

Legal Committee

**LEGAL**



**MUNUC 36**

Model United Nations at the University of Chicago

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## CHAIR LETTER

Hello Delegates,

We'd like to welcome you all to MUNUC 36 and the Legal committee! The three of us are very excited to work with you over the weekend while we explore the topic and navigate solutions, but first, here are some introductions:

What's up everyone, my name is Mateo Lopez and I've lived in the western suburbs of Chicago my whole life. I am also a second year in the College majoring in Business Economics. When I'm not in the trenches at the Joseph Regenstein Library, a pillar of our college community, I'll be at Ratner lifting or in the pool drowning during water polo. Within Model UN at the University, I am a Chair for MUNUC and an Assistant Chair for ChoMUN. Cade and I served on Historic General Assembly (HGA) last year at MUNUC and greatly enjoyed the General Assembly style, so we're excited to be running a committee ourselves this time around.

I'm Ana Emilia Davalos, but everyone calls me Riqui, and I'm a second year student here at UChicago majoring in Public Policy and Business Economics with a minor in Romance Languages and Literatures. I'm from Mexicali, Baja California, Mexico. Related to MUN, I am on the competitive travel team and am a chair for ChoMUN, our college conference. I'm also the undergraduate representative for the University of Chicago Mexican Students Association, and I am in a sorority! I am usually found running around campus trying to get to a meeting while getting iced coffee from a campus coffee shop, or trying to escape to downtown with my friends.

The three of us are so excited to be running this committee together. As friends, we value clear communication and productive collaboration, values that we believe are important for a successful and fulfilling committee experience for all delegates. Both topics, the international adoption system and data privacy laws, are extremely important in this day and age, and we want to see them treated with the highest level of respect. We want to encourage thorough debate throughout the weekend, with delegates constantly looking for creative and unique solutions.

We would like the weekend to go as smoothly as possible, focusing on your skills and preparation. We'd like to highlight the fact that MUNUC is a learning conference, and as such, conducive debate, well-mannered speech, and decorum throughout the conference are necessary. Model UN to us is the chance to practice leadership and public speaking, not the place to speak over people or be exclusionary in any way. All forms of



bigotry will not be tolerated. It is important to remember that the Model United Nations Conference of the University of Chicago should be approached as a growing experience for all students.

If you have any questions, feel free to contact any one of us. We look forward to a fun and engaging conference in February!

See you then and good luck delegates!

Mateo and Riqui

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## HISTORY OF THE COMMITTEE

The United Nations General Assembly's Sixth Committee, also known as the Legal Committee (LEGAL), was established alongside the United Nations itself in 1945.<sup>1</sup> As one of the six Main Committees of the UN General Assembly, all 193 member states can participate in its sessions, providing the committee with a global perspective on international legal issues. As specified by the name, the primary focus of the Legal Committee is the consideration of legal questions in the General Assembly's agenda. Problems ranging from diplomatic relations, treaties, and the law of the sea, to international trade law, human rights law, and international criminal law all fall under the purview of the Legal Committee.<sup>2</sup>

Throughout its history, the Legal Committee has played an instrumental role in the development of international law. Its efforts have resulted in significant legal instruments, such as the United Nations Convention on the Law of the Sea (UNCLOS), the Universal Declaration of Human Rights, and the Rome Statute of the International Criminal Court. Most recently, in the upcoming 78th session of the UN General Assembly, the Legal Committee's agenda will include topics such as protection of peoples in the event of national disasters, the scope and application of the principle of universal jurisdiction, and criminal accountability of UN officials and experts on missions.<sup>3</sup> As with other committees of the UN General Assembly, the Legal Committee does not produce legally binding resolutions. However, the resolutions and other outputs from the Legal Committee carry significant weight in the international community. They contribute to the development and codification of international law, provide direction and guidance on legal issues, and influence the actions and legal approaches of UN member states and other actors.

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<sup>1</sup> United Nations. "UN General Assembly - Legal - Sixth Committee." www.un.org, n.d. <https://www.un.org/en/ga/sixth/>.

<sup>2</sup> Ibid.

<sup>3</sup> United Nations. "Sixth Committee (Legal) — 78th Session." www.un.org, n.d. [https://www.un.org/en/ga/sixth/78/78\\_session.shtml](https://www.un.org/en/ga/sixth/78/78_session.shtml).

## TOPIC A: THE INTERNATIONAL ADOPTION SYSTEM

### Statement Of The Problem



*80 children from a Haitian orphanage aboard a US plane to meet their adoptive families in Florida following the 2010 Haiti earthquake.<sup>4</sup>*

The US Department of State's Bureau of Consular Affairs states that "[i]ntercountry adoption is one of the Department of State's highest priorities. We believe it should be an option for children in need of permanent homes when it is in the best interest of the child and domestic solutions have been given due consideration."<sup>5</sup> While international adoptions are often pursued with good intentions, the reality is that there are several problems with the

current system. The primary problems with international adoption include the minimal internationally-recognized legislation ensuring that international adoption is, in fact, in the best interest of the child, and that domestic solutions have been given due consideration.

The modern international adoption system as a whole has faced problems since its inception, mostly due to its historic origins, but there are also internal, specific problems. Although there are some benefits to international adoption, the problems that come with it affect all parties involved. Mainly, the effects on the child, language barriers, physical health, refugee situations, and human trafficking. These problems affect the adoptive parents and diplomatic relations as well. Furthermore, many of the potential abuses of the international adoption system only serve to magnify pre-existing problems.

### Effects On The Child

One of the main problems with the international adoption system is that it fails to effectively prevent abuses of the child and to protect children throughout the adoption process.

To begin, many children adopted through the international adoption system come from situations of precarity that are difficult to address at the beginning of the adoption process.

<sup>4</sup> Gatewood, Bryan. *Orphans Leave Haiti*. Autumn 1AD. Image. *Defense Visual Information Distribution Service*.

<https://www.dvidshub.net/image/244111/orphans-leave-haiti>.

<sup>5</sup> U.S. Department of State. "Intercountry Adoption." State.gov, 2019.

<https://travel.state.gov/content/travel/en/Inter-country-Adoption.html>.

Especially for newborns, the psychological and biological effects of being separated from their mothers are serious and long-lasting. The Association for Psychological Science writes, “[e]arly maternal separation can result in a series of traumatic emotional reactions during which the child engages in an anxious period of calling and active search behavior followed by a period of declining behavioral responsiveness.”<sup>6</sup>

In the critical early stages of development, babies’ innate nature is to bond with their caretakers. When children are left alone for too long, they develop insecure attachment issues.<sup>7</sup> This happens in cases without a clear caretaker—which is the case for a lot of children adopted from larger orphanages or from refugee situations.<sup>8</sup> Another important stage of development comes in here: separation. In order for a child to begin its phase of separation, which leads to independence, there must be stability. This stability comes easiest with constant attention and care, but is ruptured when a child

lacks this. A child that does not have this stability develops anxiety responses and has a harder time separating themselves from the mother.<sup>9,10</sup>

These problems do not go away with age. Rather, children who are adopted at an older age might face an even more difficult transition because of the extended time they may have spent in a specific context. This is where issues of culture and religion come in. A child who is adopted at an age after these cultural or religious values are instilled are attached to them just like a child is attached to the mother, often being a part of their stability. When they assimilate into a new society, they face a difficult time, which is only exacerbated if their new family is unwilling to accommodate their cultural or religious differences.<sup>11</sup>

## Language Barriers

Language barriers are a large part of the problem children face upon being adopted internationally.

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<sup>6</sup>Association for Psychological Science. “How Mother-Child Separation Causes Neurobiological Vulnerability into Adulthood.” Association for Psychological Science - APS, June 20, 2018. <https://www.psychologicalscience.org/publications/observer/obsonline/how-mother-child-separation-causes-neurobiological-vulnerability-into-adulthood.html>.

<sup>7</sup> Ibid.

<sup>8</sup>U.S. Department of Health and Human Services. “Adoption and the Stages of Development,” 1990. [https://www.childwelfare.gov/pubPDFs/f\\_stages.pdf](https://www.childwelfare.gov/pubPDFs/f_stages.pdf).

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<sup>9</sup>Ibid.

<sup>10</sup>Association for Psychological Science. “How Mother-Child Separation Causes Neurobiological Vulnerability into Adulthood.” Association for Psychological Science - APS, June 20, 2018. <https://www.psychologicalscience.org/publications/observer/obsonline/how-mother-child-separation-causes-neurobiological-vulnerability-into-adulthood.html>.

<sup>11</sup> MentalHelp.net. “Issues in International Adoptions.” MentalHelp.net, n.d. <https://www.mentalhelp.net/adoption/international-issues/#:~:text=Additional%20issues%20faced%20by%20those>.



These problems arise mostly when the child is older at the time of the adoption, usually starting from around a toddler age. Here, the family bears responsibility for ensuring a proper transition into the family's language to make the child comfortable in their home.<sup>12</sup> It is also common for the family to expect the acquisition of the language to be a faster process, when in reality, it is a process that takes a long time and can lead to other developmental delays. It becomes more difficult to learn a language as a child grows up. Not only that, but some children might develop a trauma response to hearing a language that they identify with an abusive previous home, or struggle with the reverse — only feeling comfortable speaking the first language they learned.

#### Physical Health

Another problem children can face when being adopted internationally is the lack of continuity in healthcare.<sup>13</sup> Especially if a child comes from a country in which healthcare is substantially different, a child might need additional vaccination, different nutrition, or might develop an illness they are not immune against. The standards of care from country to country can differ greatly, and a child might struggle with a rapid amount of change or adjustment within a shorter time frame. Another problem that can

occur comes when a medical record is not shared from country to country, and a child's medical history is kept from the adoptive family. It can take years for a medical problem to present itself with obvious symptoms, so a chronic illness or predisposition can afflict the child for years before it is properly addressed after adoption.<sup>14</sup>

### Human Trafficking And Refugee Situations

Human trafficking is also a serious problem that affects the international adoption system. Especially in cases of refugee situations, an expedited adoption process might occur. This also happens when children are taken to a temporary camp outside their home country. Ties to their home country might be severed and documentation might be lost. It might be difficult as well to bring a child back to their home country after a temporary placement with a family because of a refugee situation becoming permanent.<sup>15</sup>

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<sup>14</sup>U.S. Department of State. "Health Considerations." travel.state.gov. <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/before-you-adopt/health-considerations.html>.

<sup>15</sup>United Nations Human Rights Treaty Bodies. "Joint Statement on Illegal Intercountry Adoptions," September 2022. [https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA\\_HR\\_28September2022.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA_HR_28September2022.pdf).

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.



## Case Study: Fraudulent Adoptions

A documented problem is the abduction of children from their hometown to be adopted in another country. In 2015, an Ohio family adopted a six-year old child from Uganda under the impression that she was an orphan, and that they were improving her quality of life by adopting her.<sup>16</sup> After she developed English skills, the family realized that the adoption had been fraudulent, and that the child was in fact a victim of human trafficking as a cause of international corruption. The country's officials and the adoption agency were paid to remove a child from their home under the guise of an adoption. Although the United States debarred the adoption agency that had allowed for this to happen, the agency had already partook in more than 8,000 adoptions.<sup>17</sup> It is unknown how many children were in the same situation as the child from Uganda. This case could have been repeated with other agencies, as adoption agencies in the United States are regulated by state. Each state has a different timeline for reviewing and auditing adoption agencies, and they do not often have interstate communication. Here, one can see an unfortunate paradox: children who might benefit

from an international adoption are not given one, while children who do not need one are forcibly taken away from their homes.

Although regulation might seem like the obvious answer, overregulation of the international adoption system can result in more human trafficking. When the financial cost of adoption rises because of regulation, there is a possibility that the children are being held for longer in orphanages or temporary homes to increase payment to an agency.<sup>18</sup> According to *Creating a Family* in 2018, "international adoptions can vary in price from \$5,000 to over \$40,000, with approximately 60% of costs falling between the \$10,000 and \$30,000 price point."<sup>19</sup> As discussed earlier, the longer a child is separated, the higher the chance for them to develop psychological problems stemming from neglect.

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<sup>16</sup>The Cornell Diplomat. "Nursery Crimes: The Hidden Pitfalls of International Adoption." The Cornell Diplomat, November 30, 2021. <https://www.thecornelldiplomat.com/issue6/2021/11/24/nursery-crimes>.

<sup>17</sup> Ibid.

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<sup>18</sup>Efrat, Asif, David Leblang, Steven Liao, and Sonal S. Pandya. "Babies across Borders: The Political Economy of International Child Adoption." *International Studies Quarterly* 59, no. 3 (2015): 615–28.

<https://www.jstor.org/stable/43868298?seq=3>.

<sup>19</sup> Orr, Shelly. "UW Tacoma Digital Commons Global Honors Theses Global Honors Program Human Trafficking through International Adoption," 2018.

[https://digitalcommons.tacoma.uw.edu/cgi/viewcontent.cgi?article=1058&context=gh\\_theses](https://digitalcommons.tacoma.uw.edu/cgi/viewcontent.cgi?article=1058&context=gh_theses).

## History Of The Problem

### Adoptions From Ancient History Through The 20Th Century



*Vietnamese orphans aboard a plane to the US as a part of “Operation Babylift” to evacuate orphaned children during the Vietnam War and place them with adoptive families in the US and around the world, 1975<sup>20</sup>.*

To begin thinking about the history of international adoption and its associated problems, one must look at the foundations and country-specific practices upon which the international system was built.

The issue of international adoptions has a long and complex history rooted in ancient times. One of the earliest recorded instances of international adoption can be traced back to ancient Rome. In

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<sup>20</sup> Gerald Ford Presidential Library. *Vietnamese Babies in Their Carriers*. April 5, 1975. Image. Gerald Ford Presidential Library. <https://www.fordlibrarymuseum.gov/museum/exhibits/babylift/photography/>.

this period, the adoption of children from conquered territories was a common practice to assimilate and integrate them into Roman society. However, this process was often marked by exploitation and abuse, as children were sometimes taken forcibly from their families and used as slaves or servants.

In more recent centuries, the problem of international adoptions has evolved in different ways. During the colonial era, European powers engaged in the adoption of indigenous children from colonized territories, again with dubious motives. Many children were forcibly removed from their families and communities, resulting in the loss of cultural identity and disconnection from their heritage, which is a serious issue that still exists today.

Later, in the United States between 1854 and 1929, 250,000 children were adopted through the system of orphan trains<sup>21</sup>. Children would ride the train from east coast cities and move west, while families interested in adopting would wait at stations for the children to arrive. As expected, a lot of these placements were not supervised or recorded. The ideological background of this occurrence was based on the idea of “saving” these children from their poor families, who were usually Catholic or Jewish immigrants, and

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<sup>21</sup> The Adoption History Project. “Adoption History: Orphan Trains.” pages.uoregon.edu. University of Oregon, n.d. <https://pages.uoregon.edu/adoption/topics/orphan.html>.

placing them with Anglo-Saxon Protestant families. This idea of evangelical humanitarianism in the United States served as the basis for the proliferation of international adoption that grew after the war.

Furthermore, international adoption grew exponentially after World War II and the Cold War, in large part due to the increased visibility to Americans of orphaned children in countries affected by conflict, particularly in Korea and Vietnam.<sup>22</sup>

### Case Study: The Holt Bill, 1955

In 1955, a special law was passed by the US Congress to allow an Evangelist couple from Oregon, Harry and Bertha Holt, to adopt internationally.<sup>23</sup> The bill was officially called “An Act For the Relief of Certain Korean War Orphans.” The Holt couple brought eight children back to Oregon with them. The couple was so moved with their decision that they went on to pioneer international adoption in the United States.

The process they used for this, however, was extremely fragile: **proxy adoptions**.<sup>24</sup> A proxy adoption occurs by having a representative present in the country where the child is being adopted from and bringing the child back to the United States as an already legal child of the adoptive parents. This was a loophole that allowed adoptive parents to avoid background checks and social worker visits that would confirm the ability of the adoptive parents to care for the child. In contrast, domestic adoptions within the United States were becoming more and more formal, with social workers and government supervision, while international adoptions were almost completely unregulated. As a result, individuals such as the Holts often assisted in adoptions for couples that had previously been rejected from a domestic adoption in the U.S. In one instance concerning a Minnesota family, the prospective adoptive family was rejected by three separate adoption agencies due to the prospective adoptive father’s drinking problem and psychological disorder. Two years later, the couple had adopted a Japanese child by proxy with no local, state, or

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<sup>22</sup> The Adoption History Project. “Adoption History: International Adoptions.” [pages.uoregon.edu](https://pages.uoregon.edu/adoption/topics/internationaladoption.htm#:~:text=After%20World%20War%20II%20and). University of Oregon. <https://pages.uoregon.edu/adoption/topics/internationaladoption.htm#:~:text=After%20World%20War%20II%20and>.

<sup>23</sup> The Adoption History Project. “Adoption History: Bertha and Harry Holt.” [pages.uoregon.edu](https://pages.uoregon.edu/adoption/people/holt.htm). University of Oregon, n.d. <https://pages.uoregon.edu/adoption/people/holt.htm>.

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<sup>24</sup> The Adoption History Project “Adoption History: Proxy Adoptions.” [pages.uoregon.edu](https://pages.uoregon.edu/adoption/topics/proxy.htm). University of Oregon, n.d. <https://pages.uoregon.edu/adoption/topics/proxy.htm>.



federal oversight.<sup>25</sup> Another account writes “[a]n official of the International Social Service testified that one Texas woman appeared to be drunk and over 50 years of age when she arrived at the airport to pick up the baby who had been adopted for her in Greece in 1957.”<sup>26</sup> Not only was this a bureaucratic issue, but also a moral one. Families were not prepared to accommodate a child with a different culture, language, religion, or past trauma, and more often than not had adopted with the purpose of evangelizing a child they considered “unsaved.”

It wasn’t until the 1960s with the passage of the Immigration and Nationality Act of 1961 in the United States when the Holts began to abide by standard professional adoption procedures and hired a social worker to assist with adoptions.<sup>27</sup> They are now the oldest international adoption agency in the United States, Holt International Children’s Services.<sup>28</sup>

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<sup>25</sup> The Adoption History Project “Adoption History: ISS, ‘Proxy Adoptions,’ 1954-1956.” [pages.uoregon.edu](https://pages.uoregon.edu/adoption/archive/IssPA.htm). University of Oregon. <https://pages.uoregon.edu/adoption/archive/IssPA.htm>.

<sup>26</sup> The Adoption History Project “Adoption History: Proxy Adoptions.” [pages.uoregon.edu](https://pages.uoregon.edu/adoption/topics/proxy.htm). University of Oregon, n.d. <https://pages.uoregon.edu/adoption/topics/proxy.htm>.

<sup>27</sup> Ibid.

<sup>28</sup> Holt International. “Holt International.” [Holtinternational.org](https://www.holtinternational.org/), 2017. <https://www.holtinternational.org/>.

## The Hague Adoption Convention, 1993

International adoptions continued to rise after the 1960s. The peak of international adoption was in 2004, when 45,288 children were adopted internationally.<sup>29</sup> In 1993, however, the Hague Convention on Protection of Children and Cooperation in Respect to Intercountry Adoption came into play. It has now been ratified by 99 states, and signed by a few others.<sup>30</sup> This convention had a crucial role in shaping the modern international adoption system, in some cases even leading to countries closing their doors to international adoption, like Guatemala.

The **Hague Adoption Convention** is an important agreement that focuses on ensuring the well-being of children who are adopted across international borders. It was created to establish rules and standards to protect these children and make sure that their adoptions are carried out in a safe and ethical manner.<sup>31</sup>

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<sup>29</sup> Adoption.org. “What Is the History of Adoption?” Adoption.org, March 29, 2009. <https://adoption.org/what-is-the-history-of-adoption#:~:text=In%202004%2C%20during%20the%20peak.>

<sup>30</sup> Hague Conference. “HCCH | #33 - Status Table.” [www.hcch.net](http://www.hcch.net), 2022. <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>.

<sup>31</sup> United States Citizenship and Immigration Services. “Hague Process | USCIS.” [www.uscis.gov](http://www.uscis.gov), January 30, 2020. <https://www.uscis.gov/adoption/immigration-through-adoption/hague-process>.



The convention aims to prevent problems like child trafficking, abduction, and illegal adoptions. It sets out guidelines that countries must follow when they're involved in intercountry adoptions. These guidelines include making sure that the child's best interests are the main priority, ensuring that the adoption is legal and transparent, and providing safeguards to protect the child and their rights throughout the process.<sup>32</sup> The Hague Convention encourages cooperation among countries to prevent any harm to the child and to promote ethical adoption practices. This way, children have a better chance of growing up in a stable and caring environment.

Under the Hague Adoption Convention, countries that have acceded to the agreement agree to work together to ensure that adoptions are handled properly. One of its larger requirements is that each country must designate a **“central authority”** to serve as a contact when going through the process of intercountry adoption.<sup>33</sup> These central authorities work within their countries and usually their departments of state to oversee the adoption process and make sure that everyone involved, including the

adoptive parents and the child, is protected. The United States, for example, writes on its website, “The Office of Children’s Issues is responsible for policy matters regarding intercountry adoption between the United States and other nations and for the day-to-day oversight and implementation of the Hague Adoption Convention, which entered into force in the United States in April 2008.”<sup>34</sup>

The Hague Convention is a multilateral treaty that is seen as a pivotal moment in the history of international adoption because it brought forth multiple complaints about mismanagement and abuses. Some of its other requirements include only allowing certified adoption agencies to process intercountry adoption, ensuring that the child has been deemed eligible for adoption by their country of origin, and that due consideration has been given to finding an adoption placement for the child in their country of origin.

The Hague Convention designates a variety of overarching laws and suggests guidelines; however, it does not create specific frameworks or programs to protect children after they are adopted. The Hague Convention protects

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<sup>32</sup> Ibid.

<sup>33</sup> United States Department of State. “Understanding the Hague Convention.” State.gov, 2014.  
<https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html>.

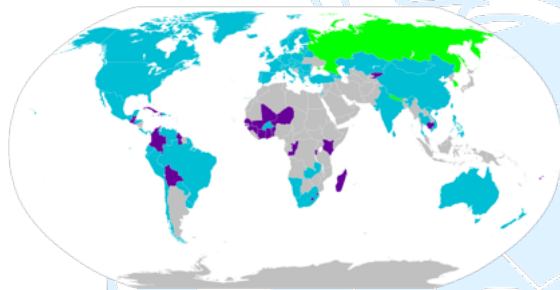
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<sup>34</sup> United States Department of State. “Intercountry Adoption Contacts.” travel.state.gov. Accessed August 26, 2023.  
<https://travel.state.gov/content/travel/en/contact-us/Intercountry-Adoption.html#:~:text=The%20Office%20of%20Children>.

children from mismanagement, human trafficking, and abduction, but only so far as each country decides to implement the treaty.<sup>35</sup> There is still the issue of how children are given psychological, physical, and emotional support once they are adopted.

## Past Actions

### Hague Convention On Intercountry Adoption



*A 2021 map of the countries that have ratified the Hague Convention in blue and purple, signatories in green.<sup>36</sup>*

Addressing the challenges faced by the international adoption system requires cooperation and commitment from countries worldwide. As previously discussed, one

successful example of an internationally-led solution was the Hague Convention on Intercountry Adoption. This convention has established a division between countries that have signed onto the treaty and ones that have not. When a country signs the Hague treaty, they agree to implement its standards within their own country. One of these standards includes having a central authority to oversee adoption.<sup>37</sup> However, one problem with this is that a country might not have the resources to create an agency with this type of central authority, leaving them both outside the convention and with less international protection for their children. One potential solution could be to create an international aid system for the creation of centralized authorities within countries lacking the resources to do so.

The benefits that come with adopting from a “Hague country” include: an expedited process because of the established diplomatic links, increased access to important documents and files related to health and education, and security that the adoption is legitimate. Most importantly, adopting from a Hague country ensures that the adopted child needed a home and one could not be provided for them in their home country.<sup>38</sup>

The Hague Convention is arguably the largest action that has been taken in the past to protect

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<sup>35</sup> United Nations High Commissioner for Refugees. “Refworld | Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption.” Refworld. <https://www.refworld.org/docid/3ddcb1794.html>.

<sup>36</sup> Wikimedia Commons. *Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption World Map*. December 26, 2021. Online Image. *Wikimedia Commons*. [https://commons.wikimedia.org/wiki/File:Hague\\_Convention\\_on\\_Protection\\_of\\_Children\\_and\\_Co-operation\\_in\\_Respect\\_of\\_Intercountry\\_Adoption\\_map.svg](https://commons.wikimedia.org/wiki/File:Hague_Convention_on_Protection_of_Children_and_Co-operation_in_Respect_of_Intercountry_Adoption_map.svg).

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

the children of intercountry adoption. Some other potential solutions to build upon the Hague Convention include ensuring that the Hague standards are implemented properly in each country and that safeguards against its violation are in place. Delegates should consider how they can make the Hague Convention more accessible or a possibility for those countries who have not yet signed to take part. Addressing these difficulties with the Hague Convention's implementation would allow many more countries to be a part of this improved standard for international adoptions.

Below is a table that provides the larger differences in adoption requirements from the perspective of a US adoptive family adopting from a Hague vs a Non-Hague country.<sup>39</sup> Delegates should note the additional protections and safeguards for children adopted from Hague countries vs. Non-Hague countries.

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<sup>39</sup> National Council for Adoption. "Addressing Convention Country Questions: Hague v. Non-Hague Country Fact Sheet." National Council For Adoption, February 1, 2016. <https://adoptioncouncil.org/article/addressing-convention-country-questions-hague-v-non-hague-country-fact-sheet/>.

	Hague Countries	Non-Hague Countries
Your Adoption Service Provider	Both require that the agency is licensed in your U.S. state of residence and accredited or approved by the Department of State's designated Accrediting Entity.	
Parent Education	For both Hague and non-Hague countries, the prospective adoptive parents must complete at least 10 hours of training.	
Adoptive Parent's Eligibility	Form I-800A; Typically filed before being matched with a child (and before Form I-800).	Form 1-600A; Can be filed at the same time as the Form I-600.
Provisional Approval; Petition Child's Eligibility	Country of Origin must determine that the child is adoptable with Convention consents and other protections; must meet definition of Convention adoptee (USCIS form 1-800).	Country of origin adoption process must be complete and the child must meet U.S. orphan definition (USCIS form 1-600).
Visa Type	IH-3 or IH-4 Visas	IR-3 or IR-4 Visas
Provisional Approval; Petition Child's Eligibility	Country of Origin must determine that the child is adoptable with Convention consents and other protections and must meet the definition of Convention adoptee Form 1-800.	Must meet orphan definition Form 1-600.
Visa Application	Submitted before foreign adoption / legal custody proceedings.	Submitted after foreign adoption / legal custody proceedings.



Adoption Records	Preserved for 75 years.	Preserved depending upon state law and agency policy.
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## Impact Of Previous Adoption Solutions

After the Hague Convention, the once-booming adoption industry saw a downturn following publicized scandals and suspicions surrounding the process. The implementation of the Hague Convention as an international standard along with **UNICEF**-inspired policies led to a drop in the number of intercountry adoptions. Issues like corruption, lack of proper documentation, and the exploitation of children contributed to the decline in adoption rates.

Countries like China, Russia, and Guatemala, which were major sources of adoptable children, have also reduced their international adoption rates for various reasons.<sup>40</sup> In China, changes in social and economic policies, including domestic adoption encouragement, have reduced the number of adoptable children.<sup>41</sup> Russia has focused on domestic adoptions, offering incentives to families for fostering or adopting

children.<sup>42</sup> Guatemala is gradually reopening to international adoptions, but the process remains limited and complex.<sup>43</sup>

This decline in international adoptions is a result of increased transparency and efforts to prioritize domestic adoption solutions. However, this has left many children growing up in orphanages without a family. While stricter regulations aim to protect the interests of children, they can also present a challenge to ensuring that children find suitable and loving homes, either domestically or internationally.

It is vital that there is a balance between proper oversight to prevent exploitation and ensuring that vulnerable children can find caring families, either within their own country or through international adoption when necessary.<sup>44</sup>

<sup>40</sup> Christian Science Monitor. "International Adoption: A Big Fix Brings Dramatic Decline." Christian Science Monitor, March 14, 2010. <https://www.csmonitor.com/World/Global-Issues/2010/0314/International-adoption-A-big-fix-brings-dramatic-decline>.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

## Possible Solutions

### Strengthening International Adoption Frameworks

While the Hague Convention has established a standard for international adoption, it has limitations. A possible solution would be to review or reconvene Hague Convention nations after a certain amount of time to review eligibility and ensure that all countries participating in the Hague Convention meet the required standards. Another action could be to establish an independent review network or agency that externally reviews and approves a country's admission to the Hague Convention standard.

This creation of internationally agreed-upon standards and guidelines for the adoption process brings uniformity and transparency. In creating new international frameworks and regulations, delegates should consider the shortcomings and implementation difficulties with previous international efforts such as the Hague Convention and work to build upon previous solutions.

### Increased Oversight And Monitoring

Implementing a robust system of oversight and monitoring can help detect and prevent unethical practices within the adoption process. Regular inspections and audits of adoption agencies conducted by the UN or an affiliated organization, both in sending and receiving

countries, can ensure compliance with the established standards. Additionally, creating a report-card or incentivization system can help ensure compliance with any new international oversight of adoption systems within individual countries.

### Promoting Education And Training

Providing education and training to adoption professionals, prospective parents, and others involved is crucial. This would help raise awareness about the complexities of adoption and the importance of ethical practices. Especially for prospective parents, education could include much needed lessons on cultural sensitivity, bridging language barriers, and working with children who have experienced trauma.

Better-informed individuals will make more responsible decisions during the adoption process, and prevent any after-the-fact problems that are common with a careless process. Some countries, like the United States, already have a mandatory minimum number of hours of adoption-focused training that adoptive families must have before adopting.

### Supporting Birth Families And Children's Welfare

Focusing on supporting birth families can help reduce the number of children put up for adoption in the first place. By addressing the root cause of why children are put up for adoption —

namely, lack of resources and economic opportunity — delegates can develop solutions that reduce the need for adoption and take strain off of the international adoption system. For example, this support can be in the form of financial aid, access to education, and healthcare services. This is extremely important as it ensures that children who are being adopted aren't simply children whose parents cannot provide for them. Additionally, providing appropriate care and facilities for children in orphanages can ensure their well-being while waiting for adoption, which will reduce the chances of trauma and other negative consequences resulting from spending an extended amount of time in these settings.

### **Promoting Domestic Adoption Programs**

Encouraging domestic adoption within individual countries can be an effective way to provide children with permanent homes and families within their own cultural contexts. Governments and NGOs can work together to make domestic adoption more accessible and socially-accepted. This would help prevent children whose language and culture are completely different and from having a difficult time assimilating to a new society.

### **Expanding Post-Adoption Support**

Ensuring ongoing support and resources for adoptive families is vital. Adopted children will likely face unique challenges, and providing counseling and assistance can help families navigate these issues more effectively. Developing post-adoption support networks in the form of localized or regional support groups for adoptive families and their adopted children may be one avenue to ensure that both families and adopted children receive the support that they need to thrive and succeed post-adoption.

By implementing these potential solutions and working together as a global community, the international adoption system can be strengthened and improved. This would create a more ethical and efficient process, ensuring the best interests and well-being of the children involved in international adoption.

### **Bloc Positions**

All delegates should advocate for the safety and protection of children, especially those who are vulnerable enough to become involved in international adoption systems. Any regulation on international adoption must include frameworks to combat and prevent the very real threat of human trafficking. Despite this common ground, delegates might disagree on prioritizing certain domestic adoption systems over international ones, whether that be for the

preservation of cultural heritage or for broader economic or political reasons. Alternatively, nations currently in or suffering from the effects of armed conflict or natural disaster may be more inclined to support a less regulatory system in order to expedite the process of international adoptions and find homes for children more rapidly. In crafting draft resolutions, delegates should be mindful of these differences and work together to come up with comprehensive and holistic solutions to the topic.

### Hague Convention Nations

In total, 103 countries have signed on to the Hague Convention on the Civil Aspects of International Child Abduction, which applies to children under the age of 16. This includes all P-5 countries with the exception of Russia.<sup>45</sup> These countries agree to abide by the relatively highly-structured and regulated adoption system with the main purpose of facilitating safe and effective adoptions while minimizing long-term psychological damage that the vulnerable children of the adoption pool may experience. These signatory countries typically have well-established legal frameworks in place to address cases of child abduction with relative

effectiveness. This almost always requires effective cooperation between countries with differing legal systems that must be navigated throughout the process of adoption. Signatories to the Hague Convention also generally adhere strongly to universal human rights principles and align with the **United Nations Convention on the Rights of the Child**.<sup>46</sup>

### Non-Hague Convention Nations

It is important to note that nations that have not signed onto the Hague Convention do not necessarily disagree with the principles defined within the Hague Convention on the Civil Aspects of International Child Abduction. They might not wish to sign onto the convention due to other fundamental legal, political, or cultural differences between them and countries within the Hague bloc. Maintaining the necessary diplomatic and legal operations to uphold the standards of the Hague Convention calls for a level of resources and political stability that some countries are simply unable to provide, such as the creation and maintenance of a central agency to oversee and manage international adoptions. It is important that delegates recognize the unique circumstances faced by individual nations and recognize both the sovereignty of and the

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<sup>45</sup> United States Department of State “Understanding the Hague Convention,” State.gov, 2014.  
<https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html>.

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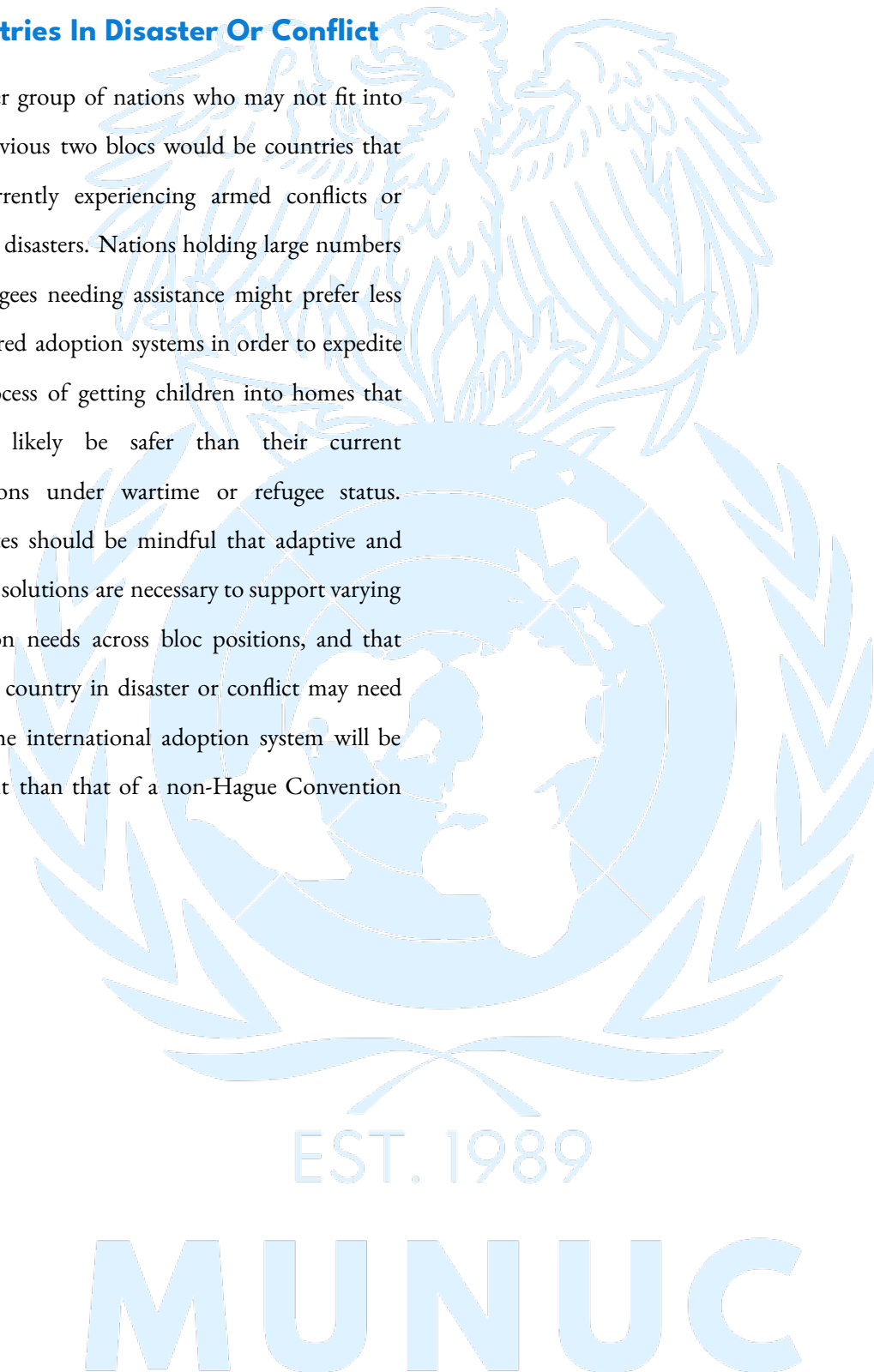
<sup>46</sup> UNICEF. “Convention on the Rights of the Child.” Unicef.org. UNICEF, 1989.  
<https://www.unicef.org/child-rights-convention>.



differences in how particular countries choose to handle the well-being of their citizen children.

### **Countries In Disaster Or Conflict**

Another group of nations who may not fit into the previous two blocs would be countries that are currently experiencing armed conflicts or natural disasters. Nations holding large numbers of refugees needing assistance might prefer less structured adoption systems in order to expedite the process of getting children into homes that would likely be safer than their current conditions under wartime or refugee status. Delegates should be mindful that adaptive and flexible solutions are necessary to support varying adoption needs across bloc positions, and that what a country in disaster or conflict may need from the international adoption system will be different than that of a non-Hague Convention nation.



## Glossary

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**Adoption by Proxy** - A form of adoption where adoptive parents are represented by proxies (stand-ins) during the adoption process, rather than being physically present themselves.

**Central Authority** - A required domestic government agency under the Hague Convention that is designated to manage and coordinate international adoptions in compliance with the Convention standards. In the United States, the Hague Convention Central Authority is the U.S. Department of State.

**Convention on the Rights of the Child** - An international human rights treaty that establishes the economic, political, cultural, and civil rights of children.

**Hague Adoption Convention** - An international treaty aiming to ensure intercountry adoptions prioritize the child's best interests and prevent child abduction, exploitation, or trafficking. It establishes safeguards and promotes cooperation among member countries.

**UNICEF** - The United Nations Children's Fund, an agency of the U.N., dedicated to improving the health, education, and rights of children and adolescents worldwide.



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## TOPIC B: DATA PRIVACY LAWS

### Statement Of The Problem



*A view of the server room used for data storage at The National Archives of the United Kingdom.*<sup>47</sup>

As individuals become ever-increasingly digitally connected, the amount of data — personal information, habits, patterns, etc. — that we produce (or rather, is collected) continues to grow, making how this data is used and who uses it more important than ever. Additionally, with the relatively recent proliferation in usage of artificial intelligence, data can be used in new and powerful ways. At the same time, many people have little to no knowledge about how their data is used and collected, yet still often find themselves being asked to agree to long and complicated privacy policies. Few people actually sit down and read the many pages of small print

that often pop up before entering a website or signing up for an application. Situations like these emphasize the present existence of issues and imperfections within data privacy law.

The United Nations has expressed concern with the processing and handling of collected data in the currently non-standardized world of international data privacy law. It seeks to arrive at a common understanding concerning the ethics and protection of every individual's right to privacy, while at the same time weighing the social value of data.<sup>48</sup>

### Methods Of Data Collection

Businesses and governments use a variety of methods to acquire data like personal information, location, IP addresses, behavior patterns, and more.

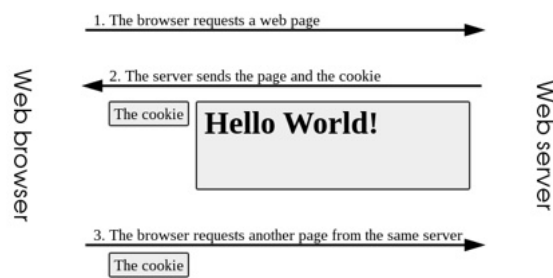
Various technologies and approaches are available for gathering individuals' data. Numerous entities, including businesses, governments, and international organizations, utilize diverse methods, either in isolation or in combination, to assemble data ranging from basic data points to

<sup>47</sup> The National Archives (UK). *A View of the Server Room at the National Archives*. May 11, 2011. Image. *Wikimedia Commons*. [https://commons.wikimedia.org/wiki/File:A\\_view\\_of\\_the\\_server\\_room\\_at\\_The\\_National\\_Archives.jpg](https://commons.wikimedia.org/wiki/File:A_view_of_the_server_room_at_The_National_Archives.jpg).

<sup>48</sup> Atske, Sara. "Americans' Attitudes and Experiences with Privacy Policies and Laws." Pew Research Center: Internet, Science & Tech, November 15, 2019. <https://www.pewresearch.org/internet/2019/11/15/americans-attitudes-and-experiences-with-privacy-policies-and-laws/>.

intricate and thorough data profiles. These profiles can establish connections between different pieces of personal information, possibly allowing easy access from one piece of personal information to another.<sup>49</sup>

## Website Tracking And Cookies



*An example of how cookies are sent and stored on devices connecting to the internet.<sup>50</sup>*

When users access internet sites, the site can send a small file called a “**cookie**”, which is stored on the user’s device. Common cookie contents include shopping cart contents, user preferences, and login status. Some site cookies, called session cookies, are deleted after the user closes the web browser, but persistent cookies remain on the user’s computer and are used to store settings and information for future website visits. Many legislative bodies, including the EU in 2011,

adopted laws to regulate cookie settings, requiring sites to notify users of their cookie settings and give them the rights to refuse allowing cookies on their browser.<sup>51</sup> Websites can also access cookies already stored on devices and use them to gather data such as links clicked, pages visited, and time spent on pages.

Many problems can arise with the use of cookies. User profiling and discrimination can occur when sites construct profiles based on user interactions on the internet. Users often do not fully understand the mechanism and full capabilities of websites that use cookies and therefore cannot give true consent. Related to consent, cookies also often involve third-party tracking, and the information collected can be vulnerable to data leaks and cyber attacks.<sup>52</sup> Because sites collecting cookies have become so common, this has become a crucial part of the larger problem with data privacy on the internet.

## Social Media

Across the vast number of social media platforms available worldwide, many users willingly share personal information, locations, preferences, and more, which are then collected and aggregated by the companies and/or government agencies that

<sup>49</sup> McAfee. “What Personal Data Do Companies Track?” McAfee Blog, August 3, 2022. <https://www.mcafee.com/blogs/tips-tricks/what-personal-data-do-companies-track/>.

<sup>50</sup> Wikimedia Commons. *HTTP Cookie Exchange*. November 21, 2021. Online Image. *Wikimedia Commons*. [https://commons.wikimedia.org/wiki/File:HTTP\\_cookie\\_exchange.svg](https://commons.wikimedia.org/wiki/File:HTTP_cookie_exchange.svg).

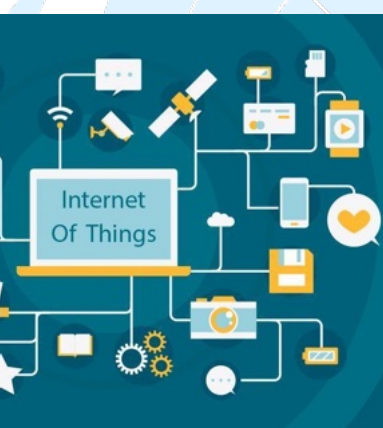
<sup>51</sup> “The Cookie Law Explained.” CookieLaw, March 12, 2020. <https://www.cookie-law.org/the-cookie-law/>.

<sup>52</sup> Ibid.

advertisements, provide a variety of forms, such as smart wearables, wearable fitness trackers, smart security systems, and much more. These devices then use and transmit the data to their device/service providers.<sup>56</sup> Although where data privacy law adequately protects data, because many IoT devices lack cybersecurity defenses, this makes them vulnerable to data leaks, cyberattacks, and breaches. Problems arise when companies fail to properly secure the data they collect, or allow unauthorized access to private personal data.<sup>57</sup>

Recent examples of lawsuits involving IoT devices. Privacy breaches are relatively common. Amazon was a defendant in a lawsuit filed by the Federal Trade Commission (FTC) in 2015, which accused the company's IoT devices, including Amazon Alexa, of violating the FTC's ban on illegally recording and storing

## Things (lot) Devices



ating some of the many devices that are  
ed to the Internet of Things.<sup>55</sup>

connectivity, and software. Such devices come in a variety of forms, such as smart home devices, wearable fitness trackers, smart doorbells, home security systems, and much more. Such devices then use and transmit the data they collect to the device/service providers.<sup>56</sup> Although, even in cases where data privacy law adequately protects user data, because many IoT devices lack proper cybersecurity defenses, this data can still be vulnerable to data leaks, cyberattacks, and breaches. Problems arise when organizations and companies fail to properly secure the data they collect, or allow unauthorized persons to access private personal data.<sup>57</sup>

Recent examples of lawsuits over IoT Data Privacy breaches are relatively common. In 2019, Amazon was a defendant in a United States Federal Trade Commission (FTC) lawsuit that accused the company's IoT connected device, Amazon Alexa, of violating privacy laws by illegally recording and storing its user's speech and conversations without proper consent.

<sup>53</sup> Electronic Privacy Information Center. “Social Media Privacy – EPIC – Electronic Privacy Information Center.” Epic.org, n.d. <https://epic.org/issues/consumer-privacy/social-media-privacy/>.

<sup>54</sup> Ibid.

<sup>55</sup> ThinkGizmo. Internet of Things (IoT). September 2, 2017. Online Image. *Flickr.com*. <https://www.flickr.com/photos/thinkgizmo/36802620122>.

<sup>56</sup> “How Do Companies Collect Data?” Narrative Knowledge Base. Accessed August 2, 2023. <https://kb.narrative.io/how-do-companies-collect-data>.

<sup>57</sup> Ibid.



Amazon settled the case, paying \$25 million.<sup>58</sup> In another instance in 2015, the German Federal Network Agency stopped sales of an IoT doll toy called “My Friend Cayla” that collected and transmitted speech data directly to the internet, which the Federal Network Agency deemed was vulnerable to hacking and violated Germany’s own data privacy laws.<sup>59</sup>

Many regulatory bodies place IoT devices under special categories that could require stricter privacy laws and security measures that affirm an individual’s right to data privacy while at the same time preserving the functionality of such IoT equipped devices. There is, however, no defined balance between these two values of privacy and utility, and it remains an issue that is yet to be adequately resolved.

## Data Brokers

Some companies specialize in collecting, aggregating, and/or analyzing data. These **data brokers** utilize public government records and online surveys, but also purchase data from other companies or organizations like social media

platforms and websites. In common with the many other forms of data collection, the information these brokers have can include what many people consider personal or private information, such as addresses, income, full names, internet browsing habits, connections, and contacts. These companies then sell this collected data to other organizations or companies for purposes ranging anywhere from targeted advertisements to personal background checks to credit risk assessments.<sup>60</sup>

In the process of using and organizing gathered data, data brokers create categories to place individuals into according to their personal data. While some categories may seem harmless, like tastes and preferences in foods or shopping, other categories creep into gray areas, for example: “gamblers”, “non-confident english speakers”, or “urban and struggling single mothers.”<sup>61</sup> The usage of these categories in targeted advertisement campaigns brings into question whether or not these methods can be considered to be invasions of privacy or even predatory. In

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<sup>58</sup> “Amazon.Com to Pay \$25 Million to Settle Alexa Privacy Lawsuit with FTC.” Reuters, May 31, 2023. <https://www.reuters.com/legal/amazoncom-pay-25-million-settle-alexa-privacy-lawsuit-with-ftc-2023-05-31/>.

<sup>59</sup> BBC News. “German Parents Told to Destroy Cayla Dolls over Hacking Fears.” BBC News, February 17, 2017. <https://www.bbc.co.uk/news/world-europe-39002142>.

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<sup>60</sup> Naylor, Brian. “Firms Are Buying, Sharing Your Online Info. What Can You Do about It?” NPR, July 11, 2016. <https://www.npr.org/sections/alltechconsidered/2016/07/11/485571291/firms-are-buying-sharing-your-online-info-what-can-you-do-about-it>.

<sup>61</sup> Naylor, Brian. “Firms Are Buying, Sharing Your Online Info. What Can You Do about It?” NPR, July 11, 2016. <https://www.npr.org/sections/alltechconsidered/2016/07/11/485571291/firms-are-buying-sharing-your-online-info-what-can-you-do-about-it>.

these systems, user's online activities can affect their consumer data profiles in a fairly direct manner as these profiles are continuously updated with newly collected data points. Data brokers pull in significant revenue figures from selling this information. Acxiom, one of the world's largest data brokers, reported a revenue of over \$800 million in 2015. This aspect of data privacy law requires deliberate and special regulatory attention in order to adequately protect individual's rights to privacy in such a lucrative international industry.<sup>62</sup>

## Artificial Intelligence

Existing within the frameworks of many of the data collection strategies mentioned above, **Artificial Intelligence (AI)** programs aid in the analysis, collection, and comprehension of data from raw individuals, transforming it into aggregates with useful trends and patterns. Recent years have seen major progress in AI capabilities across a wide range of industries, and assessing the potential and current effects of AI on society remains a principle goal of the UN.<sup>63</sup>

While organizations utilize AI in many beneficial

ways, from identifying financial fraud to assisting with customer service, or providing shopping recommendations based on habits, there remain substantial concerns regarding data privacy and data usage. The expansion of what AI can do in the world of data privacy, algorithms, and recommendation software remains limited by the inherent flaws still present in AI systems. A recent AI employee recruitment tool employed in an Amazon experiment was stopped because it proved to be biased against hiring women.<sup>64</sup> Other AI models demonstrate racial bias toward and against specific groups of people.<sup>65</sup> Because of its novelty in the sphere of consumer technology, lawmakers have some catching up to do in educating and providing legal structure as the imminent issues arise from the widespread use of AI, especially in the marketplace. Through these faults, it seems that issues with the efficacy of AI models will continue to grow under the focus of regulatory bodies in the pursuit of fair data privacy law.

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<sup>62</sup> Privacy Bee News. "These Are the Largest Data Brokers in America." Privacy Bee, July 18, 2023. <https://privacybee.com/blog/these-are-the-largest-data-brokers-in-america/>.

<sup>63</sup> International Telecommunications Union. "United Nations Activities on Artificial Intelligence (AI)," 2022. [https://www.itu.int/dms\\_pub/itu-s/opb/gen/S-GEN-UNACT-2022-PDF-E.pdf?web=1](https://www.itu.int/dms_pub/itu-s/opb/gen/S-GEN-UNACT-2022-PDF-E.pdf?web=1).

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<sup>64</sup> Dastin, Jeffrey. "Amazon Scraps Secret AI Recruiting Tool That Showed Bias Against Women." Reuters, October 10, 2018. <https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK08G>.

<sup>65</sup> Spielkamp, Matthias. "Inspecting Algorithms for Bias." MIT Technology Review, April 2, 2020. <https://www.technologyreview.com/2017/06/12/105804/inspecting-algorithms-for-bias/>.

## Development Of Data Privacy Laws

Many countries, even those most dependent on internet consumption and usage, do not have reliable, comprehensive, or robust data privacy laws that adequately protect individual's data or inform people on how that data is being used<sup>66</sup>. Because data privacy laws exist in many stages of development across the world, these privacy issues affect both high internet-use nations and countries who are just beginning to gain reliable access to the internet. As evidenced by the large number of recent lawsuits, there are many cases in which justice for violations of privacy rights seem to come too late after damage has already been done. In generating comprehensive data privacy laws, many aspects like the functionality of data, differences in values of privacy internationally, and preventative strategies should be considered.

## History Of The Problem



*Protecting the privacy and personal data of individuals remains an emerging priority of the UN and other international organizations.<sup>67</sup>*

In order to more appropriately address modern problems that exist in international data privacy laws today, it is important to understand the historical path data privacy has taken. Even before the emergence of the internet, large amounts of personal data was collected by governments and organizations for usage in medical, social security, and military programs. By the middle of the 20th century, the potential for large data sets to be used in advertising was beginning to be realized, which is now one of the main uses of data and one of the key reasons for the importance of data privacy laws today. This section outlines a chronological history of international data privacy as it has evolved over time.

<sup>66</sup> U.S. Government Accountability. "Consumer Data: Increasing Use Poses Risks to Privacy." Consumer Data: Increasing Use Poses Risks to Privacy | U.S. GAO, September 13, 2022. <https://www.gao.gov/products/gao-22-106096>.

<sup>67</sup> Blogtrepreneur. Data Security. September 29, 2016. Online Image. Wikimedia Commons. <https://howtostartablogonline.net/>.



## Development Of A Right To Privacy

The early 20th century saw a gradual increase in recognition of the importance of the protection of individual's rights to privacy. As they grew and as technology improved, banking and financial bodies collected and stored details on individual's balances, transaction histories, and other personal information. Businesses also began compiling mailing lists with the aim of reaching potential customers, a practice still common today. By around the 1930s, several countries introduced or increased their social security programs with the aim of providing financial support to their citizens.<sup>68</sup> These welfare programs required more attention to data than ever before, combining already existing census data with newly collected sensitive personal information, which all had to be processed in large databases with manual record-keeping practices.<sup>69</sup>

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<sup>68</sup> "A Brief History of Data Privacy, and What Lies Ahead." Skyflow.  
<https://www.skyflow.com/post/a-brief-history-of-data-privacy-and-what-lies-ahead/>.

<sup>69</sup> "Historical Background And Development Of Social Security." Social Security Administration.  
<https://www.ssa.gov/history/briefhistory3.html>.

## The Universal Declaration Of Human Rights



*Former United States First Lady Eleanor Roosevelt holds the UDHR at Lake Success, New York, circa 1949.<sup>70</sup>*

By 1948 the UN itself had outlined a basic universal right to privacy. In Paris, the United Nations General Assembly released the **Universal Declaration of Human Rights (UDHR)**, a document that pioneered the further development of shaping human rights from that point onward.<sup>71</sup> Article 12 of the UDHR states:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the

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<sup>70</sup> FDR Presidential Library and Museum. Eleanor Roosevelt UDHR. 1949. Image. Wikimedia Commons.  
[https://commons.wikimedia.org/wiki/File:Eleanor\\_Roosevelt\\_UDHR\\_%2827758131387%29.jpg](https://commons.wikimedia.org/wiki/File:Eleanor_Roosevelt_UDHR_%2827758131387%29.jpg).

<sup>71</sup> "A Brief History of Data Protection: How Did It All Start?" International Network of Privacy Law Professionals.  
<https://inplp.com/latest-news/article/a-brief-history-of-data-protection-how-did-it-all-start/>.



protection of the law against such interference or attacks.<sup>72</sup>

The inclusion of Article 12 in the UDHR established the importance of the individual's right to privacy internationally, and set a precedent for subsequent legal developments and court rulings. The UDHR and its stance on privacy also influenced various other international conventional agreements on human rights. These legislations are listed within the Topic B Past Actions and Possible Solutions sections, found later in this guide.

Another important milestone related to the history of data privacy law is the International Covenant on Civil and Political Rights (ICCPR) — a document formed in 1966 that went into effect in 1976 with 74 signatory countries.<sup>73</sup> The ICCPR built upon the UDHR to further establish a right to privacy and protections from arbitrary or invasive laws. While the ICCPR is not directly related to data privacy, coming from a time before the age of the internet, its broad scope and universal applicability makes it one of

the many foundational documents for later legal efforts in the area of data privacy.

This same universal applicability, however, can actually harm the effectiveness of legislation in enforcing and identifying violations of privacy. If a law or regulation is too vague, it can be difficult to pin down specific violations, especially in a court of law against corporations or organizations with vast legal resources and skilled lawyers.

## Violations Of Data Protection Laws

In August 2019, Facebook (now known as Meta) experienced a data breach in which the personal data of 533 million of its users from 106 countries was stolen and collected on an online hacking forum. The hackers used a vulnerability in one of Facebook's features which connected user's phone numbers for networking purposes to scrape the data from an insufficiently-secured database. The information on individual users included things like location, full names, phone numbers, email addresses, and other personal information.<sup>74</sup>

While Facebook stated that they had patched the issue and that route of data breaching was no longer possible, they declined to notify individual users that their data had been compromised.

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<sup>72</sup> "Universal Declaration of Human Rights." United Nations. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>73</sup> United Nations High Commissioner for Human Rights. "International Covenant on Civil and Political Rights." Human Rights Quarterly 7, no. 1 (February 1985): 132. <https://doi.org/10.2307/762040>.

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<sup>74</sup> Emma Bowman, "After Data Breach Exposes 530 Million, Facebook Says It Will Not Notify Users," NPR, April 10, 2021, <https://www.npr.org/2021/04/09/986005820/after-data-breach-exposes-530-million-facebook-says-it-will-not-notify-users>.

Because a portion of information was considered to be publicly available, Facebook downplayed the severity of their data leak.<sup>75</sup> Although the information might have been publicly available, still sensitive information was easily accessible to potential malicious actors, leaving individuals more vulnerable to cyber attacks, data phishing, and identity theft.

Under legislation like the European Union's **General Data Protection Regulation (GDPR)**, companies have a responsibility to proactively protect their user's personal data with robust protocols. Many argue that Facebook failed to practice the GDPR's requirement of transparency and accountability by not immediately notifying their users of the data breach. This incident is not the only data privacy breach that companies like Facebook (or even Facebook itself) have experienced. The frequency of these violations of data privacy laws emphasizes the need for companies to prioritize data security, take swift action in response to breaches, and communicate transparently with users and regulators.

## Net Neutrality

Another principle adjacent to data privacy law that flared in importance in 2018 is net neutrality. Under **net neutrality**, **internet service**

**providers (ISPs)** are required to treat all internet data equally without throttling or blocking certain forms of content or actions. In 2018, the United States Chairman of the Federal Communications Commission (FCC) Ajit Pai, appointed by then President Trump, led a campaign to repeal pro-net-neutrality regulations from 2015 that were established by the Obama administration. In June of 2018, Pai's repeal took effect; however, the courts ruled that the FCC was not allowed to override or preemptively establish individual state laws.<sup>76</sup>

The repeal of net neutrality sparked various movements and debates across various internet communities, companies, and advocacy groups. The potential effects of ISPs being able to speed up, slow down, or outright block internet traffic virtually at-will are heavy. Supporters of the repeal argue that net neutrality regulations follow the 1930's-style utility regulations of the United States and stifle the free market, while those against the repeal feel that the lack of net neutrality could lead to unfair practices, limit competition, and stifle freedom of expression

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<sup>75</sup> "Facebook Downplays Data Breach in Internal Email." BBC News, April 20, 2021. <https://www.bbc.com/news/technology-56815478>.

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<sup>76</sup> Jon Brodtkin - Oct 1, 2019 3:09 pm UTC. "Ajit Pai Wins (and Loses) in Court as Net Neutrality Repeal Is Mostly Upheld." Ars Technica, October 1, 2019. <https://arstechnica.com/tech-policy/2019/10/net-neutrality-still-dead-but-judges-rule-that-fcc-cant-preempt-state-laws/>.

throughout the internet.<sup>77</sup> As governing bodies continue to form regulations concerning net neutrality, the debate on how net neutrality should be handled both in the United States and internationally is far from over.

The history of international data privacy law is characterized by regulations that are often fragmented and vague. It is important to note that every individual regulation only works as far as that governing body can force organizations into compliance. This is an immensely difficult task in a globalized world with many wealthy international corporations. The common values of historical decrees on data privacy emphasize the importance of maintaining everyone's basic rights to privacy, outlined in the UN's first human rights decrees of the mid 20th century.<sup>78</sup> As technology changes, regulations will need to catch up in order to actualize these rights.

## Past Actions



*The European General Data Protection Regulation (GDPR) is the EU's data and information protection law passed in 2016.<sup>79</sup>*

## National Data Protection Authorities

National Data Protection Authorities (DPAs) play a crucial role in data privacy regulation. Their primary task is to ensure the effective application of data protection laws in their respective countries. They're tasked with investigating violations, conducting audits, and serving as a mediator between individuals and corporations that process their personal data.<sup>80</sup>

According to the European General Data Protection Regulation (GDPR), DPAs act as independent public authorities that must be

<sup>77</sup> "Pro and Con: Net Neutrality in the United States." Encyclopædia Britannica. <https://www.britannica.com/story/pro-and-con-should-the-us-have-net-neutrality-laws>.

<sup>78</sup> "UNSDG | Data Privacy, Ethics and Protection: Guidance Note on Big Data for Achievement of the 2030 Agenda." United Nations. Accessed August 2, 2023. <https://unsdg.un.org/resources/data-privacy-ethics-and-protection-guidance-note-big-data-achievement-2030-agenda>.

<sup>79</sup> Convert GDPR. GDPR & EPrivacy Regulations. March 21, 2018. Online Image. Flickr.com. <https://www.convert.com/GDPR/>.

<sup>80</sup> European Data Protection Board. "Data Protection - European Data Protection Supervisor - European Data Protection Supervisor." European Data Protection Supervisor - European Data Protection Supervisor, November 11, 2016. [https://edps.europa.eu/data-protection\\_en](https://edps.europa.eu/data-protection_en).



instituted in each member state.<sup>81</sup> DPAs have the power to impose significant penalties for non-compliance, thereby increasing the financial risk for organizations that do not adequately protect personal data. They have the ability to issue warnings, reprimands, and order compliance with data subject requests. They also have the ability to shut down data processing operations and take legal action against any entity for the improper use of data.

In addition to enforcing legislation, DPAs provide guidance on the application of data protection laws. This includes providing advice on data breaches, transfer mechanisms, and data protection impact assessments (DPIAs). They also cooperate with other DPAs in the European Data Protection Board (EDPB) to ensure the consistent application of the GDPR across Europe.<sup>82</sup>

Similar regulatory bodies can be found in countries that are not members of the European Union, such as the Federal Trade Commission in the United States or the Personal Data Protection Commission in Singapore. These authorities are

responsible for ensuring that personal information and privacy are protected within their respective jurisdictions, and they work to address issues related to privacy as they crop up.<sup>83</sup>

## Universal Declaration Of Human Rights Inspired Actions

As mentioned earlier, the Universal Declaration of Human Rights (UDHR), established in 1948, marked a groundbreaking moment in the development of legislation, serving as a foundational framework for the creation of subsequent data protection laws. The following legal protective documents came from a variety of different countries over the past few decades.

**Brazil signed the Brazilian Data Protection Act (LGPD)** in 2018, which outlines values such as “respect for privacy”, “inviolability of intimacy, honor and image”, as well as maintaining the importance of “free enterprise, free competition and consumer defense.”<sup>84</sup>

South Africa created their own protective regulation in 2020, known as the Protection of Personal Information Act (POPIA). POPIA

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<sup>81</sup>EUR-Lex. “Regulation (EU) 2016/679 of the European Parliament and of the Council of 27.” Europa.eu, 2016.  
<https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

<sup>82</sup>European Data Protection Board. “EDPB Chairmanship | European Data Protection Board.” edpb.europa.eu. Accessed September 1, 2023.  
[https://edpb.europa.eu/about-edpb/about-edpb\\_en](https://edpb.europa.eu/about-edpb/about-edpb_en).

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<sup>83</sup>Federal Trade Commission. “Protecting Consumer Privacy and Security.” Federal Trade Commission, August 5, 2013.  
<https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy>.

<sup>84</sup>International Association of Privacy Professionals. “Brazilian General Data Protection Law (LGPD, English Translation).” IAPP, October 2020.  
<https://iapp.org/resources/article/brazilian-data-protection-law-lgpd-english-translation/#>.



especially emphasizes transparency with data usage. It requires organizations to report all data breaches and must also grant individuals the right to request information about the extent of personal data held by the company, including the purpose, reasoning, and timeframe for retaining that data.<sup>85</sup>

### **Canada's Personal Information Protection and Electronic Documents Act (PIPEDA)**

asserts that consent must be given before organizations under PIPEDA jurisdiction can collect user data and gives people the right to know what data is held, including the ability to potentially challenge its accuracy. Along similar lines of other regulations, information gathered on consumers must only be used for its originally intended purpose.<sup>86</sup>

The European Union's General Data Protection Regulation (GDPR), effective in 2018, obligates that organizations who collect data on or target EU citizens are required to follow relatively strict and nonspecific guidelines on commercial internet data privacy. The fines imposed on

businesses for violating the GDPR top out at whichever value is higher, €20 million or 4% of global revenue. The GDPR itself exists in large part due to the existence and development of previous regulations on data privacy from 1995, the European Data Protection Directive.<sup>87</sup>

The European Data Protection Directive (EDPD) aimed to smooth out inconsistencies and establish a standard regulatory practice between the EU member states' own pre-existing, but insufficient, regulations regarding the storage, analysis, and transference of personal data throughout the EU.<sup>88</sup> It especially highlighted limitations and transparency standards on what data could be used for. As a flexible directive, the EDPD has remained relatively current even in the modern world and proliferation of the internet in everyday life since its inception in 1995, but many unforeseeable situations and technologies have emerged over the past few decades which the newer GDPR helps to address.

### **UN GA Resolution To The Right To Privacy In The Digital Age (2013)**

The United Nations General Assembly Resolution 68/167 recognizes the right to privacy as a fundamental human right and expresses concern at the negative impact that surveillance

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<sup>85</sup> POPIA. "Protection of Personal Information Act (POPI Act)." POPIA, 2021. <https://popia.co.za/>.

<sup>86</sup> Office of the Privacy Commissioner of Canada. "The Personal Information Protection and Electronic Documents Act (PIPEDA) - Office of the Privacy Commissioner of Canada." Priv.gc.ca, 2019. <https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/>.

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<sup>87</sup> Welford, Ben. "What Is GDPR, the EU's New Data Protection Law?" GDPR.eu. European Union, 2018. <https://gdpr.eu/what-is-gdpr/>.

<sup>88</sup> Ibid.

and/or interception of communications may have on human rights.<sup>89</sup>

The resolution reaffirms the rights of individuals to privacy and recognizes that digital communications technology can potentially interfere with these rights. It urges all states to respect and protect their citizens' right to privacy regarding digital communications. The resolution also emphasizes the need for states to assess their methods, practices, and regulations in relation to surveillance, interception, and collection of personal data in their respective jurisdictions.

The resolution asks the United Nations High Commissioner for Human Rights to report on the protection and promotion of privacy in the context of domestic and extraterritorial surveillance, including on a mass scale. The aim was to clarify the principles, standards, and recommended best practices on privacy protection at a global level. In effect, it set an international standard for privacy rights, one which all nations are encouraged to uphold.<sup>90</sup>

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<sup>89</sup> United Nations General Assembly. "The Right to Privacy in the Digital Age": United Nations Digital Library System, January 21, 2014. <https://digitallibrary.un.org/record/764407?ln=en>.

<sup>90</sup> United Nations High Commissioner for Human Rights. "OHCHR | Right to Privacy in the Digital Age." Ohchr.org, 2019. <https://www.ohchr.org/en/issues/digitalage/pages/digitalageindex.aspx>.

## Case Study: E.U.-U.S. Privacy Shield Agreement

The E.U.-U.S. Privacy Shield was an innovative solution to the challenge of data protection across jurisdictions.<sup>91</sup> The agreement was finalized in 2016 with the goal of providing legal clarity for companies that rely on transatlantic data transfers while still protecting the fundamental rights of people whose personal data is transmitted to the United States.

Under the terms of the Privacy Shield agreement, businesses were obligated to safeguard any identifiable personal information that was sent from the European Union to the United States. The Federal Trade Commission had the authority under United States law to enforce the standards that were outlined, and it was necessary for businesses to annually attest that they complied with those requirements. The Privacy Shield was an essential instrument that helped to facilitate transatlantic digital trade while simultaneously protecting individuals' private data.

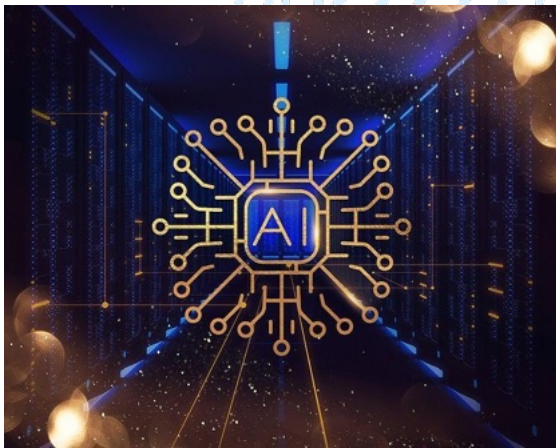
However, the Court of Justice of the European Union invalidated the Privacy Shield in 2020 in the case of Data Protection Commissioner v. Facebook Ireland and Maximillian Schrems (Schrems II) due to concerns about U.S.

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<sup>91</sup> US Department of Commerce. "Data Privacy Framework." [www.privacyshield.gov](http://www.privacyshield.gov), n.d. <https://www.dataprivacyframework.gov/s/program-overview>.

surveillance practices.<sup>92</sup> The ruling serves to illustrate the difficulties associated with enforcing data privacy regulations at the international level among countries with different regulatory environments and security interests.

## Possible Solutions



*Artificial Intelligence (AI) represents one new area of emerging technology that will require the development of new regulations to protect personal data.<sup>93</sup>*

### Establish Guiding Principles In Regards To Navigating New Technologies

The rapid pace of technological advancements has led to new challenges for data privacy

regulation. Establishing guiding principles can help navigate these challenges. The implementation of these principles could serve as a foundation for determining the effect that newly developed technologies have on individuals' privacy and act as a roadmap for the creation of applicable regulatory and legal frameworks.

These guiding principles might include aspects such as data minimization, where the least amount of personal data necessary is collected; purpose limitation, where data is only used for the reason it was collected; and transparency, where individuals are informed about how and why their data is being used.

Another possible guiding principle is “privacy by design”, a method in which concerns regarding user privacy are included in the process of developing new technology. This strategy makes certain that privacy is not an afterthought but rather a fundamental component of technological progress.

### Increasing User Control Of Personal Data

There are a few potential methods to improve data privacy, including more transparent permission mechanisms and increased user control. The currently available consent methods are frequently convoluted, obscure, and devoid of any actual option. A number of potential improvements to these systems include providing

<sup>92</sup> Publications Office of the European Union. “Judgment of the Court (Grand Chamber) of 16 July 2020.” Publications Office of the EU, July 16, 2020.  
<https://op.europa.eu/en/publication-detail/-/publication/d17ef5a0-c749-11ea-adf7-01aa75ed71a1/language-en>.

<sup>93</sup> MacKenzie, Mike. *Artificial Intelligence & AI & Machine Learning*. October 5, 2018. Online Image. *Flickr.com*. [www.vpnrsus.com](http://www.vpnrsus.com).



more precise explanations of data usage, streamlining the procedures for opting out, and increasing transparency surrounding the sharing of data with third parties.

Enhancing user control over personal data is another aspect of this solution. This could involve allowing users to view, correct, or delete the information they previously provided. Offering users more control over what data is available and how it is used is just another proponent to consumer-business transparency's cogency.

This solution would require collaboration between governments, businesses, and privacy advocates, and require legal backing to ensure that businesses are motivated to implement these changes.

### **Enhancing Enforcement And Accountability**

There is a need for improved enforcement and accountability systems in order to deter overstepping of privacy boundaries. This might involve giving privacy regulators more authority, increasing the penalties for privacy infractions, and establishing more specific rules for what constitutes a breach of privacy.

One such potential answer is the establishment of a global regulatory structure for the protection of personal data. In order to achieve this goal, privacy legislation would need to be standardized across countries. This would prevent firms from

taking advantage of jurisdictions with less stringent privacy laws. A data protection and human rights framework on such a global scale would need to be founded on concepts that are generally acknowledged as being sound.

## **Bloc Positions**

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### **Standardized Legislation vs. National Sovereignty**

#### *Proponents of Standardized Legislation:*

Many nations, especially those within the European Union and affiliated with international coalitions, advocate for standardized international legislation governing data privacy. The rationale behind this is the simplification of international trade and fostering cooperative international relations. According to the UN's International Law Commission, standardizing legislation can lead to predictability, trust, and mutual understanding among nations.<sup>94</sup> It eliminates the need to navigate a complex web of diverse national laws, especially for businesses operating in multiple countries. Furthermore, standardized rules can set a minimum standard that all countries must meet, potentially leading to a global increase in the quality of regulations.

#### *Proponents of National Sovereignty:*

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<sup>94</sup> UN International Law Commission.  
"International Law Commission." Un.org, 2016.  
<https://legal.un.org/ilc/>.



On the other hand, many nations emphasize the importance of retaining sovereignty over their internal laws and regulations with respect to data and data privacy. According to the UN Charter, one of the organization's foundational principles is the respect for the principle of equal rights and self-determination of peoples.<sup>95</sup> Some countries argue that international standards may not always align with a nation's unique cultural, historical, legal, and social contexts. Moreover, an imposed standardized legislation may inadvertently lead to regulations that are not optimized for a country's unique circumstances, potentially leading to inefficiencies or cultural dissonance.

## Developing vs. Established Regulatory Frameworks

### *Developing Countries – Building from Scratch:*

For nations still in the nascent stages of their legal development or undergoing rapid change, there is a potential advantage in building regulatory frameworks governing data privacy from scratch.

According to the World Bank, newer frameworks can incorporate modern best practices and can be optimized for the current global environment.<sup>96</sup>

For instance, countries in Africa, such as

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<sup>95</sup> United Nations. "Chapter I: Purposes and Principles (Articles 1-2)." United Nations, 1945. <https://www.un.org/en/about-us/un-charter/chapter-1#:~:text=All%20Members%20shall%20refrain%20in.>

<sup>96</sup> The World Bank. "Worldbank Search." [www.worldbank.org](https://www.worldbank.org/en/search?q=legal+frameworks+and+economic+development). Accessed September 1, 2023. <https://www.worldbank.org/en/search?q=legal+frameworks+and+economic+development>.

Rwanda, have managed to leapfrog older technologies and practices, moving directly to newer, more efficient systems. Without the baggage of outdated laws, these nations have the flexibility to adopt and integrate international standards more easily.

### *Established Nations – Reluctance to Significant Change:*

Countries with well-established legal systems and practices, like the United States or many Western European nations, may exhibit reluctance to overhaul or significantly adjust their existing laws to accommodate data privacy regulation. Countries in this bloc often have vast systems of precedent, intricately linked laws, and practices that are deeply ingrained in their business and legal communities. Adjusting these systems could cause disruption. Moreover, these nations may believe that their existing frameworks have been essential to their past success and are, therefore, hesitant to make major changes.

## Economic Growth vs. Consumer Privacy

### *Economic Growth of Businesses:*

Nations prioritizing economic growth, especially those with emerging markets, often emphasize deregulation or relaxed regulations to attract foreign investments and stimulate local businesses. The UN Conference on Trade and Development (UNCTAD) suggests that a more liberalized regulatory environment can stimulate

competition, innovation, and investment.<sup>97</sup> Some examples include Singapore and Hong Kong, who have often been lauded for their business-friendly environments, which some attribute to their rapid economic growth. However, lax regulations may result in the exploitation of data and the violation of data privacy by businesses and governments prioritizing economic growth.

*Privacy of the Consumers:*

In contrast, the increasing concerns about digital privacy, especially in the aftermath of high-profile data breaches reported by major news outlets, have prompted many nations to prioritize consumer protection over unrestricted business growth.<sup>98</sup> The European Union's General Data Protection Regulation (GDPR) exemplifies this stance, emphasizing individual rights to data and stringent controls on how businesses can use this data. Such policies highlight a belief in the fundamental right to privacy and the risks associated with unchecked data collection and usage.

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<sup>97</sup>Shafaeddin, S.M. "Trade Liberalization And Economic Reform In Developing Countries: Structural Change Or De-Industrialization?," 2005. [https://unctad.org/system/files/official-document/osgdp20053\\_en.pdf](https://unctad.org/system/files/official-document/osgdp20053_en.pdf).

<sup>98</sup> BBC News. "Apple Digital-ID Scheme Delayed to 2022." BBC News, November 24, 2021, sec. Technology. <https://www.bbc.com/news/technology-59373965>.

## Glossary

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**Artificial Intelligence (AI):** A branch of computer science focused on creating systems capable of performing tasks that typically require human intelligence, such as decision-making or language processing.

**Brazilian Data Protection Act (LGPD):** Brazil's data protection law, similar to the EU's GDPR, which regulates the processing of the personal data of its residents.

**Canadian Personal Information Protection and Electronic Documents Act (PIPEDA):** Canada's main data protection law, governing the collection, use, and disclosure of personal data in the private sector.

**Cookies (Data type):** Small files stored on a user's device by websites, often used to remember preferences, track user behavior, or provide personalized content.

**Data Brokers:** Companies or individuals that collect, process, and sell or trade data about individuals, often without their knowledge or consent.

**European Union General Data Protection Regulation (GDPR):** The EU's comprehensive data protection law that mandates how personal data of EU residents should be handled and protected.

**Internet of Things Device (IoT):** Connected devices that can collect and exchange data with other devices or systems over the internet, and which do not necessarily require human intervention.

**Internet Service Providers (ISPs):** Companies that provide internet access to customers, connecting them to the wider internet.

**Net Neutrality:** The principle that internet service providers (ISPs) should treat all data on the internet in the same way, without favoring or blocking particular products, sites, or types of content.

**Universal Declaration of Human Rights (UDHR):** A foundational international document adopted by the UN in 1948 outlining certain fundamental human rights that should be universally protected.

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