

## Bombs and Babies: The Intercountry Adoption of Afghanistan's and Iraq's War Orphans

by  
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### I. Introduction: The Children's War

Battle-hardened soldiers were speechless as they peered into the dirty room.<sup>1</sup> At first they appeared to be inside a primitive tomb filled with two-dozen lifeless bodies.<sup>2</sup> As the soldiers' eyes adjusted to the dim light, the emaciated bodies of twenty-four children chained to their cribs came into focus.<sup>3</sup> The soldiers were inside an Iraqi orphanage for special needs children.<sup>4</sup> The children, all boys, ranged in age from three to sixteen, were scarcely clothed, covered in feces and insects, and starved and neglected.<sup>5</sup> In a kitchen just beyond the reach of the boys' chains, the soldiers found shelves fully stocked with clothing, food, and other supplies.<sup>6</sup> The soldiers came too late for some of the boys who had already died from the deplorable conditions.<sup>7</sup> The surviving boys were moved to another orphanage in Baghdad which, although cleaner and better attended, is far from a happy home.<sup>8</sup>

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<sup>1</sup> See Christine Lagorio, *Iraqi Orphanage Nightmare*, CBS NEWS, June 18, 2007, <http://www.cbsnews.com/stories/2007/06/18/eveningnews/main2946007.shtml>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See *Iraq's Orphans Left to the Kindness of Strangers*, BIO-MEDICINE, June 29, 2009, <http://www.bio-medicine.org/medicine-news/Iraqs-Orphans-Left-to-the-Kindness-of-Strangers-22618-3/>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Fourteen hundred miles west of Iraq, in Kabul Afghanistan, where suicide bombings and kidnappings are an everyday occurrence, the streets are filled with orphans.<sup>9</sup> More than 9,000 street children live in poverty, struggling to find food and work on the streets of Kabul.<sup>10</sup> Often, these children work at opium farms under the supervision of drug lords.<sup>11</sup> Western aid to these orphans has met very little success.<sup>12</sup> Although the International Committee of the Red Cross requested massive amounts of emergency aid for the child orphans and children of Afghanistan, western officials feared that such a program would draw attention to the failures of the past several years; thus, Afghanistan continues to scrape for funding to begin its promised reconstruction.<sup>13</sup> The money that does manage to enter the country seems quickly shuffled to corrupt officials, in the forms of high salaries, luxury cars, and houses.<sup>14</sup> Without support from Afghan leaders and with continuing armed conflict, more of Afghanistan's children join the ranks of the abandoned war orphans daily.

This comment recognizes the ever-increasing human rights crisis facing Afghanistan's and Iraq's war orphans and explores the potential intercountry adoption of these children. After introducing the horrid conditions of Afghanistan's and Iraq's children in Part I, Part II continues with a brief discussion of the war histories of Afghanistan and Iraq and how history has shaped the current orphan crisis.<sup>15</sup> Part II includes alarming statistics regarding Afghanistan's and Iraq's war orphans.<sup>16</sup>

Part III examines the advent of Islamic Family Law and how Afghanistan's and Iraq's laws regarding familial matters have been affected by Islamic Shari'a Law.<sup>17</sup> Part III details adoption under Islamic Family Law and discusses the ramifications of the Quran on the practice.<sup>18</sup>

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<sup>9</sup> See J. Malcolm Garcia, *All the Country will be Shaking*, V.A. Q. REV., Winter 2008, at 74.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See, Garcia, *supra* note 9.

<sup>15</sup> See *infra* Part II.A-B.

<sup>16</sup> See *infra* Part II.C.

<sup>17</sup> See *infra* Part III.A-C.

<sup>18</sup> See *infra* Part III.D.

Part IV addresses the history of traditional intercountry adoption and various laws that have been enacted to regulate the practice, including the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.<sup>19</sup> Part IV further discusses how United States intercountry adoption procedures, namely those set forth in the Intercountry Adoption Act and the Immigration and Nationality Act, hinder adoption from Islamic countries practicing Shari'a Law.<sup>20</sup> Part IV concludes by suggesting potential changes the United States could make to current immigration laws that would facilitate the intercountry adoption of Afghanistan's and Iraq's war orphans.<sup>21</sup>

Part V continues the discussion of traditional intercountry adoption by examining the global response to Afghanistan's and Iraq's war orphan crisis and the various organizations that have been created in an attempt to remedy that situation.<sup>22</sup> Part V also discusses the successful adoption of an Iraqi orphan by a United States citizen and analyzes the possible steps a United States citizen can take to adopt an Afghan or Iraqi war orphan.<sup>23</sup> This analysis observes that unless the United States changes its approach to intercountry adoption, Afghanistan's and Iraq's war orphans will only be able to be adopted via lengthy and confusing non-traditional methods, namely, via humanitarian parole.<sup>24</sup>

This comment concludes by recognizing that the international community has the power to change the future of these orphaned children. It recognizes that amending United States immigration law may not remedy the crisis, and it urges humanitarian groups to get involved to help Afghani and Iraqi orphans.

## II. Orphans of War

According to the United Nations Children's Fund ("UNICEF"), there are 143 million orphans in the developing

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<sup>19</sup> See *infra* Part IV.A-B.

<sup>20</sup> See *infra* Part IV.C.

<sup>21</sup> See *infra* Part IV.D.

<sup>22</sup> See *infra* Part V.A.

<sup>23</sup> See *infra* Part V.B-C.

<sup>24</sup> See *infra* Part V.C.

world.<sup>25</sup> These children are orphaned for a variety of reasons, including natural disasters and disease.<sup>26</sup> Recently a new class of orphans has emerged: war orphans.<sup>27</sup> There are now an estimated twenty million children who have been forced to flee their homes due to armed conflict. More than two million children have died as a direct result of such conflict.<sup>28</sup> In addition, nearly six million children have been seriously injured, and over one million have been orphaned.<sup>29</sup> Both Afghanistan and Iraq suffer from violent histories of armed conflict and currently remain war-torn nations. As a result, the number of Afghan and Iraqi child orphans increases each and every day.

#### A. *A History of War: Afghanistan*

In 1979, the Soviet Union invaded Afghanistan.<sup>30</sup> As a result of that decade of conflict, over one million Afghans were killed and five million were forced to seek refuge in Pakistan and Iran.<sup>31</sup> Following the Soviet withdrawal, civil war ensued when the Mujahideen<sup>32</sup> divided into two separate factions both struggling for political power.<sup>33</sup> During this time of violent turmoil and political upheaval, the Afghan people turned to the Taliban, a fundamentalist Islamic group, who provided hope and prom-

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<sup>25</sup> See UNICEF, *The State of the World's Children 2006: Excluded and Invisible*, <http://www.unicef.org/sowc06/press/who.php> (last visited Feb. 4, 2010).

<sup>26</sup> See UNICEF, *Child Protection from Violence, Exploitation and Abuse: Children in Conflict and Emergencies*, [http://www.unicef.org/protection/index\\_armedconflict.html](http://www.unicef.org/protection/index_armedconflict.html) (last visited Feb. 4, 2010).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See ANTHONY ARNOLD, *AFGHANISTAN: THE SOVIET INVASION IN PERSPECTIVE* 85 (Hoover Press 1985).

<sup>31</sup> See MARTIN EWANS, *AFGHANISTAN: A SHORT HISTORY OF ITS PEOPLE AND POLITICS* 220 (HarperCollins 2002).

<sup>32</sup> The mujahideen are an Islamic fundamentalist group. During the Soviet-Afghan War, the mujahideen received western support, namely from the United States, to aid them in Soviet opposition. Following Soviet withdrawal, the mujahideen divided into two separate factions and a gruesome civil war ensued. See *Encyclopedia Britannica*, <http://www.britannica.com/> (search "mujahideen") (last visited Feb. 4, 2010).

<sup>33</sup> *Id.* at 247

ised change in a time of darkness and despair.<sup>34</sup> To the contrary, the Taliban introduced the Afghan people to radical insurgency, strict Islamic fundamentalism, and other, now highly publicized, atrocities.<sup>35</sup>

In 2001, following the September 11 terrorist attacks, the United States launched Operation Enduring Freedom which resulted in the invasion and occupation of Afghanistan.<sup>36</sup> The United States remains present in Afghanistan and is met with violent opposition on a daily basis. Afghanistan remains war torn and hope for the future is bleak.

#### B. *A History of War: Iraq*

Iraq's history, like that of Afghanistan's, is also full of war and turmoil. Both the Iran-Iraq war and the Gulf War resulted from Iraq's persistence to lay claim to its surrounding areas.<sup>37</sup> Iraq's invasion of Kuwait led not only to United States occupation, but also to severe economic sanctions that left the country impoverished.<sup>38</sup> According to often disputed United Nations ("U.N.") estimates, between 500,000 and 1.2 million children died during the decade of sanctions.<sup>39</sup> In 2003, the United States invaded Iraq in an attempt to thwart then-leader Saddam Hussein's alleged development of weapons of mass destruction.<sup>40</sup> As a result, Iraq remains marked by ever increasing insurgency and turmoil.

#### C. *Afghanistan's and Iraq's War Orphans*

The occupations of Afghanistan and Iraq have been marked by increased radical insurgency and a lack of proper reconstruction. As a result, thousands of military and civilian deaths have occurred. The countries' current armed conflicts, coupled with

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<sup>34</sup> See MEREDITH RUNION, *THE HISTORY OF AFGHANISTAN* 125 (Greenwood Press 2007).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> See PHEBE MARR, *THE MODERN HISTORY OF IRAQ* 109, 217 (Westview Press 2d ed. 2004).

<sup>38</sup> *Id.* at 281-82.

<sup>39</sup> See generally Amatzia Baram, *The Effect of Iraqi Sanctions: Statistical Pitfalls and Responsibility*, 54 *MIDDLE E. J.* 194 (Spring 2000).

<sup>40</sup> See MARR, *supra* note 37, at 261.

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decades of past violence, have led to a major, though often ignored, human-rights crisis in the two countries: hundreds of thousands of children have been orphaned and torn from their families.<sup>41</sup>

According to the Afghanistan Department of Orphans, there are nearly two million orphans in the country.<sup>42</sup> Even more discouraging, an estimated 8,000 underage soldiers were recruited by all fighting factions in Afghanistan, many of whom are believed to be orphans.<sup>43</sup> In addition, according to a report released by the Iraqi Ministry of Labor and Social Affairs on January 16, 2008, it is estimated that there are over five million orphans in Iraq, hundreds of thousands of whom live on the streets in major cities.<sup>44</sup>

In 2008, U.S. citizens adopted 17,438 international children.<sup>45</sup> The majority of these children were adopted from Africa and Asia with a lesser number of adoptions of children from South America.<sup>46</sup> The statistics are devoid of any information regarding adoption from the Middle East.<sup>47</sup> This is not an error, nor is it the result of an inability to gather reliable sources. Simply put, adoption is illegal in Middle Eastern countries that base their laws on Islamic Shari'a Law.<sup>48</sup>

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<sup>41</sup> See, The United States of Hope, Afghanistan Reference, <http://www.unitedstatesofhope.org/afghanistan.html> (last visited Feb. 4, 2010)[hereinafter United States of Hope]; See John Tirman, *Iraq's Shocking Human Toll: About 1 Million Killed, 4.5 Million Displaced, 1-2 Million Widows, 5 Million Orphans*, Global Policy Forum, Feb. 2, 2009, <http://www.globalpolicy.org/component/content/article/167/35716.html> (last visited Feb. 4, 2010).

<sup>42</sup> See United States of Hope, *supra* note 41.

<sup>43</sup> *Id.*

<sup>44</sup> See Tirman, *supra* note 41.

<sup>45</sup> See U.S. Department of State, Office of Children's Issues, Total Adoptions to the United States, [http://adoption.state.gov/news/total\\_chart.html](http://adoption.state.gov/news/total_chart.html) (last visited Feb. 4, 2010).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> See Joint Council on International Children's Services—Afghanistan & Iraq, Is it Possible to Adopt from Afghanistan and Iraq?, <http://www.jcics.org/Afghanistan.htm> (last visited Feb. 4, 2010)[hereinafter Joint Council].

### III. Islamic Shari'a Law and Its Effect on Family Law

There are over one billion Muslims throughout the world, and this number is continuously growing.<sup>49</sup> The highest concentration of Muslims is in the Middle East where the majority of the countries practice Islamic Shari'a Law.<sup>50</sup> Islamic Shari'a Law covers all realms of the law in these countries including family law matters such as marriage, divorce, maintenance, paternity, and adoption. Similar principles of Islamic family law do not apply in every Muslim country.<sup>51</sup> Theological, legal, and other differences among and even within Muslim sects produce variations in the practice and application of the law.<sup>52</sup> Despite this, "Islamic family law has become for most Muslims the symbol of their Islamic identity, the hard irreducible core of what it means to be a Muslim today;"<sup>53</sup> thus, Islamic Shari'a Law plays an extremely important role in the day-to-day lives of Muslim families.

#### A. Development of Islamic Family Law

Islamic Shari'a Law is drawn from the Quran.<sup>54</sup> It is said that around the year 610 the prophet Mohammed<sup>55</sup> first heard the word of God outside of Mecca, present day Kingdom of Saudi Arabia.<sup>56</sup> He shared his revelations with a group of devoted followers, and his revelations were recorded into what is now known as the Quran.<sup>57</sup> The Quran serves as the primary religious

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<sup>49</sup> See Islamic Family Law, <http://www.law.emory.edu/ifl/index2.html> Social/Cultural (follow "Social-Cultural" hyperlink; then follow "Middle East" hyperlink)(last visited Feb. 4, 2010)[hereinafter Islamic Family Law: Middle East].

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> See WILLIAM L. CLEVELAND, A HISTORY OF THE MODERN MIDDLE EAST 8-12 (Westview Press 3d ed. 2004).

<sup>55</sup> It is said that following Mohammed's retreat to a cave in the mountains surrounding Mecca, he received, at age 40, in the month of Ramadan his first revelation from God. Three years after this event Mohammed began publically preaching these revelations. See generally TOR ANDRAE, MOHAMMED: THE MAN AND HIS FAITH 31-53 (Dover Publications 2000).

<sup>56</sup> See CLEVELAND, *supra* note 54.

<sup>57</sup> *Id.*

and legal document in the Muslim world.<sup>58</sup> It must be noted that the Quran is not a legislative document, but rather “it includes various detailed pronouncements on proper conduct and social relations, including inheritance laws, marital relations, relations with non-Muslims, and punishments for crimes such as theft and adultery”;<sup>59</sup> therefore, the Quran directly impacts Islamic family law.

Islam provides more than a religious foundation to its followers; it also provides the foundation for political and social systems.<sup>60</sup> In pre-Islamic Arabia, which consisted of modern day Middle East, social bonds were determined by tribal affiliation.<sup>61</sup> With the coming of Mohammed, however, “Islam replaced this with a community whose membership was based upon a common faith rather than male blood ties; religious rather than tribal affiliation became the basis of Islamic society.”<sup>62</sup>

The change from kin-based patriarchal clans to Islamic life had a profound impact on family law.<sup>63</sup> In pre-Islamic Arabia, there was no single form of marriage and an absence of rules for the guardianship of children and the protection of women.<sup>64</sup> Essentially, the status of women in pre-Islamic Arabia was marked by contradiction.<sup>65</sup> For example, the honor of a family depended upon the honor of the females within the family; Arabic communities placed high value on honor.<sup>66</sup> Women could easily be dishonored and were thus considered to be a weak link in the family unit.<sup>67</sup> Such a notion gave rise to the gruesome custom of burying female infants alive to protect the family from vulnerability.<sup>68</sup> Women and children were considered and treated as chattel.<sup>69</sup>

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<sup>58</sup> *Id.*

<sup>59</sup> MEHRAN KAMRAVA, *THE MODERN MIDDLE EAST: A POLITICAL HISTORY SINCE THE FIRST WORLD WAR* 16 (University of California Press 2005).

<sup>60</sup> See Islamic Family Law: Middle East, *supra* note 46.

<sup>61</sup> See CLEVELAND, *supra* note 54, at 7.

<sup>62</sup> Islamic Family Law: Middle East, *supra* note 49.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> See MAHMOUD M. AYOUB, *ISLAM: FAITH AND HISTORY* 178 (Oneworld Publications 2004).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*



Further, like men, women could marry more than one spouse at a time which led to problems in establishing paternity.<sup>70</sup>

With the introduction of Islam, strict rules developed to promote morals and assure paternity.<sup>71</sup> One such rule was that women were no longer allowed to marry more than one man.<sup>72</sup> It was not until European colonialism in the nineteenth century that any challenges were raised to the basic rules laid out in the Quran regarding the rights and obligations of family members to one another.<sup>73</sup>

In the twentieth century, European colonists used the treatment of Muslim women as an explanation for the “backwardness” of the Middle East and as a justification for European colonization and influence.<sup>74</sup> The colonists began to pressure Islamic nations to make social, political, and cultural reforms encouraging the idea of a secular and nationalistic state.<sup>75</sup> This pressure for secularism was counterproductive and encouraged the formation of a strict Islamic movement that sought to set up governments based on their understanding of Islamic Shari’a law.<sup>76</sup> It is in this aftermath that both Afghanistan and Iraq developed their laws.

#### B. Afghanistan’s Family Law

Afghanistan is the only country in Central Asia that bases its legal framework on Islamic law.<sup>77</sup> Afghanistan’s practice of Islam was historically one of tolerance; however, the Soviet Union’s invasion in 1979 and the devastating civil war that followed its withdrawal in 1989<sup>78</sup> fundamentally altered Afghanistan’s inter-

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<sup>70</sup> See Islamic Family Law: Middle East, *supra* note 49.

<sup>71</sup> See AYOUB, *supra* note 65, at 184.

<sup>72</sup> See Islamic Family Law: Middle East, *supra* note 49.

<sup>73</sup> See THE OXFORD HISTORY OF ISLAM 549-552 (John L. Esposito ed., Oxford University Press 1999).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 559-60.

<sup>76</sup> *Id.*

<sup>77</sup> See Islamic Family Law, <http://www.law.emory.edu/ifl/index2.html> Social/Cultural (follow “Social-Cultural” hyperlink; then follow “Central Asia & Caucasus” hyperlink)(last visited Feb. 4, 2010)[hereinafter Islamic Family Law: Central Asia].

<sup>78</sup> See Part II.A., *supra*.

pretation of Islamic Shari'a law.<sup>79</sup> The result was a strict, fundamentalist approach to Islam instituted by the Taliban.<sup>80</sup> Such a view greatly diminished the rights of women and encouraged a literal reading of the Quran.<sup>81</sup> This literal interpretation is significant in regards to family law because it places major restrictions on marriage, divorce, and inheritance.<sup>82</sup> For example, the Quran regulates inheritance for both males and females; however, men receive twice the amount that women do based upon the idea that men have the responsibility to be the sole provider of the family.<sup>83</sup>

While the most recognized law in Afghanistan is traditional and customary law derived from Islam, there also exists statutory law.<sup>84</sup> The most important statutory provision in regard to family law is the Civil Code of 1977.<sup>85</sup> The statutory law is based on the Hanafi school of Sunni Islam.<sup>86</sup> As a result, "[i]n practice, the judges thus bypass statutory law and apply their interpretation of the *[H]anafi* rules, as far as they know them, thus putting aside all improvements that had been incorporated into the code as compared to the classical *[H]anafi* rules."<sup>87</sup> Furthermore, Afghanistan's population is largely ignorant of the law and is typically unaware of violations until summoned to court.<sup>88</sup>

### C. *Iraq's Family Law*

Iraq gained its independence during the push for nationalistic regimes.<sup>89</sup> As a result, the nationalists were able to implement many aspects of their program, including the idea of secularism,

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<sup>79</sup> See Islamic Family Law: Central Asia, *supra* note 77.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> See AYOUB, *supra* note 65, at 185.

<sup>84</sup> See MAX PLANCK INSTITUTE FOR FOREIGN PRIVATE LAW AND PRIVATE INTERNATIONAL LAW, FAMILY STRUCTURES AND FAMILY LAW IN AFGHANISTAN, A REPORT OF THE FACT-FINDING MISSION TO AFGHANISTAN JANUARY-MARCH 2005 8-10, [http://www.mpipriv.de/shared/data/pdf/mpi-report\\_on\\_family\\_structures\\_and\\_family\\_law\\_in\\_afghanistan.pdf](http://www.mpipriv.de/shared/data/pdf/mpi-report_on_family_structures_and_family_law_in_afghanistan.pdf).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> See *id.* at 10.

<sup>89</sup> See Islamic Family Law: Middle East, *supra* note 49.

into Iraq's political system.<sup>90</sup> For this reason, Iraq's Islamic Shari'a law tends to be more flexible than that of other Islamic countries.

Iraq's population of around twenty-three million consists of three main Muslim sects: Arab Shi'ites, Arab Sunnis, and Kurdish Sunnis.<sup>91</sup> Iraq is the only Arab country in the Middle East with a Shi'ite majority; however, the Arab Sunnis dominate the political arena.<sup>92</sup> Sunni Islam tends to be more secular and the Sunni controlled government in Iraq has largely controlled all religious teaching and institutions, thus further encouraging secularism and a flexible approach to Islamic Shari'a law.<sup>93</sup>

Similar to Afghanistan, Iraq's legal regime is made up of both customary law and statutory law.<sup>94</sup> Iraq's legal system draws on both Sunni and Shi'ite law which include "constitutional law, legislation and statutory provisions, usage and custom, judicial precedent, and authoritative jurists' opinions."<sup>95</sup> Iraq's current constitution was approved in 2005 and attempts to provide the foundation for a modern republic state.<sup>96</sup> The most important aspects of Iraqi family law are Iraq's personal status laws.<sup>97</sup> These laws determine the manner by which religious courts settle disputes among Muslims living in Iraq in the areas of marriage, divorce, custody of children, inheritance, endowments, and other similar religious and familial matters.<sup>98</sup>

#### D. Adoption in Islamic Family Law

Adoption under Islamic Shari'a is different from the American concept. Under Shari'a law adoption does not end the blood relationship between the child and his or her biological parents. The relationship that is created to the adoptive parent is similar

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> See Islamic Family Law, <http://www.law.emory.edu/ifl/index2.html> (follow "Social-Cultural" hyperlink; then follow "Middle East" hyperlink; then follow "Iraq" hyperlink)(last visited Feb. 4, 2010)[hereinafter Islamic Family Law: Middle East, Iraq].

<sup>95</sup> *Id.*

<sup>96</sup> See generally IRAQ CONST.

<sup>97</sup> See Islamic Family Law: Middle East, Iraq, *supra* note 94.

<sup>98</sup> *Id.*

to a guardianship.<sup>99</sup> Since both Afghanistan's and Iraq's legal systems draw on Islamic Shari'a law, adoption is technically prohibited in both countries.<sup>100</sup> The different treatment of adoption under Islamic Shari'a law is said to have come from Allah.<sup>101</sup> Though the story is somewhat confusing, it is extremely important to understand because it changed the nature of adoption, which was a common practice in pre-Islamic Arabia. In pre-Islamic Arabia, adoption was customary and even encouraged.<sup>102</sup> According to the story, before the advent of Islam, Mohammed's wife Khadijah purchased for him a slave named Zayd.<sup>103</sup> It is said that Mohammed later adopted Zayd and gave the young boy his name.<sup>104</sup> The two lived as father and son and eventually moved to Medina.<sup>105</sup> By the time they moved to Medina, Zayd was a grown man and married; he and his wife eventually divorced.<sup>106</sup> Following the divorce, it is said that Allah revealed to Mohammed several verses related to Zayd's divorce in which Allah also spoke about the issue of re-naming adopted children.<sup>107</sup> As relayed to Mohammed, the Quran says that calling adopted children by the names of their adoptive fathers is contrary to "the truth," and that they therefore must be called by the name of their biological fathers.<sup>108</sup> Although the implication is that Islamic Shari'a law does not permit legal adoption,<sup>109</sup> it is rather that it does not permit adoption as defined by US law.

People can, of course, welcome Muslim orphans into their home and treat them as their children in every respect; however, orphans will not gain the rights which Shari'a law provides for

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<sup>99</sup> See Joint Council, *supra* note 48.

<sup>100</sup> *Id.*

<sup>101</sup> See Sayyid Muhammad Rizvi, *Adoption in Islam*, reprinted from the "Dear Maulana Questions" section of Shama newsletter (Vancouver, B.C., Canada) 1990, <http://www.jaffari.org/files/literature/Adoption%20in%20Islam.pdf>.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> See Rizvi, *supra* note 101.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

biological children.<sup>110</sup> Instead, Shari'a law countries allow for guardianship of orphaned children.<sup>111</sup> The U.S. Citizenship and Immigration Services in the Department of Homeland Security and the Board of Immigration Appeals<sup>112</sup> has declared that this guardianship status is "insufficient for the purposes of immigration under the Immigration and Nationality Act ("INA")."<sup>113</sup> As a result, traditional intercountry adoption is essentially impossible between the United States and Afghanistan or Iraq.<sup>114</sup>

## IV. The United States and Traditional Intercountry Adoption

### A. History

Three factors are typically present when large scale intercountry adoption occurs: "a civil or international war, an imbalance in socioeconomic conditions between sending and receiving countries, and cooperative links between the social and child welfare agencies of the countries in question."<sup>115</sup> Interest in intercountry adoption from Afghanistan and Iraq has been most affected by the first factor, war.

Following World War II, there was a sharp increase in intercountry adoption.<sup>116</sup> Citizens of developed nations felt compelled to save orphaned children from the effects of famine, disease, and other disasters that sprung from the end of that war.<sup>117</sup> It was not until the Korean War, however, when many United States soldiers became aware of the countless orphaned children present in Asia, that intercountry adoption received the

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<sup>110</sup> See Atika Ghaffer, *Adoption in Islam*, As-Islaah Publications, [http://www28.brinkster.com/mushrf/071604/adoption\\_in\\_islam.htm](http://www28.brinkster.com/mushrf/071604/adoption_in_islam.htm) (last visited Aug. 4, 2012).

<sup>111</sup> See Joint Council, *supra* note 48.

<sup>112</sup> See Board of Immigration Appeals, <http://www.justice.gov/eoir/biainfo.htm> (last visited Feb. 4, 2010). See also United States Citizenship and Immigration Services, <http://www.uscis.gov/portal/site/uscis> (last visited Feb. 4, 2010).

<sup>113</sup> See Joint Council, *supra* note 48.

<sup>114</sup> *Id.*

<sup>115</sup> HOWARD ALTSTEIN & RITA SIMON, *INTERCOUNTRY ADOPTION: A MULTINATIONAL PERSPECTIVE 2* (Praeger Publishers 1991).

<sup>116</sup> See Margaret Lui, *International Adoption: An Overview*, 8 TEMP. INT'L & COMP. L.J. 187, 191 (1994).

<sup>117</sup> *Id.*

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attention of the United States.<sup>118</sup> In the United States, prospective adoptive parents of international children must satisfy: (1) the law of the country of the child's birth; (2) U.S. immigration law; and (3) the laws of the state where the adoptive parents reside.<sup>119</sup> All three of these elements are difficult, if not impossible, to meet in connection with adoption from Middle Eastern countries practicing Islamic Shari'a law.

Until recently, there were no specific measures to protect children of intercountry adoptions.<sup>120</sup> In 1986, the United Nations released the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally ("Declaration") which specifically addressed issues of child welfare and international adoption.<sup>121</sup> The Declaration established as a priority origin country adoption but held that "[i]f a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative."<sup>122</sup> Further, the Declaration urged all nations to adopt "policy, legislation, and effective supervision for the protection of children involved in intercountry adoption."<sup>123</sup> This Declaration started a movement toward international cooperation to foster intercountry adoption procedures and increase the protection of the children involved. This international cooperation eventually led to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.<sup>124</sup>

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<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 198.

<sup>120</sup> *Id.* at 195.

<sup>121</sup> *See* Lui, *supra* note 118, at 195.

<sup>122</sup> Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, G.A. Res. 41/85, art.17, U.N. Doc. A/RES/41/85 (Dec. 3, 1986), available at <http://www.un.org/documents/ga/res/41/a41r085.htm>.

<sup>123</sup> *Id.* at art.18.

<sup>124</sup> *See* Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134-45 [hereinafter Hague Convention].

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

In 1993, sixty-three countries signed the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“Convention”).<sup>125</sup> One of the objectives of the Convention was to “ensure proper consent to the adoption” and to provide “greater protection from exploitation for children, birth parents and adoptive parents alike.”<sup>126</sup> The Convention provides countries with certain adoption procedures, all developed to ensure that the best interests of the child are met.<sup>127</sup> The Convention applies only “where a child habitually resident in one Contracting State (‘the State of origin’) has been, is being, or is to be moved to another Contracting State (‘the receiving State’).”<sup>128</sup> It also only covers adoptions that create a permanent parent-child relationship; thus temporary custody and foster care are not covered in the Convention.<sup>129</sup> As a result of these provisions, the Convention only applies to adoptions where both the origin nation and receiving nation are signatories. Unfortunately, Afghanistan and Iraq were not among the sixty-three signatories.<sup>130</sup>

In addition to many other procedures set forth in the Convention, the Convention specifically requires that each signatory country designate a single, unitary authority to monitor requests for intercountry adoption.<sup>131</sup> In response to the guidelines set out in the Convention, the United States adopted the Intercountry Adoption Act of 2000.<sup>132</sup>

C. *The Intercountry Adoption Act of 2000.*

On October 6, 2000, the United States enacted the Intercountry Adoption Act (“IAA”).<sup>133</sup> Under the IAA, the De-

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<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> See Mary E. Hansen & Daniel Pollack, *The Regulation of Intercountry Adoption*, 45 BRANDEIS L.J. 105, 106 (2006).

<sup>128</sup> Hague Convention, *supra* note 124.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> See Hansen & Pollack, *supra* note 127, at 112.

<sup>132</sup> *Id.* at 114.

<sup>133</sup> See *id.*; see generally Intercountry Adoption Act (2000).

partment of State is the Central Authority for all intercountry adoptions.<sup>134</sup> The Department of State, acting as Central Authority, plays an important but limited role in all intercountry adoption proceedings involving the United States. For example, the Department of State cannot locate a child available for adoption, become directly involved in the adoption process in another country, act as an attorney or represent adoptive parents in court, or order that an adoption take place or that a visa be issued.<sup>135</sup> What the Department of State can do is provide information about international adoption in foreign countries, provide general information about U.S. visa requirements for international adoptions, make inquiries of the U.S. consular section abroad regarding the status of a specific adoption case and clarify documentation, and try to protect U.S. citizens from discrimination by foreign authorities or courts.<sup>136</sup> Essentially, the Department of State acts as a moderator rather than a facilitator.

The implementation of the IAA made two changes to the INA.<sup>137</sup> First, the IAA amended the INA to provide that an adoption certificate issued by a central authority is “conclusive evidence of the relationship between the child being and the adoptive parent[s].”<sup>138</sup> Second, the IAA expanded the definition of “child” beyond its previous definition under the Immigration and Nationality Act.<sup>139</sup> The IAA does not limit U.S. citizens from adopting children from non-Convention signatories so long as the child qualifies as an adopted child or an orphan under existing U.S. immigration law.<sup>140</sup> The INA defines “orphan” as:

[a] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of,

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<sup>134</sup> See U.S. Department of Justice, Citizenship and Immigration Services, Fact Sheet: The Intercountry Adoption Act of 2000, [http://www.uscis.gov/files/pressrelease/IntercountryAdoptionsAct\\_012201.pdf](http://www.uscis.gov/files/pressrelease/IntercountryAdoptionsAct_012201.pdf) (last visited Feb. 4, 2010)[hereinafter DOJ Fact Sheet].

<sup>135</sup> See U.S. Department of State Publication 10300, International Adoptions, <http://dosfan.lib.uic.edu/ERC/population/children/951001.html> (last visited Feb. 4, 2010)[hereinafter DOS Publication 10300].

<sup>136</sup> *Id.*

<sup>137</sup> See DOJ Fact Sheet, *supra* note 134.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*



abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption.<sup>141</sup>

Since the IAA requires that the child qualify as an orphan, and Islamic Law provides only for guardianship, orphaned children in Middle Eastern countries practicing Islamic Shari'a law often are not covered by this act. Further, the IAA has strict requirements that necessitate extensive proof that an adopted child's natural parents either are deceased or had their parental rights revoked.<sup>142</sup> These requirements are extremely difficult to meet in war torn countries where familial records are not regularly kept.

The IAA also requires that prospective parents from the United States fulfill the requirements set forth by the U.S. Citizenship and Immigration Services in the Department of Homeland Security ("USCIS") as laid out in the INA.<sup>143</sup> The INA contains two different methods by which a foreign child can secure immigrant classification.<sup>144</sup> First, INA section 101(b)(1)(E) provides immigrant classification for "a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years."<sup>145</sup> This allows prospective parents to temporarily reside in the child's country of origin for at least two years and then adopt the child in accordance with the laws of the foreign state.<sup>146</sup> Since living abroad for two years may be cumbersome for many prospective parents, the INA provides a second method eliminates the two-year provision.<sup>147</sup> Section

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<sup>141</sup> Immigration and Nationality Act Pub. L. No. 82-414, 66 Stat. 163 (codified as amended at 8 U.S.C. §§ 1101-1537, § 101(b)(1)(F) (1952).

<sup>142</sup> See Intercountry Adoption Act Pub. L. No. 106-279, § 2(b)(1), 114 Stat. 825 (codified in scattered sections of 8 U.S.C. and 42 U.S.C.), § 301(a)(1)(i)(II)(2000).

<sup>143</sup> See U.S. Department of State, International Adoptions, [http://travel.state.gov/family/adoption/notices/notices\\_473.html](http://travel.state.gov/family/adoption/notices/notices_473.html) (last visited Feb. 4, 2010)[hereinafter DOS International Adoptions]; See Immigration and Nationality Act § 101(b)(1)(E)(1952).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

101(b)(1)(F) of the INA sets out a lengthy list of requirements that both the child and parents must meet before the child will be granted immigrant classification; however, it eliminates the two-year provision.<sup>148</sup> Once both parties can demonstrate that they meet all of the requirements, the USCIS will issue a visa for the child to enter the United States.<sup>149</sup>

Like the IAA, the INA requires that the child qualify as an orphan.<sup>150</sup> The USCIS recognizes that:

[a]doptive and prospective adoptive parent(s) should be aware that not all children adopted abroad are orphans, and what appears to be a foreign adoption may not comply with the laws of the foreign state; and some valid foreign adoptions are not sufficient to classify the adopted person as a 'child' under [United States] immigration law.<sup>151</sup>

Further, it is the responsibility of the adopting parent or parents to prove to USCIA that a child is an orphan for immigration purposes; gaining the proper paperwork from countries that practice Islamic Shari'a law is extremely difficult since their legal system does not provide for the full, technical relinquish of parental rights.<sup>152</sup> As a result, orphaned children from Afghanistan and Iraq cannot benefit from these immigrant classification methods.

#### D. *Loosening the Strict Immigration Requirements for Orphaned Children*

For United States immigration law to facilitate the intercountry adoption of orphans from Afghanistan and Iraq, the legislature must expand the definition of "orphan" as defined in the IAA and INA.<sup>153</sup> By adding a provision that recognizes that foreign countries use different legal terms for the term "orphan," the United States could increase the chances that children from

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<sup>148</sup> See DOS International Adoptions, *supra* note 143; Immigration and Nationality Act § 101(b)(1)(F).

<sup>149</sup> See DOS International Adoptions, *supra* note 143.

<sup>150</sup> See Immigration and Nationality Act § 101(b)(1)(F).

<sup>151</sup> IMMIGRATION AND NATURALIZATION SERVICES, U.S. DEP'T OF JUSTICE, M-249Y, THE IMMIGRATION OF ADOPTED AND PROSPECTIVE ADOPTIVE CHILDREN 30 (1990), available at [http://www.uscis.gov/files/article/adopt\\_book.pdf](http://www.uscis.gov/files/article/adopt_book.pdf) [hereinafter DOJ M-249Y].

<sup>152</sup> *Id.*; see Joint Council, *supra* note 48.

<sup>153</sup> See Intercountry Adoption Act § 301(a)(1)(i)(II); Immigration and Nationality Act § 101(b)(1)(F).

countries practicing Islamic Shari'a law are adoptable. Despite this, because prospective adoptive parents of international children must satisfy the law of the country of the child's birth,<sup>154</sup> and countries practicing Islamic Shari'a law do not provide for the full, technical relinquish of parental rights,<sup>155</sup> even if the United States loosens the immigration requirements for prospective adoptive children, it is unlikely that Afghanistan's and Iraq's war orphans will meet the requirements.

Though the United States law falls short of providing a traditional remedy for these children, the sharp increase in global action as well as the utilization of non-traditional adoption methods may serve as a cure to Afghanistan's and Iraq's war orphan plight.

## V. Global Response to War Orphans

### A. International Organizations

With globalization and an ever-increasing media presence in the Middle East, the war orphans of Afghanistan and Iraq have gained the attention of the United States and other countries in the Western world. As a result, there has been a sharp increase in organizations and initiatives created in an attempt to remedy the situation. Some notable organizations include War Child,<sup>156</sup> the International Rescue Committee,<sup>157</sup> and the Afghanistan Orphanage Project.<sup>158</sup>

War Child has offices in Canada, the Netherlands, and England and seeks to provide "opportunities and long-term solutions for war-affected children, focusing on education, strengthening children's rights, reducing poverty and fostering self reliance."<sup>159</sup> War Child is present throughout Africa and the Middle East and has recently started a women's community sup-

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<sup>154</sup> See Lui, *supra* note 116, at 198.

<sup>155</sup> *Id.*; see Joint Council, *supra* note 48.

<sup>156</sup> War Child, <http://www.warchild.org/> (last visited Feb. 4, 2010).

<sup>157</sup> International Rescue Committee, <http://www.theirc.org/> (last visited Feb. 4, 2010).

<sup>158</sup> Afghanistan Orphanage Project, <http://www.taoproject.org/> (last visited Feb. 4, 2010).

<sup>159</sup> War Child, <http://www.warchildusa.org/> (follow "About Us" hyperlink)(last visited Feb. 4, 2010).

port project in Afghanistan.<sup>160</sup> Through various fundraising activities and donations, the group provides aid to war orphans; however, due to strict laws and other circumstances, it is unable to place the children with adoptive families.<sup>161</sup> The group observes that “the chaos of war means that reuniting children with family can often be a long and costly process,” and requests that interested parties instead offer financial aid.<sup>162</sup>

The International Rescue Committee (“IRC”) seeks to provide emergency relief, post-conflict development, resettlement services, and other services for those uprooted by armed conflict.<sup>163</sup> In Iraq, IRC works to renovate schools and recreational areas in communities with a high number of displaced children.<sup>164</sup> Further, it has provided “catch-up” classes for children who have missed school due to ongoing violence.<sup>165</sup> Unfortunately, the increase in violence in Iraq in 2003 forced IRC to leave, but the group was able to return in November 2007 and has since assisted nearly fifty-thousand people.<sup>166</sup>

The Afghanistan Orphanage Project (“Project”) was founded by the United States military and is “dedicated to providing orphaned and homeless children of Afghanistan with shelter, food, clothing, health services, education, and love.”<sup>167</sup> One of its biggest current initiatives is raising money to build an orphanage which will hold one thousand children near Kabul, Afghanistan.<sup>168</sup> Another major initiative is to bring Afghan children to the United States to receive medical treatment and life-saving

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<sup>160</sup> *Id.*

<sup>161</sup> *See* War Child, <http://www.warchildusa.org/> (follow “FAQ” hyperlink)(last visited Feb. 4, 2010).

<sup>162</sup> *Id.*

<sup>163</sup> *See* International Rescue Committee, <http://www.theirc.org/> (follow “Who We Are” hyperlink)(last visited Feb. 4, 2010).

<sup>164</sup> *See* International Rescue Committee, <http://www.theirc.org/> (follow “Where We Work” hyperlink; then follow “Middle East” hyperlink; then follow “Iraq” hyperlink)(last visited Feb. 4, 2010).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> The Afghanistan Orphanage Project, <http://www.taoproject.org> (last visited Feb. 4, 2010).

<sup>168</sup> *Id.*

surgeries.<sup>169</sup> However, unfortunately the Project is unable to aid in the successful intercountry adoption of these children.

Despite the inability of these organizations to aid in the successful intercountry adoption of orphans from Afghanistan and Iraq, there are a few success stories involving United States citizens and some of these orphans. These adoptions came about in a non-traditional way and are exceptions.

#### B. *Successful Intercountry Adoption from Iraq*

On September 6, 2003, Captain Scott Southworth and his military police unit visited Mother Theresa Orphanage in Baghdad, Iraq.<sup>170</sup> There he met Ala'a who was nine years old and suffering from cerebral palsy; Ala'a weighed only fifty-five pounds.<sup>171</sup> He lived with twenty other orphans with physical or mental disabilities in the orphanage which was maintained by Catholic nuns.<sup>172</sup> The soldiers visited the orphanage over the next ten months, and Southworth and Ala'a developed a strong bond. Ala'a began calling Southworth "Baba," Arabic for "Daddy."<sup>173</sup> Within a few months, Southworth was told that Ala'a was getting too old for the orphanage and, as a result, was going to get transferred to a public, poorly maintained government run orphanage.<sup>174</sup> It was then that Southworth decided to adopt Ala'a.<sup>175</sup>

Southworth knew that under Iraqi law, foreigners are prohibited from adopting Iraqi children, so he meticulously filed paperwork and got approval from Iraq's Minister of Labor to take Ala'a to the United States for medical care.<sup>176</sup> Upon returning back to Wisconsin, Southworth contacted an immigration attorney and was told that it would be nearly impossible to get Ala'a to the United States.<sup>177</sup> Despite this, he began the

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<sup>169</sup> *Id.*

<sup>170</sup> See Carrie Antlfinger, *Soldier Saves Iraqi Child in Unlikely Adoption*, N.Y. SUN, Dec. 23, 2007, <http://www.nysun.com/national/soldier-saves-iraqi-child-in-unlikely-adoption/68515/>.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> See Antlfinger, *supra* note 170.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

paperwork to bring Ala'a over on humanitarian parole, a process used for urgent reasons or significant public benefit, and mailed the information to the Department of Homeland Security.<sup>178</sup> In mid-January Homeland Security approved Ala'a for humanitarian parole, and Southworth returned to Iraq to retrieve him.<sup>179</sup> On June 4, 2007, Southworth legally adopted Ala'a.<sup>180</sup>

Captain Southworth's story shows that the intercountry adoption of Afghanistan's and Iraq's war orphans can be a reality; however, this reality involves a lengthy process and the use of confusing, non-traditional intercountry adoption methods such as humanitarian parole.

### *C. Non-Traditional Intercountry Adoption: Humanitarian Parole*

Unless the United States changes the definition of "orphan" in both the IAA and INA,<sup>181</sup> it appears that the only way to successfully adopt one of Afghanistan's or Iraq's war orphans is via non-traditional means, namely via humanitarian parole. The grounds for humanitarian parole are laid out in INA 212(d)(5)(A).<sup>182</sup> This section of the INA provides that the Secretary of the Department of Homeland Security ("Secretary") may "parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit."<sup>183</sup> This provision gives the Secretary wide discretion as to the meaning of "urgent humanitarian reasons" and "significant public benefit."<sup>184</sup> Individuals paroled under this particular visa waiver are not eligible to apply for green cards, or permanent resident status, as parolees; however, they can apply if they qualify under another immigration provision, such as employment or stu-

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<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> See Antlfinger, *supra* note 170.

<sup>181</sup> See *supra* Part IV.D.

<sup>182</sup> See U.S. Citizen and Immigration Service, <http://www.uscis.gov/portal/site/uscis> (search "humanitarian parole"; then follow "Frequently Asked Questions About Humanitarian Parole" hyperlink)(last visited Feb. 4, 2010)[hereinafter USCIS Humanitarian Parole].

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

dent.<sup>185</sup> If successful in achieving permanent resident status, parolees are eligible to apply for citizenship five years from the date they entered the United States as parolees.<sup>186</sup>

Humanitarian parole has been used as a means to get otherwise inadmissible children into the United States for adoption. On January 18, 2010, the Department of Homeland Security Secretary, in coordination with the Department of State, announced a new humanitarian parole policy allowing orphaned children from Haiti to enter the United States.<sup>187</sup> The policy requires that the children fall under one of two categories.<sup>188</sup> The first category includes children who have been legally established as orphans eligible for intercountry adoption by Haiti and were in the process of being adopted by Americans prior to January 12, 2010, the date on which Haiti experienced a catastrophic earthquake.<sup>189</sup> The second category covers children who have been identified by an adoption service provider or facilitator as eligible for intercountry adoption and were matched to prospective American adoptive parents prior to January 12, 2010.<sup>190</sup> Depending on circumstances, the child will either receive an immigrant visa with permanent immigration status requiring no further processing or the child will need to have his or her immigration status resolved after arrival.<sup>191</sup>

The Department of Homeland Security's decision to adopt the humanitarian parole policy came after intense pressure from various human rights organizations.<sup>192</sup> These groups urged U.S. citizens to pressure their Congressional representatives to take

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<sup>185</sup> See The ABCs of Immigration: Parole Status,

<sup>186</sup> *Id.*

<sup>187</sup> See U.S. Citizens and Immigration Services, <http://www.uscis.gov/portal/site/uscis> (follow "NEWS" hyperlink)(then follow "Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans Fact Sheet" hyperlink)(last visited Feb. 4, 2010).

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> See Demand Humanitarian Parole for Haitian Orphans, [http://immigration.change.org/blog/view/demand\\_humanitarian\\_parole\\_for\\_haitian\\_orphans](http://immigration.change.org/blog/view/demand_humanitarian_parole_for_haitian_orphans) (Jan. 17, 2010, 16:56 PT).

action.<sup>193</sup> As a result of increased media coverage, the groups were able to convey their message and humanitarian parole was granted to many Haitian orphans.<sup>194</sup> Despite the near constant media coverage of the United States' presence in both Afghanistan and Iraq, the problem of war orphans is largely ignored. It will take a coalition of human rights organizations to bring this issue to the forefront.

If the project to grant humanitarian parole for the war orphans of Afghanistan and Iraq is successful in catching the attention of the Department of Homeland Security, it will likely fall under the discretionary power of the Secretary as a "significant public benefit"<sup>195</sup> due to the increase in child soldiers. More than 300,000 children under the age eighteen have been coerced or induced to take up arms as child soldiers.<sup>196</sup> It comes as no surprise that children living on the streets are most susceptible to such recruitment.<sup>197</sup> Surveys taken in Afghanistan have found that about thirty percent of all Afghan children have participated in military operations at some point in their childhood.<sup>198</sup> In fact, the first casualty in Operation Enduring Freedom<sup>199</sup> was the result of a fourteen-year-old Afghan child sniper.<sup>200</sup> Though the exact number of child soldiers in Iraq is unknown, U.S. soldiers have reported many instances of being fired upon by children with assault rifles.<sup>201</sup> In addition, children are being used as spies and as decoys sent out to target U.S. convoys.<sup>202</sup>

As a result of the facts represented by these alarming statistics, it is not only in the children's best interest for the United States to facilitate intercountry adoption, but also in the best interest of America's national security. As the Department of Homeland Security's mission is to "preserve freedom" and "pro-

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<sup>193</sup>

<sup>194</sup> *Id.*

<sup>195</sup> See USCIS Humanitarian Parole, *supra* note 182.

<sup>196</sup> See United Nations Cyberschoolbus, Briefing Papers for Students, Child Soldiers, <http://www.un.org/cyberschoolbus/briefing/soldiers/soldiers.pdf>.

<sup>197</sup> See P.W. SINGER, CHILDREN AT WAR 59 (University of California Press 2006).

<sup>198</sup> *Id.* at 26.

<sup>199</sup> See *supra* Part II.A.

<sup>200</sup> See Singer, *supra* note 197, at 25.

<sup>201</sup> *Id.* at 24.

<sup>202</sup> *Id.* at 86.



tect America,”<sup>203</sup> decreasing child soldiers would likely fall under the Secretary’s discretion as a “significant public benefit.”<sup>204</sup>

## VI. Conclusion: Children Are the Future

“War violates every right of a child, the right to life, the right to be with family and community, the right to health, the right to development of personality and the right to be nurtured and protected.”<sup>205</sup>

In a time of crisis, such as war, when thousands of children are displaced and orphaned, one would hope that the developed world would make it a priority to help. Although the Western world has taken initiatives such as the Hague Convention<sup>206</sup> to protect children of intercountry adoptions, many Western countries, particularly the United States, have strenuous immigration standards that significantly hinder successful intercountry adoption from many third world countries. Further, because of the particular way countries practicing Islamic Shari’a law characterize orphaned children, even if the United States loosens its immigration standards, these children will not likely be adopted by U.S. citizens.

Perhaps the only hope for Afghanistan’s and Iraq’s war orphans is through bypassing traditional immigration procedures via humanitarian parole. Since the granting of humanitarian parole lies within the discretion of the Secretary of the Department of Homeland Security, it is important that the public, namely human rights groups, begin pressuring for change. Remedying the war orphan crisis is a “significant public benefit” because it will not only serve the best interests of the children who have fallen victim to war, but it will also protect United States soldiers fighting abroad in Afghanistan and Iraq who are forced to face child soldiers. “Children are the world’s most valuable resource

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<sup>203</sup> Department of Homeland Security, <http://www.dhs.gov/index.shtm> (last visited Feb. 4, 2010).

<sup>204</sup> See USCIS Humanitarian Parole, *supra* note 182.

<sup>205</sup> Impact of Armed Conflict on Children: Report of the Expert of the Secretary-General, Ms. Graca Machel, 51st Sess., Agenda Item 108, ¶ 30, U.N. Doc. A/51/306 (1996), available at [http://www.unicef.org/graca/a51-306\\_en.pdf](http://www.unicef.org/graca/a51-306_en.pdf).

<sup>206</sup> See Hague Convention, *supra* note 125.

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and its best hope for the future”;<sup>207</sup> unfortunately, as of now, there is no bright future for Afghanistan’s and Iraq’s war orphans. The Western world has the means to change the future of these children; now it is just a matter of remembering those often forgotten in a time of war.

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<sup>207</sup> John F. Kennedy, Presidential Library & Museum, Historical Resources, UNICEF Appeal, <http://www.jfklibrary.org/Historical+Resources/Archives/Reference+Desk/UNICEF+Appeal.htm> (last visited Feb. 4, 2010).