⁹

Chinese officials, however, have since abandoned the relaxation of the OCP, making it difficult to encourage in-country adoptions.³²⁰ Under the OCP, adoptions of a second child are punished just as rigorously as the birth of a second child.³²¹ The use of these punishments dissuade couples from adopting children as they are unable to pay the fines.³²² By enforcing the OCP and penalties for noncompliance, China is unable to fulfill the Convention's requirement of locating a suitable in-country family for the child prior to searching for an international adoptive home.³²³

316. See Bartholet, *supra* note 103, at 193 (adding an international adoption is preferred over foster or institutional care offered by the child's country of origin).

317. See *China Relaxes its Policies on Children*, *supra* note 183 (confirming the need to promote adoptions by Chinese nationals). The government also proposed the Adoption Law changes would be a means to "crackdown" on intercountry adoptions. *Id.*; see also *infra* discussion Part III.B.2 (discussing the amendments to the adoption law as presumably easing the adoption requirements, but reinforcing the need to comply with any family planning policies the government has in place).

318. See *China Eases One-Child Policy*, *supra* note 4 (revealing China's intent to eliminate the OCP by 2003 and permit Chinese families who are not childless to adopt).

319. See Schoof, *Abandonment of Baby Girls on Rise in China*, *supra* note 312 (relating the Adoption Law changes increase the number of Chinese parents permitted to adopt). These revisions would enable more children in orphanages to reside in nurturing families within China. *Id.*

320. See *China Vows 'Historical Leap' in Birth Control Measures*, *supra* note 55 (revealing China will not relax the OCP as it had once stated it would). A conflict exists between the OCP and in-country adoptions, as the Adoption Law Amendments permit couples who are not childless to adopt children, but at the same time the amendments do not allow couples to violate the OCP.

321. See Johnson, *supra* note 52, at 492 (admitting the adoption of a child by a couple who is not childless is treated as an over quota birth and is subject to the same penalties as if the child had been born in the adoptive family).

322. See Penny Kane & Ching Y Choi, *China's One Child Family Policy*, 319 BRIT. MED. J. 992 (1999) (providing couples who had more than one child faced economic sanctions for each additional child); see also Vonk, *supra* note 27, at 497 (presenting the fines couples face if they have more than one child). Couples can be fined twenty percent of their income if a second child is discovered, but can recover this money if they agree to an abortion. The government further penalizes the couple by withholding grain and land allowances. *Id.* The problem for Chinese couples who adopt is that if the second child is discovered, their only way around the penalties is to abandon the child. For a child who may have already been abandoned to a Children's Welfare Institution, a subsequent abandonment can be even more emotionally damaging as the child is likely to be older and perhaps able to realize what is occurring at the time of the second abandonment.

323. See *id.* (presenting the penalties implemented by the government are a means of deterring couples from violating the OCP); see also *supra* note 302 and accompanying text (addressing the requirement under the Convention of promoting in-country adoption).

V. CONCLUSION

Although Chinese officials intended the OCP to be a positive method of curbing the population growth, it has caused many Chinese families to abandon their babies in order to avoid government punishments. This resulted in overcrowded conditions in orphanages. The Chinese government, through its Adoption Law Amendments recognized the need for these children to live in loving homes. Although China desires to promote domestic adoptions through more favorable laws, it still retains the OCP and does not authorize adoptions that do not comply with the policy. Thus, as applied, the amendments cannot relieve the conditions of the crowded orphanages and allow more children to find domestic adoptive families as China had hoped.

If China will alter its OCP and in effect change the Adoption Law Amendments, it would be honoring the requirements of the Hague Convention. By acknowledging these requirements, adoptive parents from the United States would be reassured that their adoptions were in the "best interests of the child." Furthermore, the repetitive adoption process that currently exists between China and the United States could be eliminated through relaxation of the OCP, since the United States would be reassured the international adoption process was favoring the child's interests, and not the government's family planning policies.

Changes in the OCP and the Adoption Law Amendments would also enable more domestic adoptions as couples who are not childless would be permitted to adopt children residing in orphanages. Whether the children are in orphanages or in loving homes within China, they still require food and shelter from China's resources in order to survive. In light of this realization, permitting domestic adoptions does not seem to create any added strain on China. Rather, domestic adoptions would promote the goals of China in locating nurturing families for children, demonstrating true compassion to children without parents, and keeping children within the country.