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ORGAN TRAFFICKING: LEGISLATIVE PROPOSALS TO PROTECT MINORS

Maria N. Morelli*

INTRODUCTION

For the many afflicted with organ failure, organ substitution is often the only viable, life-saving option. As medical advances with anti-rejection drugs have yielded high success rates,¹ the demand for organ transplants has increased² at a rate greatly exceeding supply.³ This void has spawned an international trade in adult organs to meet the excessive demand for organs and to bypass Western countries' laws prohibiting financial remuneration for organ donations.⁴

* J.D. candidate, May 1996, Washington College of Law, The American University; B.A. 1992, Yale University. I would like to thank my family for their unconditional love, support and confidence over the years. Special thanks to T.J. Wolfe for his patience and computer skills, for supplying me with caffeine during the wee hours of the morning and, finally, for keeping a smile on my face. I am especially grateful to Max Holland for his untiring editorial assistance, Heather Thomas and the entire *ILJ* staff. Any errors are, of course, entirely my own.

1. See *Organ Transplant Act*, 4 U.S.C.A.N. 3975, 3976 (1984) (providing a detailed legislative history of the National Organ Transplant Act and explaining that the anti-rejection drug, cyclosporine was released in 1983). Cyclosporine increases survival rates. *Id.* Kidneys have a better than 80% chance of survival for at least one year, up from 50% before cyclosporine. *Id.* Specifically, from 1984 to April 1990, the annual number of heart transplants increased from 346 to 1673; liver transplants increased from 308 to 2160; and kidney transplants increased from 6969 to 8890. *National Organ Transplantation Act, Hearing Before the Subcomm. on Health and the Env't of the House Comm. on Energy and Commerce*, 101st Cong., 2d Sess. 17 (1990) [hereinafter *Hearing*] (statement of Robert G. Harmon, Admin'r, Health Resources and Serv.'s Admin., Pub. Health Serv.).

2. *Hearing*, *supra* note 1, at 17 (statement of Harmon).

3. *Id.*

4. See WHO Guiding Principles on Human Organ Transplantation, pmbl. ¶ 1 [hereinafter WHO Guiding Principles], reprinted in LEGISLATIVE RESPONSES TO ORGAN TRANSPLANTATION 470-71 (World Health Organization (WHO) ed., 1994) [hereinafter LEGISLATIVE RESPONSES] (stating, "rational argument can be made to the effect

This documented trade in adult organs and the paucity of organs for medical transplants have fueled fears of a thriving criminal market in children's organs.⁵ Beginning in 1987,⁶ rumors of such a trade to North America,⁷ Europe,⁸ and Israel,⁹ have raged throughout Latin America.¹⁰ These rumors remain unsubstantiated.¹¹ Nonetheless, the

that shortage has led to the rise of commercial traffic[k] in human organs, particularly from living donors who are unrelated to recipients"). *See generally*, Maud Beelman, *Parts Needed for Transplants in Human Organs Stirs Global Attention*, L.A. TIMES, July 16, 1989, at A6 (reporting on the commercialization of organ transplants, including sales by Turkish and Philippine citizens).

5. *See Rights of the Child, Sale of Children: Report of Mr. Vitit Muntarbhorn, Special Rapporteur*, Comm. on Human Rights, 49th Sess., Agenda item 24, at 22 ¶ 127, U.N. Doc. E/CN.4/67 (1993) [hereinafter *Muntarbhorn*] (stating that because "there is definitely a proven trade of human organs concerning adults; the threat to children is thus ever-present"); *Summary Record, Comm. on Human Rights, Sub-Comm. on Prevention of Discrimination and Protection of Minorities*, 41st Sess., 39th mtg., at 21 ¶ 94, U.N. Doc. E/CN.4/Sub.2/SR.39 (1989) [hereinafter *Summary Record*] (statement of Mr. Graves, Int'l Comm. of Health Professionals) (testifying that unethical professionals and government officials exploit impoverished children).

6. UNITED STATES INFORMATION AGENCY (USIA), *THE BABY PARTS MYTH: THE ANATOMY OF A RUMOR* (June 1994) [hereinafter USIA].

7. *See* Victor Perrera, *New Reports on Baby Trafficking in Guatemala*, Sacramento Bee, May 29, 1994, at F3 (explaining that the rumors suggest that North Americans, Swiss, Germans, and Italians participate in the trafficking of children's organs).

8. *Id.*

9. *See Baby-Selling Ring*, LATIN AM. WKLY. REP., Feb. 4, 1988, at 12 (reporting that two Israelis and three Guatemalans were arrested for alleged involvement in children's organ trafficking).

10. *See* Eric Sottas, Director, World Organisation Against Torture, Address at Eurosciences Media Workshop on Trade in Organs and Torture (Mar. 7, 1994) [hereinafter *Sottas Report*] (report on file with AM. U. J. INT'L L. & POL'Y) (discussing countries where the rumors are widespread, including Brazil, Argentina, Peru, Colombia, Mexico, and Honduras). Guatemala recently experienced a resurgence of the rumors. *See* William Booth, *Witch Hunt*, WASH. POST, May 17, 1994, at C1-2 (detailing the impact of the rumors in Guatemala).

11. *See* Letter from James O. Mason, Assistant Secretary of Health, & C. Everett Koop, Surgeon General, to Karel de Gucht, Chair Human Rights Subcomm. of the Eur. Parl. (June 6, 1989) [hereinafter *Letter*] (on file with AM. U. J. INT'L L. & POL'Y) (explaining that the USIA and most health professionals in the United States insist that a trade in minors' organs at this time is legally and scientifically impossible). The trade appears impossible for many reasons. First, the United States has a careful death registration system; thus, any suspicious hospital deaths would be detected. *See* Letter, *supra*; UNOS, *ORGAN TRAFFICKING: PERSPECTIVE FROM UNOS 7* (Apr. 1994) [hereinafter *UNOS ORGAN TRAFFICKING*] (responding to the rumors to allay fears of unethical practices and to increase organ donations). Organs obtained

fear runs rampant in Latin America. Angry and frightened Guatemalan crowds recently attacked American women, whom they suspected were involved in trafficking in children's organs.¹² These attacks on American citizens arguably damage the reputation of the United States,¹³ decrease international adoptions,¹⁴ and discourage organ donations.¹⁵

This comment argues that the most effective way to counter the rumors and their devastating effects is to address the rumored trade candidly. If Latin Americans believe that the United States and the international community are listening to and assessing their fears, then the rumors and their violent aftermath may subside. The discussion and

from uncertain sources will be refused. See UNOS ORGAN TRAFFICKING, at 7. Second, organ harvesting and transplantation are very complex and require highly trained health professionals and surgical facilities. See Letter, *supra*. Make-shift hospitals would not suffice, and one is unlikely to find health professionals willing to jeopardize their careers by violating the law and medical ethics. *Id.* Third, doctors must know the cause and time of death of the donor because organs must be tissue-typed to find a matching recipient and are only viable for a limited time outside of the human body. See USIA, *supra* note 6, at 4 (explaining that hearts last five hours, livers two to four hours, pancreases six to twelve hours, and kidneys for longer than forty-eight hours but doctors hesitate to use them beyond twenty-four to forty-eight hours). Organ transplant centers are government certified and inspected so irregularities in organ procurement and transplantation would be uncovered. See Letter, *supra*. But see Lindsey Gruson, *Signs of Traffic in Cadavers Seen, Raising Ethical Issues*, N.Y. TIMES, Sept. 25, 1986, at A14 (arguing that because organs can live outside the body for longer and demand is constantly increasing, "the motive and technology now exist for a black market in transplant organs").

12. See Booth, *supra* note 10, at C1-2. The spring of 1994 witnessed three attacks on American women in Guatemala. On March 29, a mob attacked June Weinstock, a fifty-one year old environmentalist from Alaska, leaving her in a coma. *Id.* The mob accused her of stealing a child, who was found unharmed four hours later. *Id.* On May 15, a crowd attacked Janice Vogel of Philadelphia on a Guatemala City bus believing that she stole her recently adopted six-month old Guatemalan baby. *Id.* Authorities arrested Melissa Larson in Santa Lucia Cotzumalguapa and released her after 19 days. *Id.* See also *Americans Beware!—Danger in Central America*, (20/20, ABC television network, June 3, 1994) [hereinafter *Americans Beware!*] (interviewing Janice Vogel; two missionaries who witnessed the attack on June Weinstock; and Todd Levanthal of the United States Information Agency).

13. But see UNOS ORGAN TRAFFICKING, *supra* note 11, at 5 (arguing that the rumors do not injure the government of the United States, but rather hurt individuals waiting for transplants who may not receive an organ because the rumors decrease donations).

14. See USIA, *supra* note 6, at 9, 12 (arguing that the rumors interfere with adoption proceedings, depriving many children of loving adoptive families).

15. See *id.* (contesting that the rumored trade may decrease voluntary organ donations and result in premature deaths).

passage of legislation to protect children from trafficking in organs may adequately calm Latin American anxiety. While legislation aimed at crippling the alleged trade in children's organs or laws designed to prevent the development of such a trade may pacify fears, in light of the present scarcity of transplant organs and their increasing monetary value on the underground market, only a noteworthy alleviation of the shortage of transplant organs will ultimately safeguard children.

Part I of this Comment provides background on the international organ trade by looking at the international scarcity of organs, the trade itself, and the Latin American rumors about trafficking in children's organs. Part II develops a legal analysis of existing sources of regulation to protect children from trafficking in organs, including the Convention on the Rights of the Child, the World Health Organization's Guiding Principles on Human Organ Transplantation, and domestic laws concerning the ability of minors to consent to organ donation. Part III explores proposed regulations to increase the supply of organs which should diminish the need to turn to underground channels for organ procurement. Part IV presents recommendations for the improved protection of children, such as amending the Convention on the Rights of the Child and adopting an international treaty, based on amended WHO Guiding Principles, to regulate organ transplantation.

I. BACKGROUND: THE DEVELOPMENT OF AN INTERNATIONAL ORGAN TRADE

A. ORGAN SCARCITY

The scarcity in transplant organs results from the combination of a decreasing donor pool¹⁶ and few voluntary, post-mortem donations.¹⁷

16. See *Hearing, supra* note 1, at 28 (statement of Harmon) (claiming that state seatbelt legislation reduces the number of traffic fatalities, thereby diminishing the number of suitable, brain-dead, heart-beating cadaveric donors); Ronald Sullivan, *New York's Shortage of Organ Donors Grows Acute*, N.Y. TIMES, Sept. 8, 1985, at E26 (reporting that New York's seatbelt law was decreasing traffic fatalities and subsequently the number of available organs for transplants). AIDS has also lessened the donor pool. *Hearing, supra* note 1, at 28 (statement of Harmon). Some propose harvesting organs from non-heartbeating cadavers to increase the supply of organs for transplants. See Stuart M. Youngner & Robert M. Arnold, *Ethical, Psychosocial, and Public Policy Implications of Procuring Organs from Non-Heart-Beating Cadaver Donors*, JAMA, June 2, 1993, at 2769 (explaining that new methods of procurement from non-heartbeating cadavers have increased their usefulness as organ donors).

17. See *Uniform Anatomical Gift Act*, (1987), 8A U.L.A. 19 (1993) [hereinafter

Surveys in the United States indicate that 60% of the population favors organ donation for themselves while 85% claim they would consent to the donation of their loved ones' organs.¹⁸ Nevertheless, at the time of death, only 25-30% of families agree to donate.¹⁹ Certain religious beliefs may curtail the number of organ donations,²⁰ while ignorance of

UAGA] (regulating voluntary post-mortem donations). In the United States, a person may consent to post-mortem donation by signing a Uniform Donor Card or a driver's license, UAGA § 2(b), or by leaving a will, UAGA § 2(e). These gifts can be revoked. UAGA § 2(f). See Hastings Centre Report (1983), reprinted in LEGISLATIVE RESPONSES, *supra* note 4, at 396 (explaining that donor cards do not mean automatic organ harvesting upon death because doctors often ask the next of kin for permission despite the card).

If the decedent did not expressly consent or refuse to donate, the following family members may consent to make a gift of decedent's body parts in the United States: 1) decedent's spouse; 2) decedent's adult son or daughter; 3) either of decedent's parents; 4) decedent's adult brother or sister; 5) a grandparent of decedent; and 6) a guardian of the person of decedent at time of death. UAGA §3(a). The UAGA requires each state to have "required request" laws which mandate physicians and health care professionals to ask family members for permission to harvest organs from the deceased. UAGA § 5. But see *Letters: Financial Incentives for Organ Donation: The Perspective of Health Care Professionals*, JAMA, Apr. 15, 1992, at 2037 (arguing that retrieval rates remain low with required request because doctors feel uncomfortable asking families to donate a loved one's organs and the provision is not well enforced); *Hearing*, *supra* note 1 (statement of Kaplan) (explaining that doctors who feel uncomfortable asking for organ donations have lower procurement rates and complain that lack of training in solicitation techniques impairs their success in getting donors).

18. *Too Few Human Organs For Transplantation, Too Many In Need . . . And The Gap Widens*, JAMA, Mar. 13, 1991, at 1223 [hereinafter *Too Few Human Organs*]. See *Hearing*, *supra* note 1, at 180-81 (statement of Arthur L. Kaplan, Ctr. for Biomedical Ethics, Univ. of Minn.) (estimating that only 60-70% of the population in the United States would consent to the donation of a loved one's organs).

19. *Hearing*, *supra* note 1, at 181 (statement of Kaplan); *Too Few Human Organs*, *supra* note 18, at 1223.

20. Antonia C. Novello, Surgeon General, *Increasing Organ Donation: A Report from the Surgeon General's Workshop*, JAMA, Jan. 8, 1992, at 213. For a look into specific religious perspectives on organ donation, see NEW HARVEST 181-221 (C. Don Keyes ed., 1991). Generally, Judeo-Christian beliefs do not prohibit living or post-mortem organ donations. *Id.* at 187-221. A Confucian aversion to dismembering corpses discourages organ transplantation. *Heartless*, The ECONOMIST, Feb. 18-24, 1989, at 91, 94. Muslims believe in the omnipotence of Allah and his ability to resurrect the dead, hindering efforts at organ donation. NEW HARVEST, *supra*, at 181-83. However, Muslim theologians now permit voluntary organ donations. *Arab Doctors Seek Theological Advice on Transplants*, Reuters, Mar. 8, 1990 (reporting that in 1979, Kuwait's Islamic Jurisprudence Council was the first in the Muslim world to sanction

organ transplantation prevents others from donating.²¹ Furthermore, the absence of uniform brain death definitions in some countries exacerbates the international shortage of human organs for transplants,²² and until recently, some nations lacked the technology necessary for the successful, healthy removal of organs from cadavers.²³

Growing waiting lists are the result of this shortage of organs.²⁴ For example, in the United States, as of June 22, 1994, the Scientific Registry at the United Network of Organ Sharing (UNOS)²⁵ reported over

transplants); DAVID LAMB, *ORGAN TRANSPLANTATION AND ETHICS* 123 (1990) (explaining the prevailing Islamic theological thought that the living should command greater respect than the dead, thereby encouraging followers of Islam to donate organs); Mohammed Rasooldeen, *Saudi Center for Organ Transplantation, In the Service of Humanity*, RYADH DAILY, June 15, 1994 (discussing the growing number of pledges by Saudis to donate organs post-mortem).

21. See Novello, *supra* note 20, at 213 (explaining that many Americans fear their organs will be removed before all measures are taken to save their lives). Lack of information within the Black community hinders donations by this population. *Id.* Blacks donate little in proportion to their numbers on the waiting list. See *The Color of Kidneys*, THE ECONOMIST, Oct. 2, 1993, at 92, 94 (reporting that Blacks comprise 33% of all those in need of transplants, but only 8% of all donors). Of those Blacks awaiting transplants, 80% could receive across racial lines, whereas 20% cannot because genetic differences in blood types and antigens make donations potentially more difficult. See *Medical Expert Gives 5 Reasons Blacks Aren't Donors*, JET, Feb. 15, 1990, at 38, 39 (announcing the start of national education campaign to recruit more Black organ donors); Sharon Jefferson, *Donor Organs: A Crisis*, ESSENCE, Oct. 1990, at 146 (urging Blacks to donate organs as a way of shaping their race's destiny). But see *The Color of Kidneys*, *supra*, at 92, 94 (showing that tissue-typing in effect discriminates against Blacks and may be unnecessary because immunosuppressive drugs increase success rates regardless of the degree of tissue-matching).

22. See *Heartless*, *supra* note 20, at 94 (discussing the traditional Japanese belief that the beating heart houses a living soul, which inhibits passage of a uniform brain death statute to facilitate organ donation); Japan Law No. 70, *reprinted in* LEGISLATIVE RESPONSES, *supra* note 4, at 249 (establishing the Special Research Committee on Brain Death and Organ Transplantation to deliberate on bioethics and policy issues).

23. See *Egypt Doctors Trying to End Sale of Kidneys, Group to Ban Transplants From Most Living Donors*, S.F. CHRON., Jan. 24, 1992, at A16 [hereinafter *Egypt Doctors*] (explaining that organ harvesting and transplantation took place in a single five-hour procedure because of inability to remove organs from cadavers).

24. See *Hearing*, *supra* note 1, at 17 (statement of Harmon) (stressing that the gap between available organs and the need for these organs is widening).

25. See UNOS TRAFFICKING, *supra* note 11, at 3 (stating that UNOS was named the government contractor for the National Organ Procurement and Transplantation Network (OPTN)). OPTN was established by the National Organ Transplantation Act to facilitate and encourage organ donation and to oversee and assist organ procure-

35,000 patients needing an organ transplant, with more than 25,000 waiting for a kidney transplant.²⁶ Comparable statistics demonstrate that in 1993, only 18,167 patients actually received organ transplants.²⁷ Nearly 11,000 kidney transplants alone were performed in 1993.²⁸ As of December 31, 1992, the Scientific Registry listed over 1542 patients under the age of eighteen waiting for an organ transplant.²⁹ In Britain, in 1993, the medical community performed 1750 kidney transplants, but 4500 patients remained on the waiting list.³⁰ Eurotransplant, which monitors organ transplants for the Benelux countries, Germany and Austria, list over 7000 patients waiting for organ transplants.³¹ Indian hos-

ment organizations (OPOs). *National Organ Transplantation Act*, Pub. L. No. 98-507, §372, 98 Stat. 2339, 2344-45 (1984) (to be codified at 42 U.S.C. 274) [hereinafter *NOTA*]. The Scientific Registry maintains records of kidney, heart, lung, heart-lung, pancreas, and liver transplants. *NOTA* §373, 98 Stat. 2345 (to be codified at 42 U.S.C. 274 (a)).

26. UNOS, *FACTS ABOUT TRANSPLANTATION IN THE UNITED STATES* (1994) [hereinafter *UNOS TRANSPLANTATION*]. The national waiting list is only a partial indicator of the numbers of patients who could benefit from an organ transplant. *Too Few Human Organs*, *supra* note 18, at 1223. Individuals may not be placed on the waiting list because the expenses connected with surgery and anti-rejection drugs intimidate them; the length of the waiting list discourages them; or their doctors choose not to place them on the waiting list because of age or other health factors. *Id.* The underlying cause of the shortage of organs in the United States may be the inefficiency of the organ procurement organizations (OPOs). See Roger W. Evans, *Organ Procurement Expenditures and The Role of Financial Incentives*, *JAMA*, June 23-30, 1993, at 3113, 3117 (concluding that there is a broad discrepancy in organ procurement charges in the United States and that financial incentives for organ donation should not be implemented until the cost efficiency of such a system is fully comprehended).

27. *UNOS TRANSPLANTATION*, *supra* note 26.

28. *Id.* Those who do not get kidney transplants face death. See Thomas G. Peters, *Life or Death: The Issue of Payment in Cadaveric Organ Donation*, *JAMA*, Mar. 13, 1991, at 1302 (explaining that in 1989, UNOS reported that 5.8% of those on the organ waiting list died before a suitable match was found); *Too Few Human Organs*, *supra* note 18, at 1223 (indicating that 200 people on the national organ waiting list die each month).

29. UNOS, *FACTS EVERYONE SHOULD KNOW ABOUT ORGAN DONATION AND TRANSPLANTATION* (1992) [hereinafter *UNOS DONATION*]; see *Hearing*, *supra* note 1, at 173 (statement of Kaplan) (reporting that everyday a child dies while waiting for an organ transplant).

30. Hugh O'Shaughnessy, *Murder and Mutilation Supply Human Organ Trade*, *THE OBSERVER*, Mar. 27, 1994, at 27.

31. *Id.*

pitals report 100,000-120,000 renal failures each year, where kidney donations fail to meet this demand.³²

B. THE INTERNATIONAL ORGAN TRADE

Living donors help to alleviate the shortage of cadaveric organs.³³ In order to prevent rejection of the donated organ, the medical community prefers to use genetically related donors, nevertheless it increasingly turns to unrelated donors' organs.³⁴ A growing commercialized market in organs has developed from a combination of the willingness to use living donors and the chronic dearth of transplant organs.³⁵

32. See Charles P. Wallace, *For Sale: The Poor's Body Parts*, L.A. TIMES, Apr. 27, 1992, at A1 (describing the desperation of India's poor, prompting them to sell their organs for economic survival).

33. See RENEE C. FOX & JUDITH P. SWAZEY, SPARE PARTS 46-54 (1992) (discussing the use of living donors for kidneys, liver and lung lobe grafts); Paul Cotton, *Living-Donor Liver Transplants Cap Surgical Research for Decade of 1980's*, JAMA, Jan. 5, 1990, at 13, 14 (explaining that the liver regenerates, making inter vivos liver donations scientifically possible); *Surgeons Transplant Liver From Living Donor*, NEW SCIENTIST, Aug. 12, 1989, at 26 (implying that children will benefit most by new procedures which increases the success of living donor liver transplants); Aaron Spital, M.D. & Max Spital, M.D., *Letters: The Ethics of Liver Transplantation From a Living Donor*, NEW ENG. J. MED., Feb. 22, 1990, at 549, 550 (arguing that parents should have the right to assess the risks of living liver donations); *Hearing, supra* note 1, at 173 (statement of Kaplan) (arguing that society will, however, have to continue to rely on cadaveric organs).

34. See Gina Kolata, *Unrelated Kidney Donors Win Growing Hospital Acceptance*, N.Y. TIMES, June 30, 1993, at C14 (reporting that the number of unrelated donors has grown since the mid-1980s). In 1988, there were fifty-six kidney transplants from unrelated donors. *Id.* In 1991, the number of living unrelated donors was over 50% higher than the 1988 rate. *Id.* Studies now show that kidney transplants from related and unrelated living donors have about the same survival rates, moreover, kidneys from unrelated donors fair better than cadaveric kidneys by 10%. *Id.* See also Andrew S. Levey et al., *Kidney Transplantation From Unrelated Living Donors*, NEW ENG. J. MED., Apr. 3, 1986, at 914-16 (preferring living kidney grafts over cadaveric kidneys and criticizing the practice of rejecting unrelated living donors as overprotective). Levey argues that living kidney grafts fair better than those with cadaveric kidneys because the transplant surgery can be scheduled in advance so the prospective donee can receive blood transfusions from the donor and begin taking immunosuppressive drugs prior to surgery. *Id.* Levey also notes that medical teams usually commit fewer technical errors when removing a liver from a living donor. *Id.*

35. See *supra* note 4 (quoting the preamble to the WHO Guiding Principles on Human Organ Transplantation which expresses concern over the development of trafficking in human organs).

The lower economic classes supply this international organ market by selling their organs for profit while alive.³⁶ Americans and Europeans—both entrepreneurs and the poor—have sought to make a profit from this trade.³⁷ The Third World, with its vast numbers of poor willing to sell kidneys for profit, encourages desperately ill Westerners and wealthy Arabs to flock to these countries for organ transplants.³⁸ This

36. But see *Furor Over Call to Sell Organs of Poor People*, N.Y. TIMES, July 21, 1990, at A9 (presenting a proposal by a Milwaukee politician to sell the organs of deceased welfare recipients to pay for funeral expenses); *Milwaukee County Official Suggests Selling Body Organs*, CHI. TRIB., May 9, 1990, at 3 (reporting that the impetus behind the proposal was the increase in burial costs from \$430 to \$470).

37. See Margaret Engel, *Va. Doctor Plans Company to Arrange Sale of Human Organs*, WASH. POST, Sept. 19, 1983, at A9 (discussing Dr. Harry Jacobs' proposal to start a kidney brokerage company). Jacobs, whose Virginia license to practice medicine was revoked in 1977 because of mail fraud, presented his proposal to Congress. *Id.* According to his plan, the federal government would continue to pay for the removal of organs for Medicare patients. *Id.* Donors would set the price for their kidneys and Jacobs would add \$2,000-5,000 to the price of the kidney for his brokerage services. *Id.* The recipient would pay all of the costs associated with kidney procurement. *Id.* Prior to England's ban on organs sales, poor Turkish citizens travelled to England to serve as donors for wealthy English citizens. See *Turk Who Masterminded Trade in Human Kidneys Jailed For Two Years*, INDEPENDENT, May 19, 1992, at 11 [hereinafter *Turk Who Masterminded Trade*] (discussing the criminal sentencing of a Turkish broker who brought poor Turks to England to donate kidneys). A West German entrepreneur established an organ brokerage company in 1988. See Bjorn Edlune, *Courage Isn't Up To Bank Heists?, Sell a Kidney, Cash Offered For Live Donors' Organs*, L.A. TIMES, Nov. 13, 1988, at 12 (reporting that the businessman's proposal charged donors or recipients a \$55 association membership fee for his brokerage services and six businessmen experiencing financial difficulties accepted his offer). In January 1994, a French man advertised to sell his kidneys for a job. O'Shaughnessy, *supra* note 30, at 27. Desperate Poles sell kidneys for cash plus expense paid travel to Western Europe, and Budapest doctors offer to sell organs to the Swiss. See *id.* (indicating that Eastern Europeans, including Russians, have entered the trade).

38. See Sanjoy Hazarika, *India Debates Ethics of Buying Transplant Kidneys*, N.Y. TIMES, Aug. 17, 1992, at A20 (questioning the possible exploitation of the poor under an organ market system). In India, living donors sell kidneys but usually middlemen reap the profits. See *id.* (reporting that donors receive from \$275 to \$553, where the average monthly income of worker is \$11, but brokers charge recipients \$1000 over the cost of procurement). Despite Egypt's ban on unrelated, living donors, kidneys in Egypt sell for \$10,000 to 15,000, or are bartered for apartments, televisions, and other electronic goods. See *Egypt Doctors*, *supra* note 23, at A16 (explaining that private laboratories send recruiters into the slums of Cairo to locate willing donors for wealthy Arabs). Philippine prisoners volunteer to donate kidneys in exchange for conditional pardon or parole. See Maria Teresa Villanueva, *Philippine Prison Center of Lucrative Human Organ Trade*, JAPAN ECONOMIC NEWSWIRE, Dec.

trade raises serious ethical concerns about the exploitation of the poor by the wealthy.³⁹

This trade in adult living donor organs, however differs substantially from the widespread rumored trafficking in children's organs. While adult donors consent to the sale and harvesting of their organs,⁴⁰ these rumors suggest that foreigners kidnap and murder Latin American children⁴¹ for their organs.⁴² If true, this trafficking in children's organs surpasses mere economic exploitation and moves into the realm of human rights violations.

9, 1993 (stating that relatives or hospitals contact prisoners for donations); *Parts Needed For Transplants in Human Organs Stirs Global Attention*, L.A. TIMES, July 16, 1989, at 6 (adding that after the Philippine government banned the death penalty in 1987, prisoners began to ask for money instead of pardon). Impoverished Uruguayans sell organs to rich compatriots by travelling to Brazil with future recipients. See Samuel Blixen, *Organ Traffic Linked to Uruguayan Poverty*, LATIN AM. PRESS, Dec. 19, 1991, at 2 (clarifying that Brazilian law only requires the consent of the donor, which facilitates unrelated living donations); Sam Dillon, *Poor in Uruguay Sell Kidneys to Rich*, DETROIT FREE PRESS, Dec. 9, 1991, at A3 (discussing Uruguayan worker, Pedro Riverolli, who was sent to prison for two years for selling his own kidney and seeking out other donors).

39. See Henry Hansmann, *The Economics and Ethics of Markets for Human Organs*, 14 J. HEALTH POL., POL'Y & L. 57, 72-74 (1989) (arguing that it is paternalistic to ban a commercialized trade in organs because the ban denies the impoverished a freely chosen means of survival and belies the reality the poor must live). Hansmann compares organ donation with working at a dangerous job, but recognizes a weakness in the comparison because organ donation is irrevocable. *Id.*

40. But see Wallace, *supra* note 32, at A1 (discussing the possibility of a criminal market in adult organs because some Indians have awakened in alleys with incisions across their abdomens that suggest kidney removal.).

41. See Booth, *supra* note 10, at C2 (relating tales which allege that abductors search for children in the countryside).

42. See K. Wengerter et al., *Which Pediatric Donor Kidneys Should Be Transplanted to Adults?*, in ORGAN PROCUREMENT II: PROCEEDINGS OF THE SECOND INTERNATIONAL CONGRESS ON ORGAN PROCUREMENT 95 (Luis H. Toledo-Pereyran ed., 1986) [hereinafter ORGAN PROCUREMENT II] (reporting that kidney grafts, to adult recipients, from donors ages two through fifteen fair equal to or better than kidneys procured from adult donors). Within a few weeks after transplant, pediatric kidneys achieve adult size. *Id.* Many transplant facilities will not perform single kidney grafts with cadaveric, pediatric kidneys from donors ages two to five years old because of potential function problems with a single transplanted kidney. See D.C. Dafoe et al., *Use of Single Kidneys From Donors Two to Five Years of Age for Transplantation Into Nonpediatric Recipients*, in ORGAN PROCUREMENT II, *supra*, at 97-99 (protesting that this practice needlessly halves the supply of kidneys available for transplant).

C. THE RUMORS OF TRAFFICKING IN
CHILDREN'S ORGANS

The rumors of trafficking in children's organs, originating in colonial Latin American folklore,⁴³ first surfaced in the press in 1987.⁴⁴ Updating and playing on deep-seated folklore beliefs, Leonardo Villela Bermudez, General Secretary of the Honduran official welfare agency, alleged in January 1987 that foreign couples willingly adopted handicapped children only to dismember them for use in North American organ transplants.⁴⁵ Bermudez later retracted his story,⁴⁶ but Latin American fears kept the rumor alive.⁴⁷ The Soviet government's newspaper, *Pravda*, printed the story in April 1987,⁴⁸ giving it international attention.⁴⁹ Leftist sympathetic groups advanced the rumors in the

43. See Perrera, *supra* note 7, at F3 (relating Mayan mothers' belief that pale, anemic European men needed the blood of healthy, brown-skinned infants to recover their health); Veronique Campion-Vincent, *The Baby-Parts Story: A New Latin American Legend*, W. FOLKLORE, Jan. 1990, at 9, 19 (explaining the prevalent Third World stories about the "white ogre," evil white men with supernatural attributes who require the blood or organs of indigents). Other tales involve the Spanish mantequero character who steals fat from Indians at night. Campion-Vincent, *supra*. These evil "bogeymen" take on a slightly different form in each country, but the root tale remains the same. See *In Guatemala, Rumors Fly and Military Hovers*, L.A. TIMES, Apr. 3, 1994, at A23 (accounting tales of the local Guatemalan "bogeyman," Miculash, who allegedly steals fat to make soap); Fiona Neill, *Guatemala: Wild Baby-Stealing Fears Take Root in Guatemala*, REUTERS, May 24, 1994 (commenting that some Guatemalans believe that Miculash draws spinal fluid from children for unknown purposes); Robert Lillich, *Health, Human Rights, and International Law*, 82 AM. SOC'Y INT'L L. PROC. 122 (1988) (audio) (stating that Brazil's "bogeyman," Papa Figo, allegedly roams the countryside at night with a sack ready to steal children); William R. Long, *Adopting a Tougher Policy*, L.A. TIMES, Apr. 16, 1994, at A1 (describing tales of the Peruvian "bogeyman," Pishtako, who reportedly stole body "greases" for export to the United States as machinery lubricants, and the victims' blood sold to blood banks); Campion-Vincent, *supra*, at 20 (claiming that Pishtako has been replaced by "Sacaojos," eye robbers, who allegedly kidnap children only to return them with missing eyes).

44. USIA, *supra* note 6, at 6; Campion-Vincent, *supra* note 43, at 10-11.

45. See Campion-Vincent, *supra* note 43, at 10 (explaining that Bermudez believed that adoptive parents were selling handicapped children for a price of \$10,000).

46. *Id.*

47. See USIA, *supra* note 6, at 3 (asserting that the rumors will persist for many years because of the stronghold the rumors have in people's minds).

48. *Id.* at 2; Campion-Vincent, *supra* note 43, at 11.

49. See Campion-Vincent, *supra* note 43, at 11 (noting that the *Pravda* article was transmitted by the Tass agency worldwide).

press and at the United Nations.⁵⁰ The controversy strained relations between the United States and the former Soviet Union to the point of affecting arms control talks.⁵¹ Soviet leader Mikhail Gorbachev vowed that he would cease the disinformation campaign in December 1987,⁵² but the rumors persisted. In November 1988, the European Parliament - condemned the involvement of the United States⁵³ in such an illicit, unethical activity. In response, the United States began an education campaign aimed at explaining the impossibility of such a trade.⁵⁴

During the spring of 1994, stories surfaced about child abductors roaming the countryside in a van or truck to kidnap children for their organs.⁵⁵ This resurgence of the rumors⁵⁶ sparked a xenophobic back-

50. See USIA, *supra* note 6, at 2 (discussing the one-person disinformation campaign initiated by Mrs. Bridel of the International Association of Democratic Lawyers (IADL), a Soviet front group); Campion-Vincent, *supra* note 43, at 12 (stating that on Sept. 15, 1988, a French representative with communist party ties presented a resolution to the European Parliament to condemn the trafficking in children's organs).

51. See DEPARTMENT OF STATE, *ADVANCING U.S.-SOVIET RELATIONS: THE CHALLENGE OF ARMS CONTROL* (Nov. 1987) (stating, in reference to charges of trafficking in children's organs, that "[a]s long as the Soviet Union continues to spread venomous propaganda against us, it cannot be said to be seeking to conduct relations in a truly civilized manner").

52. See Linda Feldmann, *Soviets Smile, But Fake Stories Continue*, THE CHRISTIAN SCI. MONITOR, Sept. 6, 1988, at 1 (quoting Gorbachev as saying in 1987, "No more lies, no more disinformation").

53. EUR. PARL., Resolution on the Trafficking of Central American Children, Nov. 1988, *reprinted in* Robert Smith, *The Trafficking of Central American Children*, REP. ON GUAT., at 4, 5 (basing the resolution partially on a presentation by IADL at the United Nations Human Rights Commission on Apr. 5, 1988 and the discovery of Honduran and Guatemalan "fattening houses," or "casas engordes"). For an explanation of fattening houses and Latin American adoption rings, see Victor Perrera, *Behind the Kidnapping of Children For Their Organs*, L.A. TIMES, May 1, 1994, at 1 (defining "fattening houses" as the locations where adoption rings house children until adoption); Tim Johnson, *Rumors, Rage, Xenophobia in Guatemala Baby-Snatching Tales Stir Scary Backlash*, MIAMI HERALD, Mar. 28, 1994, at A1 (claiming that generally Guatemalans run underground adoption rings, not foreigners).

The United States denounced the European Parliament's decree as "crude fabrications" and "cynical lies." *U.S. Says Resolution on Baby Trafficking Results From 'Lies'*, N.Y. TIMES, Oct. 20, 1988, at A10 (quoting letter of Richard Schifter, Asst. Sec. of State for Human Rights and Humanitarian Affairs, to Karel de Gucht, Chair of Human Rights Subcomm. of Eur. Parl.).

54. See USIA, *MISINFORMATION AND DISINFORMATION: THE SO-CALLED "BABY PARTS" RUMOR SPREADS WORLDWIDE* (Apr. 15, 1991) (decrying the Soviet propaganda responsible for disseminating the rumors and stressing the impossibility of trafficking in children's organs).

55. See Booth, *supra* note 10, at C2 (detailing further that allegedly someone

lash that resulted in violence.⁵⁷ Both Guatemala and the United States took immediate steps to curb the violence.⁵⁸ Investigations by various governmental and non-governmental organizations have not discovered any basis for the rumors.⁵⁹ Inquiries did, however, unearth the disappearances of Latin American children for underground adoptions, which may feed fears that children are being stolen to supply an organ trade.⁶⁰

uncovered a dead boy's body stuffed with \$100 and a thank-you note); Lillich, *supra* note 43 (commenting on similar stories in Peru).

56. See Booth, *supra* note 10, at C2 (remarking that the recent revival of the rumors in Guatemala could be the work of the military). The military purportedly instigated crowds to create an atmosphere of social unrest which the military hoped would keep international human rights observers out of Guatemala. *Id.* These observers planned to investigate human rights violations, most of which the military allegedly committed, that transpired during the recently ended thirty-three year civil war in Guatemala. *Id.* The military may also have prompted the violence to enable a reassertion of military power in spite of the civilian controlled government. *Id.*

57. See *id.* (providing an in-depth report on the attacks on American tourists in Guatemala).

58. See *Government Communique on Attack on U.S. Woman Falsely Accused of Child-Trafficking*, (Cadera de Emisoras Unidas Radio, Guatemala City, Mar. 31 1994), rebroadcast (BBC Summary of World Broadcasts, Apr. 1, 1994) [hereinafter *Government Communique*] (broadcasting a condemnation of the violence against tourist June Weinstock and reaffirming her innocence to the charges of child stealing); Barbara Ann Curcio, *Worldwide: Travel Warnings*, WASH. POST, Apr. 3, 1994, at E3 (publicizing the travel advisory to Guatemala and further advising that individuals aiming to adopt Guatemalan children should have the correct paperwork and should avoid public appearances with Guatemalan children); Booth, *supra* note 10, at C2 (noting that Peace Corps volunteers retreated from the countryside).

59. See USIA, *supra* note 6, at 6-8 (listing the international agencies which have investigated the rumored trade without finding any evidence to support the allegations); Muntarhorn, *supra* note 5, at 20 ¶¶ 110-11 (explaining that government members of the Convention and non-governmental agencies completed questionnaires and all refuted the existence of the sale of children for organ transplants within their jurisdictions).

60. See Booth, *supra* note 10, at C2 (connecting the rumored trade with adoptions); Perrera, *supra* note 7, at F3 (indicating that six children disappear per day in Guatemala); FRANCISCO GOLDMAN, *THE LONG NIGHT OF WHITE CHICKENS* (1992) (giving a fictional account of Guatemalan adoption rings). Activists worry that the great numbers of street children in Latin America may provide a large supply of organs for the international organ trade. See *Summary Record*, *supra* note 5, at 21 ¶ 94 (statement of Mr. Graves, Int'l Comm'n of Health Professionals) (stressing that street children are vulnerable to the organ trade). There are one hundred million street children worldwide, the common age ranging from age eight to fifteen: twenty-five million live on the streets, seventy-five million work on the streets. *Street Children: A*

The United States Information Agency (USIA) adamantly avers the baselessness of the rumors.⁶¹ From the perspective of the USIA, any discussion of the matter only legitimizes dangerous lies.⁶² These lies, the USIA argues, result in fewer adoptions⁶³ and scare away potential organ donors.⁶⁴ This Comment concedes that the tales of trafficking in children's organs scare away potential donors,⁶⁵ strain international relations,⁶⁶ and decrease international adoptions.⁶⁷ This Comment main-

Global Disgrace: Hearing before the House Select Comm. on Hunger, 102d Cong., 1st Sess. 53 (Nov. 7, 1991). In Latin America alone, there are forty million street children. *Id.* at 54. See generally AMNESTY INTERNATIONAL, GUATEMALA (July 1990) (highlighting the abuses against street children); AMNESTY INTERNATIONAL, GUATEMALA: CHILDREN IN FEAR (May 1992) (examining the human rights abuses against street children).

61. See USIA, *supra* note 6, at 1 (referring to the charges of trafficking in children's organs as "totally unfounded," "horrifying," "ghastly—and totally untrue").

62. See USIA, *supra* note 6, at 3 (explaining that discussing the rumors only prolongs their duration):

[T]he 'baby parts' rumor has frequently been spread by well-meaning individuals who either believe that the rumor is true or worry that it may be. Tragically, the publicity these usually well-intentioned individuals have given the rumor by deploring a non-existent crime has inadvertently contributed to its credibility and the resultant damage it has done.

Id. Yet despite apparent dislike of media attention and a desire to silence the rumors, Todd Levanthal of USIA appeared on the primetime TV news program 20/20 to belabor the baselessness of the allegations. See *Americans Beware!*, *supra* note 12 (televising a report on the violence in Guatemala during the spring of 1994).

63.63. See USIA, *supra* note 6, at 9, 12 (criticizing the negative impact of the rumors on international adoptions).

64. See *id.* (worrying that many will die if the rumors dissuade voluntary organ donations).

65. See *Trade Blamed for Drop in Kidney Transplants*, TIMES (London), July 31 1989, at 5 (discussing the decline in kidney transplants connected to the international organs-for-sale trade based in London prior to passage of legislation banning sales in July 1989); Peter Pallot, *Transplants Rise as Kidneys-for-Sale Outcry Dies Down*, DAILY TELEGRAPH, Aug. 1, 1989, at 7 (reporting that the number of donations increased 3% from June to July after publicity concerning the trade dwindled).

66. See DEPARTMENT OF STATE, *supra* note 51 (arguing that allegations troubled the relationship between the United States and the Soviet Union and influenced the conduct of arms-talks with Gorbachev); Curcio, *supra* note 58, at E3 (explaining State Department's travel advisories to Guatemala); *Government Communique*, *supra* note 58 (denouncing the violence against June Weinstock); Tim Johnson, *Attacks Lead To Guatemalan Tourism Crisis*, MIAMI HERALD, Apr. 14, 1994, at A20 (reporting that tourism to Guatemala dropped after the upsurge of violence targeted against foreigners).

67. See Hugh O'Shaughnessy, *El Salvador: Takeaway Babies Farmed to Order*,

tains, however, that ignoring the rumors will not eradicate them forever. Insufficient investigation into the rumors will only magnify the concerns of Latin Americans, making the next resurgence of the rumors possibly more violent. Most importantly, perhaps, the rumors warn that the time has come to address the scarcity of adult and child organs for transplant and to reconsider current organ procurement strategies.⁶³

II. AN ANALYSIS OF EXISTING SOURCES OF REGULATION

A. CONVENTION ON THE RIGHTS OF THE CHILD

1. Background/Analysis

The United Nations General Assembly adopted the Convention on the Rights of the Child on November 20, 1989.⁶⁹ The Convention made the principles declared in the Geneva Declaration of the Rights of the Child⁷⁰ and the 1959 United Nations Declaration of the Rights of the Child⁷¹ legally binding on signatory states. Although the treaty reiter-

THE OBSERVER, Sept. 26, 1983, at 14 (announcing that El Salvador uses DNA tests to establish parentage); Long, *supra* note 43, at A1 (demonstrating that Peruvian bureaucrats and judges have limited adoptions). United States visas for adopted Peruvian children dropped from 620 in fiscal year 1991 to 270 in fiscal year 1992, and to 170 in fiscal year 1993. *Id.* As of April 1994, no American had been able to adopt a Peruvian child since the start of fiscal year 1994. *Id.* United States Consulates have begun to interview birth mothers who give children up for adoption. See Booth, *supra* note 10, at C2 (explaining that the United States Consulate has begun DNA testing to verify the relationship between the child and the alleged mother giving the child up for adoption if they suspect wrong-doing).

68. See Lillich, *supra* note 43, at 130 (arguing that inefficiencies in the organ procurement system in the United States must be resolved).

69. CONVENTION ON THE RIGHTS OF THE CHILD, G.A. Res. 44/25, U.N. GAOR, 61st mtg., U.N. Doc. A/44/736 (1989), reprinted in 28 I.L.M. 1448 (1989) [hereinafter CONV.]. Also in place is the Inter-American Convention on International Traffic in Minors of March 18, 1994, which recognized the international traffic in minors and the importance of the Convention of the Rights of the Child, Articles 11 and 35. See INTER-AM. CONV. ON THE INT'L TRAFFIC IN MINORS, pmbl., 33 I.L.M. 721 (1994).

70. See Cynthia Price Cohen, Introductory Note, *United Nations: Convention on the Rights of the Child*, 28 I.L.M. 1448 (1989) (interpreting the Convention's preamble). The Convention recognized that the Geneva Declaration of the Rights of the Child of 1924 [hereinafter 1924 Convention] granted the child "particular care." CONV. pmbl. ¶ 8, *supra* note 69 (citing the 1924 DECLARATION, LEAGUE OF NATIONS O.J. Spec. Supp. 21, at 43 (1924)).

71. See Cohen, *supra* note 70, at 1448 (analyzing the Convention's preamble).

ates political, civil, economic, humanitarian, and legal rights already well-established by other international agreements, the Convention specifically imports these rights to children.⁷²

The Convention on the Rights of the Child makes no explicit reference to the sale of children for organ transplants.⁷³ While the Convention's general provision reaffirming children's right to life⁷⁴ protects children from criminal trafficking in their organs,⁷⁵ Articles 23, 11, 21, and 35 are more closely connected to this trade and ensure more focused protection, at least in principle. Article 23 guarantees mentally and physically disabled children "a full and decent life."⁷⁶ Article 11 of the Convention protects children from "illicit transfer" to foreign countries.⁷⁷ Article 21 shields children from illegal adoptions, which may result in their bodily harm, by ensuring that the "paramount consideration" in all adoptions is the best interests of the child.⁷⁸ Article 35

The Convention quotes the 1959 Declaration of the Rights of the Child [hereinafter 1959 Declaration], stating that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." CONV. pmb. ¶ 9, *supra* note 69 (citing the 1959 DECLARATION, 14 U.N. GAOR Supp. (No. 16), at pmb. ¶ 3, U.N. Doc. A/4059 (1959)).

72. See Cohen, *supra* note 70, at 1448, 1450 (providing a concise history of the drafting of the Convention).

73. See generally CONV., *supra* note 69 (showing no provision on organ transplantation).

74. *Id.* art. 6 (declaring that "States Parties recognize that every child has the inherent right to life").

75. See Muntarhorn, *supra* note 5, at 19 ¶ 105 (arguing that the Convention's protection of the right to life impliedly protects children from organ trafficking).

76. CONV. art. 23., *supra* note 69. In full, article 23 states: "States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community." *Id.*

77. *Id.* art. 11. In full, Article 11(1) says, "States Parties shall take measures to combat the illicit transfer and non-return of children abroad." *Id.*

78. *Id.* art. 21. Article 21 permits adoptions only by competent authorities. *Id.* These authorities should only contemplate international adoption if a placement cannot be found in the child's country of origin. *Id.* International adoption shall be protected by the same safeguards as national adoptions. *Id.* Adoptions may not serve as a means for financial gain. *Id.* Placement in the country of destination shall be handled by competent authorities. *Id.* See Ahilemeh Jonet, *International Baby Selling for Adoption and the United Nations Convention on the Rights of the Child*, 7 J. HUM. RTS. 82 (1989) (detailing the draft Convention as it applies to the problem of baby-selling and focusing on the elimination of independent adoptions).

criminalizes "the abduction, the sale of or trafficking in children for any purpose or in any form."⁷⁹

Article 23 directly applies to the allegations about dismemberment of disabled children for organ transplantation. It is clear that if abductors dismember disabled children for use as organ sources, they completely deprive children "of a full and decent life."⁸⁰

Articles 11, 21, and 35 address the international movement of children in some fashion. These articles apply to the rumored trade in children's organs if abductors transport the living children themselves abroad through "illicit transfer" (Article 11), adoption (Article 21), or "sale . . . or trafficking" (Article 35). A problem arises, however, if the living children do not travel abroad for organ removal,⁸¹ but rather surgeons remove the organs in a domestic facility and co-conspirators ship only the harvested organs abroad.⁸² Article 11 arguably would not encompass such a trade because the article's precise language refers to "children," not body parts. Likewise, Article 21 could not apply to such transactions because families adopt "children," not "organs" or "body parts." Only Article 35 protects children if transferred abroad for organ retrieval or if dismembered in their native country. Article 35, like Article 11, refers explicitly to children, but Article 35 also prohibits the "abduction, sale of or trafficking of children *in any form*."⁸³ (emphasis

79. CONV. art. 35, *supra* note 69. Article 35 expands on Principle 9 of the 1959 Declaration which states, "the child shall be protected against all forms of neglect, cruelty, and exploitation. He shall not be the subject of traffic in any form." See *Slavery and Slave-Like Practices*, U.N. Comm. on Human Rights, Subcomm. on Prevention of Discrimination and Protection of Minorities, 39th Sess., Agenda item 12(a), U.N. Doc. E/CN.4/Sub.2/28, at 13 (1987) (quoting the 1959 Declaration).

80. See *supra* note 45 and accompanying text (discussing the allegation about trafficking in disabled children's organs by Honduran official Bermudez).

81. See *Congressional Probe of Child Killings*, LATIN AM. REGIONAL REP.—BRAZ., Mar. 19, 1992, at 4 (referring to the Dominican priest, Paul Barruel, who believes that foreigners, especially Italians, adopt Brazilian children as "living organ banks" for transplants in the country of destination). According to Brazilian authorities, in 1991, Italian couples adopted approximately 4000 children, but the Italian registry reported that only 1000 Brazilian children entered Italy. *Id.*

82. See Sottas Report, *supra* note 10, at 4-5 (detailing the alleged trafficking in Argentina and Colombia). Investigations in Argentina uncovered dead psychiatric patients with corneas removed and mutilated eyeballs. *Id.* In 1992, in Colombia, exhumation near a medical facility revealed corpses of missing poor people with missing organs. *Id.* Two Colombian children were reportedly kidnapped and had their eyeballs removed. *Id.*

83. CONV. art 35, *supra* note 69.

added) The addition of the clause "in any form" broadly bans the domestic removal of children's organs and the subsequent sale of these body parts abroad.

2. Shortcomings of the Convention in Applicability to the Alleged Problem of Trafficking in Children's Organs

The mission and tone of the treaty proscribe the sale of children for their organs.⁸⁴ The Special Rapporteur, for example, stated that "the implication of the Convention . . . which protects children's right to life and freedom from abuse and exploitation is that the sale of children for organ transplants is totally illegal."⁸⁵ The lack of specific language about organ trafficking, however, renders the treaty inadequate protection against the sale of children for this purpose.

The enormity of problems addressed by the Convention also diminishes its effectiveness to combat the alleged trafficking in children's organs. The Convention mandates the Special Rapporteur⁸⁶ to investigate child prostitution,⁸⁷ pornography,⁸⁸ and all "sales of children,"⁸⁹ which includes the sale of children for adoptions, labor exploitation, human organ transplantation, and all other conceivable forms of sale.⁹⁰ These forms of sale merit singular attention, but the nature of the Special Rapporteur's mandate and understandable time and resource constraints⁹¹ impede prolonged discussion of these abuses at the United Nations.⁹²

84. See Muntarbhorn, *supra* note 5, at 19 ¶ 105 (explaining that the Convention impliedly criminalizes the trade in children's organs).

85. *Id.*

86. *Id.* at 1 ¶ 1 (providing the history of the Special Rapporteur's mandate). The Commission on Human Rights first enacted the mandate in 1990 for one year, but has since renewed the mandate. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* The "sale of children" as defined by the Special Rapporteur's mandate includes "the transfer of a child from one party (including biological parents, guardians, and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensations." *Id.* at 5 ¶ 28. The Special Rapporteur requests that the term "sale" take on a flexible meaning with the primary issue being "the exploitation of the child, which usually entails the action of another benefiting from the child in violation of his/her rights." *Sale of Children: Report of Mr. Vitit Muntarbhorn, Special Rapporteur*, Comm. on Human Rights, 47th Sess., Agenda item 12, at 3 ¶ 10, U.N. Doc. E/CN.4/51 (1991) [hereinafter *Sale of Children*].

90. Muntarbhorn, *supra* note 5, at 4 ¶ 22.

91. *Id.* at 1 ¶ 2 (explaining that the Special Rapporteur's mandate encompasses the investigation of the sale of children in both developed and developing countries,

B. WHO GUIDING PRINCIPLES ON HUMAN ORGAN TRANSPLANTATION

1. Background/Analysis

WHO Guiding Principles on Human Organ Transplantation⁹³ do not legally bind members but nevertheless provide guidance for governments and health professionals.⁹⁴ The WHO drafted the Guiding Principles in 1991 after detecting growing angst about trafficking in organs.⁹⁵ The WHO expressed particular concern over the potential traffick in *people*, which seemed the foreseeable product of the international paucity of transplant organs and the growing market value of these organs.⁹⁶ The WHO also stressed the need to protect "minors and other vulnerable persons from coercion and improper inducement to donate organs."⁹⁷ Those concerned with the sale of children for their organs suggest the

but that the Special Rapporteur only visited Australia during the period of December 1991 to November 1992 because of "constraints of time and resources").

92. See generally *id.* (suggesting that meetings of the Commission on Human Rights typically address all of the violations covered by the Special Rapporteur's mandate, including adoption-for-profit, child labor exploitation, organ transplantation, child soldiers, children as prisoners of war, child prostitution, and child pornography).

93. WHO Guiding Principles, *supra* note 4. The nine WHO Guiding Principles encourage: voluntary or presumed consent systems (Principle 1); the use of different medical teams to harvest and then transplant the organ (Principle 2); the use of cadaveric organs (Principle 3); the absolute ban of the use of living minor donors (Principle 4); the prohibition of financial compensation for donors (Principle 5); the prohibition of advertising for organs (Principle 6); the prohibition on transplanting an organ believed to have been purchased covertly (Principle 7); the ban of excessive financial compensation for physicians or facilities (Principle 8); and the distribution of transplant organs on the basis of medical need (Principle 9). *Id.*

94. *Id.* pmbl. ¶ 2 (declaring that "[t]hese Guiding Principles are intended to provide an orderly, ethical, and acceptable framework for regulating the acquisition and transplantation of human organs for therapeutic purposes").

95. See World Health Assembly Resolution WHA 42.5 (May 1989), reprinted in LEGISLATIVE RESPONSES, *supra* note 4, at 467-68 (insisting that the organ trade-for-profit exploits human distress and multiplies the health risks to donors while also admitting little success in preventing this traffic); World Health Assembly Resolution WHA 40.3 (May 1987), reprinted in LEGISLATIVE RESPONSES, *supra* note 4, at 467 (stating that the trade for human organs is inconsistent with the most basic human values).

96. See WHO Guiding Principles, pmbl. ¶ 1, *supra* note 4 (admitting the existence of a trade in human organs and underscoring that "fears have arisen of the possibility of related traffic[k] in human beings").

97. *Id.* pmbl. ¶ 2.

adoption of all nine Principles,⁹⁸ but Principles 4 and 5 prove to be the most relevant to the rumored trade.

Principle 4 calls for the absolute prohibition of the use of minors' organs for human transplant.⁹⁹ Many countries already completely ban the use of minors' organs.¹⁰⁰ The restriction on underage donations stems from the fear that family members or kidney brokers might coerce or induce minors to donate organs.¹⁰¹ As a result, this principle prevents the consensual donation¹⁰² by minors to genetically-related individuals waiting for organ transplants.

Principle 5 forbids payment to organ donors beyond reasonable expenses attributable to organ harvesting surgery, such as travel, hospital fees, and recovery.¹⁰³ Similar national prohibitions against financial transactions developed in response to the growing commercialization of organ donation.¹⁰⁴ In the United States, vague ethical and moral beliefs

98. See Muntarhorn, *supra* note 5, at 19 ¶¶ 106-07 (urging compliance with WHO Guiding Principles); *Sale of Children*, *supra* note 89, at 7 ¶ 25 (citing the WHO Guiding Principles as an international development directed at ending the commercialization of organs for transplants); Sottas Report, *supra* note 10, at 8-10 (encouraging the international adoption of WHO Guiding Principle 4, which bans the use of minors as donors, and an international ban on the sale of human organs).

99. WHO Guiding Principles, Principle 4, *supra* note 4. Principle 4 states in full, "No organ should be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissue." *Id.*

100. See LEGISLATIVE RESPONSES, *supra* note 4 (providing the legislation of Bolivia, Colombia, Mexico, Lebanon, Russia, and Turkey, which prohibit the use of minors as donors); ANDREW DIX ET AL., LAW FOR THE MEDICAL PROFESSION 285 § 1205 (1988) (examining Australian laws in the provinces of New South Wales, Victoria, and Queensland, which prohibit the removal of non-regenerative tissue from minors). *But see infra* notes 120-138 and accompanying text (examining practices in France, Luxembourg, Quebec, and the United States which permit the limited use of minors as living organ donors).

101. WHO Guiding Principles, pmbl. ¶ 2, *supra* note 4.

102. See *infra* notes 120-138 (studying the capacity of minors to consent). *But see* Strunk v. Strunk, 445 S.W.2d 145, 149 (Ky. 1969) (Steinfeld, J., dissenting) (comparing the use of minors as living donors to Nazi experimentation on living human subjects).

103. WHO Guiding Principles, Principle 5, *supra* note 4. Principle 5 reads in full, "The human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment (including any other compensation or reward) for organs should be prohibited." *Id.*

104. See, e.g., NOTA, § 301(a), 98 Stat. 2346-47 (to be codified at 42 U.S.C. 274(a)). "It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human trans-

that altruism and voluntarism enhance the sanctity of the organ gift¹⁰⁵ suppressed full-scale consideration of remuneration.¹⁰⁶

2. Shortcomings in Applicability to the Alleged Problem of Trafficking in Children's Organs

The complete ban on the use of living minors as organ donors may best protect children from organ trafficking.¹⁰⁷ This absolute prohibition, however, seems unduly severe because it denies minors the choice to donate organs to siblings desperately needing transplants, thereby jeopardizing the life of the sibling.¹⁰⁸

Principle 5 bans financial compensation of donors, a tactic which, if permitted, could increase the supply of transplant organs. By limiting cadaveric organ procurement to voluntary, post-mortem contributions or to a presumed consent system,¹⁰⁹ the WHO unnecessarily restricts the number of organs acquired.

plantation if the transfer affects interstate commerce." *Id.* Congress was prompted to pass this legislation after growing outrage over Dr. Harry Jacobs' proposal to establish a kidney brokerage company. See Engel, *supra* note 37, at A9 (discussing Jacobs' plan in detail). England also prohibits the introduction of financial incentives into organ donations and procurement:

A person is guilty of an offense if in Great Britain he—(a) makes or receives any payment for the supply of, or for an offer to supply, an organ which has been or is to be removed from a dead or living person and is intended to be transplanted into another person whether in Great Britain or elsewhere.

The Human Organ Transplants Act of July 27, 1989, reprinted in LEGISLATIVE RESPONSES, supra note 4, at 375. This legislation was passed in response to the increasing use of poor Turkish citizens as organ donors in England. See *Turk Who Master-minded Trade, supra* note 37, at 11 (accounting the conviction of a Turkish kidney broker).

105. See Hastings Centre Report, 1983, *reprinted in LEGISLATIVE RESPONSES, supra* note 4, at 409-10 (concluding that the introduction of financial incentives into the organ procurement system will damage the moral principles which motivate people to donate organs and will thereby hinder the efficient operation of the system).

106. See *Hearing, supra* note 1, at 174-75 (statement of Kaplan) (testifying that "many Americans found the prospect of a market in body parts distasteful . . .").

107. See *supra* note 98 (advocating an absolute ban on the use of minors as organ donors).

108. See *Hearing, supra* note 1, at 173 (stating that everyday a child dies while waiting for an organ transplant in the United States).

109. See WHO Guiding Principles, Principle 1 and Commentary, *supra* note 4 (explaining that people may "opt in" to organ donation by giving explicit consent, or may "opt out" of a presumed consent system by voicing their objections to organ donation while alive).

Principles 4 and 5 overregulate organ procurement. These excessive restrictions aggravate the limited supply of human organs for transplant. Desperate individuals waiting for a transplant may resort to underground channels to obtain human organs, which puts children in danger of abduction for organ retrieval.¹¹⁰

C. DOMESTIC RESTRICTIONS ON THE CAPACITY OF
MINORS TO CONSENT TO INTER VIVOS
ORGAN DONATION

1. Introduction

Physicians must obtain voluntary¹¹¹ and informed¹¹² consent for the specific medical treatment¹¹³ they will perform on a patient. Most importantly, consent is only valid if obtained from a person "legally and mentally competent" to consent.¹¹⁴ As a general rule, medical treatment of minors cannot proceed without parental consent.¹¹⁵ Medical treat-

110. See *supra* note 42 (explaining that doctors can safely transplant children's kidneys into adults).

111. See J.M. PAXMAN & RUTH JANE ZUCKERMAN, *LAW AND POLICIES AFFECTING ADOLESCENT HEALTH* 14-15 (1987) (describing "voluntary" as free of coercion, threats, and manipulation).

112. See *id.* (defining "informed" as awareness of the nature, foreseeable risks, potential benefits, need for further treatment, and possible alternatives of the discussed medical treatment). But see Carl H. Fellner & John R. Marshall, *Kidney Donors—The Myth of Informed Consent*, AM. J. PSYCHIATRY, Mar. 9, 1970, at 1245-51 (explaining that family members often choose to donate an organ instantaneously when confronted by the illness of a loved one, thus failing to give truly informed consent).

113. PAXMAN & ZUCKERMAN, *supra* note 111, at 14-15.

114. *Id.*

115. William J. Curran, *A Problem of Consent: Kidney Transplantation in Minors*, 34 N.Y.U. L. REV. 891, 892 (1959). Exceptions to this general rule include the "mature minor" rule, which allows minors below the statutory age of majority to consent on his or her own behalf, if the court concludes that the minor is mentally capable of understanding the specific medical procedure in question and the consequences of undergoing the procedure; and the "emancipated minor" rule, which the court applies when it determines that the minor lives apart from his or her parents, is self-supporting, or is married. See DIX ET AL., *supra* note 100, at 86-87 §§ 513-516 (1988) (presenting Australian interpretation of the mature minor rule); PAXMAN & ZUCKERMAN, *supra* note 111, at 12-14 (1987) (exploring the abilities of minors to consent to various medical procedures in Canada and the United States); ELLEN I. PICARD, *LEGAL LIABILITY OF DOCTORS AND HOSPITALS IN CANADA* 56-57 (2nd ed. 1984) (discussing the mature and emancipated minor exceptions in relation to Canadian common law).

ment generally provides the minor with a direct physical benefit.¹¹⁶ As such, non-therapeutic medical procedures, such as organ donation for the benefit of another, create special concerns.¹¹⁷ Assuming donations by minors presumably would be for the benefit of a family member, allowing parental consent to be determinative could pose a conflict of interest and would not protect the interests of children.¹¹⁸ For simplicity, many countries place a blanket prohibition on all inter vivos donations by minors.¹¹⁹ The ensuing discussion will explore the permissive practices in countries which allow minors to make inter vivos organ donations under limited circumstances.

2. Statutory Legislation: France, Luxembourg and Quebec

Inter vivos organ donations by minors are governed by statute in France and Luxembourg. France and Luxembourg law share the general principle that minors of any age can donate organs upon the consent of the minor's legal representative and authorization by an independent committee.¹²⁰ These laws also require the consent of the prospective

116. Curran, *supra* note 115, at 892.

117. *Id.* Courts generally do not accept the mature minor and emancipated minor exceptions discussed above, *supra* note 115, as sufficient basis for authorizing non-therapeutic medical procedures. See *infra* notes 120-138 (discussing statutory and common law restrictions on the ability of minors to consent to organ donations).

118. See GILBERT SHARPE, *LAW & MEDICINE IN CANADA* 320 (2nd ed. 1987) (quoting Gerald Dworkin, Professor of Law at the University of Southampton, "Parents . . . cannot be philanthropic on behalf of their children and the law must protect a child even against his own philanthropy"); William F. Cook, *Incompetent Donors: Was the First Step or Last Taken in Strunk v. Strunk?*, 58 CAL. L. REV. 754, 767 (1970) (upholding the common law view that parental determinations of their minor child's best interests is not controlling because the court retains the power to intervene for the sake of the child); Michael J. Saks, *Social Psychological Perspectives on Consent*, in *CHILDREN'S COMPETENCE TO CONSENT* 48-49 (Gary B. Melton et al. eds., 1983) (admitting the potential for intrafamily conflict and indicating that doctors often use the excuse of genetic incompatibility to shield a prospective donor from family pressure if the intended donor chooses not to donate).

119. See *supra* note 100 (naming countries which ban donations by minors).

120. See French Law No. 76-1181, in *LEGISLATIVE RESPONSES*, *supra* note 4, at 199.

[T]he organ may be removed only with the consent of the person's legal representative and after authorization has been given by a committee made up of at least three experts, including two physicians, one of whom shall provide evidence of 20 years' practice of the medical profession. This committee shall give its opinion after examining all the foreseeable consequences, both physical and psychological, of the procedure.

child donor if the child is capable of reaching an independent decision about whether to donate.¹²¹ France and Luxembourg differ, however, in their specification of intended recipients. French law mandates that minors may donate only to a brother or sister.¹²² Luxembourg law, by contrast, does not restrict the relationship between the prospective donor and the intended recipient.¹²³

The Civil Code of the Province of Quebec also legislates organ donations by living minors.¹²⁴ This legislation resembles that of France and Luxembourg with two major differences. First, Quebec only empowers minors "capable of discernment" to make *inter vivos* organ donations.¹²⁵ The prospective underage donor must personally consent to organ donation.¹²⁶ Negative inference suggests that this limitation precludes minors incapable of reaching an independent decision about organ donation from donating.¹²⁷ Second, Quebec requires authorization by the Quebec Superior Court, not simply the consent of a committee of experts.¹²⁸

Id. Luxembourg Law of 25 November 1982 permits removal of a minor's organs when both a minor's legal representative and a three person committee consent to the procedure. H.J.J. LEENEN ET AL., *THE RIGHTS OF PATIENTS IN EUROPE: A COMPARATIVE STUDY* 102 (1993).

121. See French Law No. 76-1181, *supra* note 120 (stating, "[w]here it is possible to obtain the views of the minor, refusal by the latter to agree to removal of the organ shall in all cases be respected"); Leenen, *supra* note 120, at 102 (explaining that Luxembourg Law of 25 November 1982 demands the consent of intended donor if the minor is "capable of discernment").

122. See French Law No. 76-1181 (stating, "[w]here the prospective donor is a minor, an organ may be removed only if the person in question is the brother or sister of the recipient").

123. See LEENEN, *supra* note 120, at 102 (summarizing Luxembourg Law of 25 November 1982).

124. See MARGARET A. SOMERVILLE, *CONSENT TO MEDICAL CARE* 76-77 (1979) (discussing article 20 of the Civil Code of the Province of Quebec); ELKIN ROZOVSKY & FAY ADRIENNE ROZOVSKY, *THE CANADIAN LAW OF CONSENT TO TREATMENT* 81 (1990) (distinguishing Quebec Civil Code, art. 20, from the laws in the other Canadian provinces which proscribe tissue donations by living minors). Rozovsky suggests that the Canadian laws which ban organ donations by minors arguably violate the Canadian Charter of Rights and Freedoms, section 15(1), by discriminating against children as a class. ROZOVSKY, *supra*, at 82.

125. SOMERVILLE, *supra* note 124, at 76 (quoting Quebec Civil Code, art. 20).

126. *Id.* The person with parental authority over the minor must also consent to the donation. *Id.*

127. See *id.* at 77 (suggesting that parental consent should be merely "enabling or declarative," whereas the minor's consent must be "constitutive").

128. ROZOVSKY, *supra* note 124, at 81. Typically, the court will authorize the

3. Common Law: The United States

In the United States, regulation of donations by minors is the purview of common law, not statute.¹²⁹ United States courts first approached the question of inter vivos donations by those incapable of legally consenting through application of the doctrine of substituted judgment.¹³⁰ This doctrine authorizes the court to answer as would the minor, if the minor were legally capable of consenting.¹³¹ To truly enter its substituted judgment, the court must base its decision on clear and convincing evidence that exhibits the minor's intent or opinion toward organ donation.¹³² The necessity of determining the minor's intent excludes minors too young to formulate an opinion on, or engage in a discussion on, the subject of donation.¹³³ In more recent cases, United States

procedure if the child donor does not face any "serious risk" of physical injury. *Id.*

129. See Strunk, 445 S.W.2d at 145 (opining that courts of equity have the power to permit the removal of an organ from an incompetent ward of the state for transplantation into the ward's sibling). But see WHO SPEAKS FOR THE CHILD: THE PROBLEMS OF PROXY CONSENT 186-87 (Willard Gaylin & Ruth Macklin eds., 1982) [hereinafter WHO SPEAKS FOR THE CHILD] (arguing that judges and doctors do not have the training to impose value judgments on families faced with the choice of whether a child should donate to an unhealthy sibling, therefore the courts should only interfere with the privacy of the family if probable cause exists to believe that the parents are exploiting one child for the sake of another child).

130. See Strunk, 445 S.W.2d at 148 (expanding the doctrine of substituted judgment to cover not only property issues but also any matter affecting the well-being of the ward).

131. *Id.* See John A. Robertson, *Organ Donations by Incompetents and the Substituted Judgment Doctrine*, 76 COLUM. L. REV. 48 (1976) (supporting the substituted judgment doctrine as a sensible and ethical standard when faced with subjecting incompetents to non-therapeutic medical procedures). But see WHO SPEAKS FOR THE CHILD, *supra* note 129, at 218 (criticizing the standard for its ambiguity).

132. See Curran v. Bosze, 566 N.E.2d 1319, 1325-26 (Ill. 1990) (arguing that allowing a lesser standard of proof would violate a person's right to self-determination and the right to refuse medical treatment).

133. See *id.* at 1326 (holding that ascertaining the opinion or intent of three-year old twins regarding bone marrow donation to their half-brother suffering from a rare form of leukemia was impossible and any efforts to use substituted judgment would be based on "speculation and conjecture"). Some suggest that the traditional age of reason, age seven, be established as the minimum age for organ donation. See Norman Frost, *Children as Renal Donors*, in ORGAN SUBSTITUTION AND TECHNOLOGY 82 (Deborah Mathieu ed., 1988) (arguing, however, that children over age seven, like adults, probably cannot give truly informed consent). But see WHO SPEAKS FOR THE CHILD, *supra* note 129, at 135-36 (suggesting that the opinion of children over the

courts studied and weighed the possible positive and negative effects of donation on the minor. Typically, courts in the United States review the child's relationship with the prospective recipient,¹³⁴ the possible detrimental psychological effects on the minor from the death of the intended recipient,¹³⁵ the risks of organ harvesting to the donor,¹³⁶ and the possible psychological benefits of donation.¹³⁷ Courts undergo this balancing process in order to ascertain whether the donation serves the child's best interests.¹³⁸

These statutory and common law approaches afford children substantial protection against a trade in children's organs despite the permissive use of underage donors. These approaches, unlike WHO Guiding Princi-

ages of eight to ten should be respected in the decision to donate); SHARPE, *supra* note 118, at 319 (presenting the opinion of Dr. Murray of the Peter Bent Brigham Hospital in Boston, who feels that children under age twelve neither experience the psychological benefit of organ donation nor the trauma resulting from refraining from donating); J.K. MASON & R.A. MCCALL SMITH, *THE LAW AND MEDICAL ETHICS* 170 (1983) (belittling the adoption of an arbitrary age at which point children can be said to understand sufficiently so as to give legally valid consent and urging a case-by-case analysis).

134. See *Hart v. Brown*, 289 A.2d 386 (Conn. Super. 1972) (weighing the strong bond between identical seven-year, ten-month-old twins as a factor in its decision to permit one twin to donate a kidney to the other); *Little v. Little*, 576 S.W.2d 493, 498 (Tx. Civ. App. 1979) (permitting organ donation because of incompetent's close bond to ailing sibling).

135. See *Strunk*, 445 S.W.2d at 146 (arguing that the death of the unhealthy sibling would have a damaging emotional impact on the prospective donor).

136. See *id.* at 148-49 (evaluating the few, but very real, short and long term risks to the donor); *Hart*, 289 A.2d at 386 (basing its decision to allow a seven year and ten month old twin to donate a kidney to her twin primarily on the fact that the risks to the donor child were minimal and granted the donee a continued life).

137. See *Little*, 576 S.W.2d at 499 (naming the psychological benefits of organ donation, including "heightened self-esteem, enhanced status in the family, renewed meaning in life . . . and transcendental or peak experiences flowing from their gift of life to another"); SOMERVILLE, *supra* note 124, at 79 (arguing that courts seek to find a psychological benefit for the donor in order to conclude that donation serves the "best interests" of the child because the physical benefit of therapeutic medical procedures is absent).

138. See *Curran*, 566 N.E.2d at 1319 (denying permission for three and one-half year old twins to submit to bone marrow harvesting for the benefit of their half-brother because the procedure was not in the best interests of the twin girls); *Strunk*, 445 S.W.2d at 149 (holding that organ donation was in "the best interest" of the incompetent ward); *Little*, 576 S.W.2d at 498 (stating that whether courts use the doctrine of substituted judgment or not, courts primarily focus on the benefits of organ donation to the child donor).

ple 4, recognize the continual scarcity of transplant organs. Rather than helplessly allowing a child to die because of an absolute prohibition on living minor donors, France, Luxembourg, Quebec, and the United States embrace flexible solutions which may save an unhealthy child's life.

III. PROPOSED REGULATIONS

To increase the supply of transplant organs, alternative measures have been proposed to replace the current voluntary, post-mortem donative system in the United States. Proposals to lessen the shortage of transplant organs include an organ draft,¹³⁹ presumed consent/routine salvage,¹⁴⁰ or financial incentives through a death benefit,¹⁴¹ an open market,¹⁴² or a futures market.¹⁴³

A. AN ORGAN DRAFT

An organ draft completely restricts a person's right to choose not to become an organ donor after death.¹⁴⁴ The draft requires the state's

139. See Theodore Silver, *The Case for a Post-Mortem Organ Draft and a Proposed Model Organ Draft Act*, 68 B.U. L. REV. 681 (1988) (proposing an organ draft to increase the supply of transplant organs for the national health and arguing that conscription correctly aligns society's priorities by placing the living before the dead).

140. See *id.* at 703 (explaining that presumed consent organ procurement tactics are operative in Austria, Czechoslovakia, Denmark, France, Finland, Greece, Israel, Italy, Japan, Norway, Poland, Spain, and Switzerland). See generally LEGISLATIVE RESPONSES, *supra* note 4 (printing individual countries' organ transplant regulations).

141. See *infra* notes 153-56 and accompanying text (discussing the death benefit).

142. See *infra* notes 157-63 and accompanying text (examining the open-market proposal).

143. See Lloyd R. Cohen, *Increasing the Supply of Transplant Organs: The Virtues of a Futures Market*, 58 GEO. WASH. L. REV. 1 (1989) (advocating the implementation of a futures market).

144. See Silver, *supra* note 139, at 681, 689-92, 714-15 (showing that advocates argue that there is no property right in the human body after death, but at most a "quasi-property" right exists which allows for burial of choice). Some challenge the constitutionality of the draft on the grounds that it violates the right to privacy guaranteed in the Fourteenth Amendment. *Id.* at 716-18. Supporters dispute that a corpse is not a "person" as defined in the Constitution, and moreover, even if a corpse were a "person," the state's interest in serving the national health through an organ draft usurps a person's interest in bodily integrity after death. *Id.* at 718. Still others base their objections in psycho-social terms, protesting that an organ draft would destroy society's ability to express its altruism. *Id.* at 696. Professor Ramsey, for instance, argues that "the routine taking of organs would deprive individuals of the exercise of

routine harvest of all suitable cadaveric organs, *i.e.* organs which have a tissue match on the recipient waiting list.¹⁴⁵ Only a religious objection can obstruct the routine salvage of organs.¹⁴⁶ The state overlooks any other objection expressed by the decedent prior to death or by decedent's family.¹⁴⁷

B. PRESUMED CONSENT

Presumed consent, also known as routine salvage, empowers a person to opt out of automatic post-mortem organ retrieval simply by expressing this desire before death.¹⁴⁸ In effect, however, the presumed consent plan mirrors the organ draft¹⁴⁹ because often individuals do not understand that they can prevent the routine salvage of their organs.¹⁵⁰ By not voicing their opposition to donate, the state may retrieve a person's organs against their true wishes.¹⁵¹ To avoid this result, physicians in a presumed consent state often seek the consent of the decedent's next of kin, which yields fewer organ donations than anticipated by the presumed consent doctrine.¹⁵²

C. LIMITED COMPENSATION: THE DEATH BENEFIT

Limited compensation may take the form of a death benefit to the decedent's family.¹⁵³ This benefit would entail a single standard payment of approximately \$1,000-2,000 to cover burial expenses.¹⁵⁴ If

the virtue of generosity." *Id.* at 697.

145. *Id.* at 726 (stating that an Organ Conscription Board will ascertain the suitability of cadaveric organs).

146. *Id.* at 681.

147. *Id.*

148. See Erik S. Jaffe, Note, *She's Got Bette Davis' Eyes: Assessing the Nonconsensual Removal of Cadaver Organs under the Takings Clause*, 90 COLUM. L. REV. 528 (1990) (explaining that despite this opt-out policy, the same constitutional arguments about the property right in corpses and the right to privacy that surround the organ draft re-surface when discussing presumed consent).

149. Silver, *supra* note 139, at 706.

150. See *id.* at 706 (arguing that a presumed consent system is more deceptive than the organ draft because citizens are generally unaware of their right to refuse to donate).

151. *Id.*

152. See *id.* at 706-07 (indicating that efforts at presumed consent in Europe have not substantially increased organ supplies).

153. See Peters, *supra* note 28, at 1302, 1304 (arguing that officials should examine death benefit proposals more closely).

154. See *id.* (asserting that this minimal compensation would be an uncoercive

enacted in the United States, this plan would cost the government approximately \$4 million annually,¹⁵⁵ but presumably would greatly increase the supply of transplant organs.¹⁵⁶

D. AN OPEN MARKET FOR ORGAN SALES

Implementing an open market for organs would require the repeal of legislation prohibiting the sale of organs¹⁵⁷ and the establishment of a property right in the human body and its parts.¹⁵⁸ An open laissez-faire market may augment the number of living donors, but at the same time may reduce altruistic donations¹⁵⁹ and increase the number of unhealthy organs.¹⁶⁰ An open-market would increase the costs of organ transplants,¹⁶¹ but should not preclude the lower economic classes from undergoing this potentially life-saving procedure.¹⁶² Yet another negative consequence may be the further waning of public trust in health professionals because of the potential for blatant favoritism to the wealthy.¹⁶³

incentive).

155. *Id.* at 1304. Peters claims that this expenditure would not have a significant impact on total organ procurement costs, and moreover, that increased acquisition rates would offset overall expenses because continued dialysis treatment costs more than organ substitution. *Id.*

156. *Id.*

157. Stephen Ashley Mortinger, *Spleen for Sale*, 51 OHIO ST. L.J. 499, 508 (1990); Hansmann, *supra* note 39, at 72-74 (fearing that the inter vivos sale of human organs could potentially exploit the poor).

158. *See* Jaffe, *supra* note 148, at 551 (stating that a property right consists of the power to use, possess, exclude, sell, and destroy the property).

159. *See* Hansmann, *supra* note 39, at 68 (noting that the sale of blood diminished blood donations).

160. *See* Mortinger, *supra* note 157, at 508 (arguing that the sale of organs will increase the supply of diseased organs because the plan motivates the lower economic classes, who often have poor health habits, to donate).

161. *See Organ Transplantation*, 103 HARV. L. REV. 1614, 1628-29 (1990) (suggesting that the costs of organ procurement would be outweighed by the benefits).

162. *See id.* (predicting that the federal government would likely continue to pay for the majority of organ substitution surgeries).

163. *See id.* at 1629-30 (arguing that an open-market is presently unworkable, and stating that health professionals fear that such a market will diminish trust in the medical community).

E. A FUTURES MARKET IN TRANSPLANT ORGANS

A futures market allows people to contract during their lifetime for the post-mortem removal of any or all of their organs.¹⁶⁴ As compensation for donating organs, a donor may earn cash money,¹⁶⁵ tax deductions,¹⁶⁶ preferential access to organs for the donor's family,¹⁶⁷ a discount on health insurance,¹⁶⁸ or a survivor's pension/insurance to the donor's family.¹⁶⁹ Although some fear that a potential criminal market may seek to make a profit by murdering contracted donors,¹⁷⁰ two discussed precautions should effectively bar this consequence. First, if the donor elects post-mortem compensation, then the future donor must name a beneficiary¹⁷¹ to ensure that only the designated beneficiary will receive compensation from the fulfilled contract.¹⁷² Second, to execute the contract, the donor must die in a hospital where organ harvesting can take place.¹⁷³ To pacify fears of economic exploitation of the poor, individuals may opt out of the contract and forego future compensation.¹⁷⁴

These alternative organ procurement strategies recognize the inadequacy of a procurement system based on voluntary, uncompensated donations. These strategies adhere to a value system which places the elimination of organ shortage ahead of moral concerns raised by the commercialization of the process of organ donations.

164. See generally Cohen, *supra* note 143 (detailing a futures market plan).

165. *Id.* at 33.

166. Ann McIntosh, *Regulating the "Gift of Life"—The 1987 Uniform Anatomical Gift Act*, 65 WASH. L. REV. 171, 179 (1990) (proposing that a futures market enjoys the benefits of financial incentives while upholding the virtues of altruism).

167. *Id.*

168. *Id.*

169. See Cohen, *supra* note 143, at 33, 35 (arguing that payments to a family after removal of decedent's organs operate, in effect, as a supplementary life insurance policy, the value of which may depend on the number of organs harvested from the decedent).

170. *Id.* at 41 (admitting that financial incentive to murder may exist in a futures market system, but that the threat is insignificant).

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

IV. RECOMMENDATIONS

The existing legislation described in detail above inadequately protects children and does little to assuage deep-rooted fears of Latin Americans, who continue to fear the murder and exploitation of their children by powerful and wealthy foreigners.¹⁷⁵ Economic well-being would leave Latin Americans less vulnerable to abduction and corrupt government practices,¹⁷⁶ but as finding a cure to poverty is not a tenable solution, the recommendations below aim to prevent the development of such a trade. These recommendations are not mutually exclusive and would serve children best if implemented jointly.

A. STRICTER REGULATION OF INTERNATIONAL ADOPTIONS

Although outside the scope of this discussion, the disappearances of children for illicit adoptions intensify Latin American anxiety about trafficking in children's organs.¹⁷⁷ Stricter regulation of international adoptions¹⁷⁸ could reduce instances of child kidnapping for illegal

175. See Booth, *supra* note 10, at C2 (sketching the unrest in Guatemala during the spring of 1994).

176. See *Sale of Children*, *supra* note 89, at 7 ¶ 25 (stating that "the root causes [of trafficking in children's organs] are linked with family needs and social disparities"); Daniel Rothenberg, *Heeding a Grotesque Morality Tale from Latin America*, CHI. TRIB., July 8, 1994, at 17 (attesting that the rumors, whether true or not, symbolically reflect the exploitation and marginality of Latin American poor).

177. See Booth, *supra* note 10, at C2 (connecting the disappearances of children for adoption with the rumored trade in children's organs).

178. See CONV. art. 21, *supra* note 69 (regulating international adoptions); ADOPTION LAWS IN LATIN AMERICAN COUNTRIES (Hector Faundez Ledezma, International Social Service ed., 1982) (compiling national adoption laws). For analysis and criticism of the regulations governing international adoptions, see also Richard R. Carlson, *Transnational Adoption of Children*, 23 TULSA L.J. 317 (1988) (studying federal immigration laws defining adoptability in the United States); Jane Truesdell Ellis, *The Law and Procedure of International Adoption: An Overview*, 7 SUFFOLK TRANSNAT'L L.J. 361 (1983) (examining immigration law in the United States); Ahilemah Jonet, *supra* note 78 (analyzing the effectiveness and the shortcomings of the draft Convention to end baby selling); Ahilemah Jonet, *Legal Measures to Eliminate Transnational Trading of Infants for Adoption: An Analysis of Anti-Infant Trading Statutes in the United States*, 13 LOY. L.A. INT'L & COMP. L.J. 305 (1990) (analyzing state anti-infant trading regulations); Holly C. Kennard, Comment, *Curtailing the Sale and Trafficking of Children: A Discussion of the Hague Conference Convention in Respect of Intercountry Adoptions*, 14 U. PA. J. INT'L BUS. L. 623 (1994) (criticizing the Convention for creating loopholes in legislation where adoptions-for-profit may pros-

adoptions, and thereby proportionally diminish fears about trafficking in children's organs.

B. AMEND THE 1989 CONVENTION ON THE
RIGHTS OF THE CHILD

Parties to the Convention on the Rights of the Child should amend the treaty to include specific language addressing the sale of children for organ transplants. An additional article to the Convention would echo Article 35, but apply explicitly to organ trafficking. The addendum article should read as follows:

States Parties shall take all appropriate measures to prevent the abduction of, sale of or trafficking in children and their body parts in any form.¹⁷⁹

Signatory parties should not seek to amend the Convention, however, until and unless United Nations' investigators can document the trade. Without documentation, it is unlikely that parties to the treaty will willingly expend time and resources to adopt an amendment based on sheer speculation. Likewise, the United States, given its position on the subject, would never agree to such an amendment.¹⁸⁰ The abstention of the United States in amending the Convention could potentially incite greater consternation because of the alleged involvement of Americans in the trafficking of children's organs.¹⁸¹ If investigations substantiate the existence of the trade, an amendment to the Convention which explicitly bans the trafficking in children for the subsequent sale of their body parts and the trafficking in children's body organs would ensure greater protection for children by unequivocally declaring the illegality of the trade and by demanding compliance with the Convention. If thorough research does not verify the rumors, then the need for an amendment will prove to be moot.

per).

179. See CONV. art. 35, *supra* note 69, and accompanying text (prohibiting "the abduction of, sale of or trafficking in children in any form").

180. See Cohen, *supra* note 70, at 1449 (stating the United States was reluctant about the treaty from the start for establishing as "rights" what were considered "merely good social policy").

181. See *supra* note 7 (naming those countries allegedly involved in the trade of children's organs).

C. ADOPT AN INTERNATIONAL TREATY
REGULATING ORGAN TRANSPLANTATION

The international community should adopt a treaty based on WHO Guiding Principles on Human Organ Transplantation with the exception of Principle 4, which absolutely bans the use of minors as living organ donors, and Principle 5, which prohibits financial compensation for organ donors.¹⁸² Provisions to replace Principles 4 and 5 are provided below.

1. Replacing Principle 4

Principle 4 should permit limited, inter-vivos organ donations by minors to siblings subject to judicial review. The amended principle should read as follows:

No organ or regenerative tissue should be removed from the body of a living minor for the purpose of transplantation.¹⁸³ Exceptions may be made if the minor is the brother or sister¹⁸⁴ of the intended recipient. In that case, the organ or regenerative tissue may be removed only with the consent of the person's legal representative¹⁸⁵ and after authorization has been given by the court¹⁸⁶ based on its determination of the best inter-

182. See *supra* note 98 and accompanying text (enumerating supporters of the international adoption of WHO Guiding Principles).

183. See *supra* note 99 (quoting WHO Guiding Principle 4, stating "no organ should be removed from the body of a living minor for the purpose of transplantation").

184. See French Law No. 76-1181 of 22 December 1976, *supra* note 120 (permitting minors to donate only to siblings). "Brother or sister" may include half-brother and sisters, or adopted siblings, subject to national law, with the understanding that such a broad interpretation poses a potential risk of falsified relationships. *But see* MASON & MCCALL SMITH, *supra* note 133, at 171 (1983) (advocating that minors should only donate to full siblings because such a restriction provides a higher degree of certainty in applying the law). Furthermore, Mason and McCall Smith believe the high degree of genetic incompatibility among adoptive siblings justifies this limitation. *Id.* This reasoning is flawed, however, because of the growing acceptance and use of unrelated living donors. See *supra* note 34 (discussing the increased use of unrelated donors).

185. See *supra* note 120 (explaining that French and Luxemborg legislation requires the consent of the minor's legal representative).

186. See *supra* note 129 (discussing the holding in Strunk); Saks, *supra* note 118 (finding that "the more adversarial the structure of the forum, the more the people whose interests are at stake are satisfied with the fairness of the process").

ests of the child¹⁸⁷ after hearing testimony by the minor's physician,¹⁸⁸ the intended recipient's physician (who may not be the same physician attending to the minor donor),¹⁸⁹ and the minor's psychologist/social worker.¹⁹⁰ If the child is over age seven,¹⁹¹ then the child's viewpoints must enter into the court's decision. If the minor unequivocally refuses donation, then the minor's wishes shall be respected.¹⁹² Violations of this provision shall be punishable by fine or imprisonment¹⁹³ subject to national law.¹⁹⁴

This language incorporates the protection afforded to children under common-law and existing statutory legislation. It should adequately paralyze any trade in children's organs. The adoption of this provision would punish any violators, including organ brokers, child abductors, and all health professionals, especially physicians. Clearly, without physicians' acquiescence and cooperation, the rumored trade could never develop.¹⁹⁵ Doctors who retrieve organs from living minors without verifying consent, without establishing the relationship between the donor and the intended recipient, and without obtaining judicial authorization will suffer criminal penalties subject to national determination. The law equally compels physicians who perform the recipient's transplant to

187. See *supra* note 138 (studying this American common law standard of review).

188. See *supra* note 120 (quoting French Law No. 76-1181 which requires the consent of a committee with at least two physicians, one of whom must have at least twenty years of medical experience, before a minor may donate an organ to a sibling).

189. See WHO Guiding Principles, Principle 2 and Commentary, *supra* note 4 (anticipating a potential conflict of interest, the WHO advocates that physicians who declare the death of the prospective donor not be involved with the removal of the donor's organs or the health care of the intended recipient).

190. See *supra* note 137 (explaining that United States courts weigh the psychological benefits of donation on the child donor).

191. See *supra* note 133 (discussing when children may develop the requisite mental capacity to consent to organ donations).

192. See *supra* note 121 (citing French and Luxemborg law which require that reviewing committees abide by the decision of a minor capable of discernment).

193. See NOTA § 301 (b), 98 Stat. 2346 (to be codified at 42 U.S.C. 274 (e)) (permitting fines of not more than \$50,000 or imprisonment for no more than five years or both for those involved in the purchase or sale of human organs).

194. See WHO Guiding Principles, Commentary to Principle 5, *supra* note 4 (stating, "[t]he method of prohibition, including sanctions, will be determined independently by each jurisdiction").

195. See USIA, *supra* note 6, at 4 (describing the impossibility of an illicit trade in children's organs because transplants demand the skills of many highly-trained health professionals).

confirm the donor's and the donor's family's consent, the relationship of the donor to the recipient, and judicial authorization. Overall, physicians will be less likely to engage in an underground trade in children's organs if they know they face criminal charges.¹⁹⁶ Admittedly, judicial review consumes more time than WHO Principle 4, however, the amended provision avoids the side-effect of an all-out ban on donations by minors.

2. Replacing Principle 5

National governments proscribe financial compensation to organ donors based on principles of altruism and the sanctity of the organ gift. Unfortunately, as society steadfastly stands by its principles, people die needlessly because of the shortage of donated organs.¹⁹⁷ The implementation of a futures market for organs should alleviate this organ shortage. The replacement of Principle 5 encourages the development of this type of market. The amended provision should read as follows:

(a) Cadaveric organs should be utilized before resorting to transplants from living donors. Living donors shall not receive any payment for donating organs, including any other compensation or reward beyond reimbursement for costs attributable to the organ removal surgery.¹⁹⁸ Violations of this provision shall be punishable by fine or imprisonment subject to national law.¹⁹⁹

(b) The procurement of cadaveric organs shall be encouraged through the offer of compensation to adult individuals who contract for the post-mortem removal of their organs. This "futures market" shall be subject to national law, but may take the form of cash payment, reduction in health insurance premiums, or survivors' insurance to the decedent's family.²⁰⁰ Contracted donors may retract their decision to donate at any time during their lifetime and forego compensation.²⁰¹

196. *But see id.* at 4 (arguing that even without criminal sanctions, health professionals receive such large salaries through legitimate practice that there is no incentive to enter into a clandestine trafficking ring).

197. *See supra* note 28 (listing mortality rates for the population waiting for an organ transplant).

198. *See supra* note 4 (quoting WHO Guiding Principle 5).

199. *See supra* note 193 (citing the penalties imposed by NOTA) and 194 (quoting WHO Guiding Principles, Commentary to Principle 5).

200. *See supra* notes 165-69 and accompanying text (listing the various incentives a futures market may offer).

201. *See supra* note 174 and accompanying text (noting that permissive withdrawal reduces the risks of exploitation of desperate individuals).

Opponents of the futures market proposal believe that any increment of commercialism offends society's morals, but to deny the commercialism of the existing system is naive. Organ transplants are a lucrative business for hospitals²⁰² and physicians.²⁰³ Equity demands that organ donors also receive some financial compensation.

The futures market will likely increase the supply of transplant organs because it encourages people to donate for their own self-interest,²⁰⁴ without any subsequent pain and suffering,²⁰⁵ as well as for the recipient. The increased number of available transplant organs will help match the present excessive demand.²⁰⁶ Greater satisfaction of this formerly unmet demand should minimize the need for people to purchase organs covertly, thus attacking the underlying financial incentive for the development of an illegal trade in children's organs.²⁰⁷ With the motivating force behind the alleged trafficking in children's organs significantly abated,²⁰⁸ children should be sufficiently protected from abduction for organ donation.

CONCLUSION

Organ transplants occur more frequently than in the past due to increasing success rates in organ substitution surgery.²⁰⁹ The frequency

202. See Evans, *supra* note 26, at 3115, 3116 (indicating that hospitals bill patients up to 200% more than what organ procurement organizations charge the hospital for organ acquisition, often billing the highest rates for kidneys).

203. See Ronald Bailey, *Should I Be Allowed To Buy Your Kidney?*, FORBES, May 28, 1990, at 365-66 (quoting a physician who disapproves of the current organ procurement system because donors are the only actors not making a profit).

204. See Cohen, *supra* note 143, at 34 (arguing that the futures market offers a "robust solution" to the shortage of organs by providing sufficient incentives to donate).

205. See Kolata, *supra* note 34, at C14 (explaining that living kidney donors undergo complex surgery requiring a "12 inch incision" and the "removal of a rib" followed by "weeks of recuperation").

206. See Cohen, *supra* note 143, at 6 (contending that "the current untapped supply of cadavers appears to be more than adequate to meet the current demand of all organs . . .").

207. See *supra* notes 33-39 (describing the growth of an international trade in adult human organs) and 42 (demonstrating how physicians can successfully transplant children's organs into adult recipients).

208. See *supra* note 5 and accompanying text (implying that the economic incentive for the trade in adult organs could also spawn the criminal trafficking in children's organs).

209. See *supra* notes 1-3 and accompanying text (accounting the medical progress

of these surgeries, however, raises the demand²¹⁰ which greatly exceeds the supply of donated organs.²¹¹ This unmet demand stimulated the growth of a profitable trade in adult organs.²¹² The much-publicized market in adult living donors now worries many that children will become the next source of transplant organs.²¹³ The lack of substantiation of the rumors of trafficking in children's organs²¹⁴ should not bar discussion of legal avenues to protect children from this trade. As noted above, the Convention on the Rights of the Child makes the sale of children for their organs illegal,²¹⁵ but it does not explicitly address the trade.²¹⁶ By not directly prohibiting the sale of children for their body parts, the Convention fails to give children the degree of protection warranted by the horrors of the rumored trade.²¹⁷

To truly protect children, the international community should adopt an international treaty based on the WHO Guiding Principles to regulate organ procurement and allocation because the primary threat to children lies in the international scarcity of transplant organs.²¹⁸ The treaty, however, should replace WHO Guiding Principles 4 and 5, which now ban the use of minors as living organ donors and financial compensation for organ donors respectively.²¹⁹ If doctors cannot locate a suitable cadaveric or living donor, the court should permit minors to donate organs

in transplant surgeries).

210. See *supra* notes 1-3 and accompanying text.

211. See *supra* notes 16-32 and accompanying text (highlighting the reasons behind the shortage of transplant organs).

212. See *supra* notes 33-39 and accompanying text (noting the creation of a commercial market in human organs).

213. See *supra* note 5 and accompanying text (deducing a threat to children based on the severe shortage of organs and their current economic value on the underground market).

214. See *supra* note 59 and accompanying text (indicating that, to date, the rumors remain unconfirmed).

215. See *supra* notes 84-85 and accompanying text (arguing that the illegality of the trafficking in children's organs stems from children's inherent right to life and freedom from abuse and exploitation).

216. See *supra* note 73-83 and accompanying text (discussing applicable provisions of the Convention to the alleged trafficking in children's organs).

217. See *supra* notes 86-92 and accompanying text (examining the shortcomings of the Convention in protecting children from the alleged problem of trafficking in children's organs).

218. See *supra* notes 182-208 and accompanying text (detailing a proposed treaty to regulate organ transplantation).

219. See *supra* notes 183-201 and accompanying text (modifying the principles proposed by the WHO).

to siblings if the minor and the minor's family consent and if the donation serves the best interests of the minor donor.²²⁰ Furthermore, the treaty should encourage a futures market in organs.²²¹ By increasing the supply of organs through a futures market,²²² the profit of a trade in children's organs will fall significantly.²²³ The elimination of economic gain from trafficking in children's organs will grant children the utmost protection from non-consensual, violent organ procurement.

220. *See supra* notes 184-192 and accompanying text (detailing the limited, permissible use of children as living organ donors).

221. *See supra* notes 198-203 and accompanying text (advocating the adoption of a futures market in human organs).

222. *See supra* notes 204-207 and accompanying text (noting the potential for increasing the supply of transplant organs through the implementation of a futures market).

223. *See supra* note 208 and accompanying text (equating the market incentives behind the trafficking in children's organs to those encouraging the trade in adult organs).