

David Smolin: The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals

Pages 407 to 409

Quote:

1. The CRC and Intercountry Adoption The CRC appears to take a very limited view of when intercountry adoption is appropriate. The critical text requires that state parties “[r]ecognize that inter-country adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin.”

The CRC’s preference for in-country over intercountry adoption is compatible with the Hague Convention. However, the CRC also specifically prefers in-country foster care over intercountry adoption, and initially appears to favor in-country institutional care over intercountry adoption. These latter positions are more controversial, and appear to conflict with the Hague Convention.

It is notable, in this regard, that the United Nations Children’s Fund (“UNICEF”) recently issued a public position on intercountry adoption which appears to favor intercountry adoption over incountry institutional care.²⁴ The statement cites both the CRC and the Hague Convention with approval. In regard to institutional care, however, UNICEF states: For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care, which should be used only as a last resort and as a temporary measure. Inter-country adoption is one of a range of care options which may be open to children, and for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution. In each case, the best interests of the individual child must be the guiding principle in making a decision regarding adoption.

One could argue that, under the language of the CRC, institutional care is not a “suitable manner” for the permanent care of a child. Therefore, a plausible interpretation of the CRC is that it prefers intercountry adoption to in-country institutional care. By such interpretations, the international community is apparently working toward a harmonization of apparent conflicts between the CRC and the Hague Convention.

Quote end.

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