

# The New Cold War: Russia’s Ban on Adoptions by U.S. Citizens

by  
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## I. Introduction

In Russia, there are approximately 128,000 orphans eligible for adoption.<sup>1</sup> For those not adopted domestically, intercountry adoption is the only way to have a family. American citizens have been adopting orphans from Russia for twenty years.<sup>2</sup> However, the hopes of American adoptive families have been crushed by the new Iron Curtain established by recent Russian legislation on adoption.

On December 28, 2012, Vladimir Putin, President of the Russian Federation, signed a federal law “On Sanctions for Individuals Violating Fundamental Human Rights and Freedoms of the Citizens of the Russian Federation.”<sup>3</sup> This law provides for sanctions against U.S. officials thought to have violated funda-

<sup>1</sup> David M. Herszenhorn, *In Russia, Ban on U.S. Adoptions Creates Rancor and Confusion: [Foreign Desk]*, N.Y. TIMES (Jan. 16, 2013), <http://search.proquest.com/docview/1269606403?accountid=40968> (citing statement of Deputy Prime Minister of the Russian Federation, Olga Golodets).

<sup>2</sup> David Crary, *Russia’s Move on Adoptions Discouraging*, WASH. TIMES (Dec. 23, 2012), <http://www.washingtontimes.com/news/2012/dec/23/russias-move-on-adoptions-discouraging/> (indicating that American citizens have adopted more than 60,000 Russian orphans over the past twenty years).

<sup>3</sup> Federal Law on Sanctions for Individuals Violating Fundamental Human Rights and Freedoms of the Citizens of the Russian Federation, Dec. 28, 2012, No. 272-FZ.

mental human rights and freedoms of Russian citizens.<sup>4</sup> The new Russian federal law also suspends the activity of politically active non-profit organizations that receive money from American citizens and organizations.<sup>5</sup> However, the part of the law causing the most controversy is the section banning U.S. citizens from adopting children who are Russian citizens.<sup>6</sup>

In 2011, the two countries signed the Agreement Between the United States of America and the Russian Federation Regarding the Cooperation in Adoption of Children (“Adoption Agreement”).<sup>7</sup> The Adoption Agreement was intended to promote a safe, ethical, and transparent adoption process for all parties involved in intercountry adoption between Russia and the United States. As a result, the new adoption ban passed a year later caught many people by surprise.

Proponents of the ban claim that it is the only way to protect Russian orphans from unsupervised and uncontrolled adoptions to the United States, citing incidents of death and abuse of Russian children by their American adoptive parents.<sup>8</sup> Opponents of the ban blame politics, alleging that the law is an action taken in retaliation for recent U.S. legislation, the Sergei Magnitsky Rule of Law Accountability Act of 2012 (“Magnitsky Act”) that denies visas and other privileges for Russian officials who violate human rights.<sup>9</sup>

This article will review the historical background of intercountry adoption between the two countries, detail the Russian laws governing intercountry adoptions, and then evaluate

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<sup>4</sup> *Id.* art. 1.

<sup>5</sup> *Id.* art. 3.

<sup>6</sup> *Id.* art. 4.

<sup>7</sup> Agreement between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children § 10(1)(b) (signed July 13, 2011, terminated Jan. 1, 2013, by Federal Law on Sanctions for Individuals Violating Fundamental Human Rights and Freedoms of the Citizens of the Russian Federation of Dec. 28, 2012), [http://tsgsandbox.his.com/adoptions/country\\_information/country\\_specific\\_alerts\\_notices.php?alert\\_notice\\_type=alerts&alert\\_notice\\_file=russia\\_2](http://tsgsandbox.his.com/adoptions/country_information/country_specific_alerts_notices.php?alert_notice_type=alerts&alert_notice_file=russia_2) [hereinafter *Adoption Agreement*].

<sup>8</sup> Anna Jane High, *Pondering the Politicization of Intercountry Adoption: Russia's Ban on American "Forever Families,"* 22 *CARDOZO J. INT'L & COMP. L.* 497 (2014).

<sup>9</sup> Sergei Magnitsky Rule of Law Accountability Act of 2012, H.R. 6156, 120th Cong. § 4 (Jan. 3, 2012).

recent changes to these laws, including the reasons behind the ban. Ultimately, this article will propose a different method of dealing with the adoption problem at the core of the dispute, which includes lifting the ban, improving domestic adoptions, ratifying the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (“Hague Adoption Convention”), and promoting further cooperation between the two countries in accordance with the Adoption Agreement.

## II. Historical Background of American and Russian Intercountry Adoption

### A. *Development of Intercountry Adoption in the United States*

Intercountry adoption is a relatively new practice in the United States, as it was essentially unheard of prior to the 1940s.<sup>10</sup> The rise of intercountry adoptions began after World War II, when large numbers of children orphaned or abandoned abroad as a result of the war were adopted in America.<sup>11</sup> The second wave of intercountry adoptions to the United States occurred after the Korean and Vietnam wars that resulted in numerous orphans, often fathered by Americans and adopted by U.S. families.<sup>12</sup> Since the middle of the 1950s, more than 130,000 intercountry adoptions by American families have occurred.<sup>13</sup> The trend of Americans adopting foreign children continued to grow as more wars, natural disasters, and medical epidemics led

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<sup>10</sup> Kate O’Keeffe, *The Intercountry Adoption Act of 2000: The United States’ Ratification of the Hague Convention on the Protection of Children, and Its Meager Effect on International Adoption*, 40 VAND. J. TRANSNAT’L L. 1611, 1615 (2007).

<sup>11</sup> Rachel A. Bouman, *China’s Attempt to Promote Domestic Adoptions: How Does China’s One-Child Policy Affect Recent Revisions in China’s Adoption Law and Measure Up to the Hague Convention?*, 13 TRANSNAT’L LAW. 91, 100 n.71 (2000) (explaining that intercountry adoptions developed primarily as a response to war, disasters, and a growing sentiment to help orphaned children); Peter F. Dodds, *The Case Against International Adoptions*, 10 GEBORENER DEUTSCHER (newsltr. for German-Born Adoptees and Their Birth/Adoptive Fam.) 2 (No. 3 1997), <http://wmlgace.com/GD/pdfs/GD036.pdf> (indicating that the aftermath of World War II brought many children who were orphaned or abandoned to the United States after being sent from one European country to another and finally to the United States).

<sup>12</sup> Dodds, *supra* note 11, at 2.

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

to more children losing their biological parents and becoming orphans.<sup>14</sup>

Numerous domestic factors in America have contributed to continuing interest in intercountry adoption. Due to the increased availability of abortion and contraceptive use, there was a decline in the number of healthy American babies available for adoption.<sup>15</sup> Further, the increased acceptance of single motherhood in American society has prompted many single mothers to choose to raise the children whom they might have previously put up for adoption.<sup>16</sup> Rigid domestic adoption qualifications of age, financial and marriage status, and the existence of other children make domestic adoption difficult compared to the shorter waiting period and easier procedural requirements of intercountry adoptions.<sup>17</sup> Furthermore, in the United States, parents who release their child for adoption occasionally return to claim their child,<sup>18</sup> which may act as a deterrent to prospective adoptive parents.

In addition to the difficulty of adopting domestically, prospective parents are also motivated to consider foreign adoption through altruism and a sense of obligation to foreign homeless children.<sup>19</sup> As a result, the number of international children adopted by American families has more than doubled. In 1990, American citizens adopted 7,093 children from other countries,

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<sup>14</sup> Rebecca Worthington, *The Road to Parentless Children Is Paved with Good Intentions: How the Hague Convention and Recent Intercountry Adoption Rules are Affecting Potential Parents and the Best Interests of Children*, 19 *DUKE J. COMP. & INT'L L.* 559, 560 (2009) (indicating that more recently, the AIDS epidemic in sub-Saharan Africa has left millions of children orphaned).

<sup>15</sup> *Roe v. Wade*, 410 U.S. 113 (1973) (decision resulting in the legalization of abortion in the United States during the earlier months of pregnancy).

<sup>16</sup> Shannon Thompson, *The 1998 Russian Federation Family Code Provisions on Intercountry Adoption Break the Hague Convention Ratification Gridlock: What Next? An Analysis of Post-Ratification Ramifications on Securing a Uniform Process of International Adoption*, 9 *TRANSNATL. L. & CONTEMP. PROBS.* 703, 706 (1999).

<sup>17</sup> *Id.*

<sup>18</sup> *In re Doe*, 638 N.E.2d 181 (Ill. 1994) (indicating that the biological mother can seek to reinstate her rights to the child long after adoption); *In re B.G.C.*, 489 N.W.2d 239 (Iowa 1993).

<sup>19</sup> Thompson, *supra* note 16, at 706.

56 *Journal of the American Academy of Matrimonial Lawyers*

and by 2003 the number of adopted children reached 22,734.<sup>20</sup> Although international adoptions have recently declined due to more restrictive adoption policies,<sup>21</sup> America remains the country that receives the largest number of international orphans.<sup>22</sup>

Generally, intercountry adoption is a process that involves countries with unequal levels of socioeconomic development and populations of different racial composition – most of the adoptive parents are citizens of more developed nations, like the United States and Europe, while adoptable children come from less developed countries, like Asia, Latin America, Romania, and Russia.<sup>23</sup>

B. *Development of Intercountry Adoptions Between Russia and the United States*

Political and economic reforms carried out in Russia in the last decade of the twentieth century negatively affected the population of the country. The sharp decline in industrial and agricultural production, as well as price reforms, changed the lives of most families by dramatically dropping their income and destroying earned savings. The reforms and social instability greatly increased poverty, crimes, alcohol and drug addiction, prostitution and the number of orphans. Historically, the Russian government designates orphans as “state children” and takes responsi-

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<sup>20</sup> Bureau of Consular Affairs, U.S. Dept. of State, *Intercountry Adoption*, [http://adoption.state.gov/about\\_us/statistics.php](http://adoption.state.gov/about_us/statistics.php) (accessed Mar. 31, 2013) [hereinafter *Intercountry Adoption*].

<sup>21</sup> Jaci L. Wilkening, *Intercountry Adoption Act Ten Years Later: The Need for Post-Adoption Requirements*, 72 OHIO ST. L.J. 1043, 1061 (2011) (listing various causes for the intercountry adoption decrease, such as preventing baby trafficking and various countries' domestic regulations restricting intercountry adoptions).

<sup>22</sup> Melissa Long, Comment, *Guatemala Passes Domestic Legislation to Implement Hague Adoption Convention; But Does It Help the Children?*, 15 L. & BUS. REV. AMS. 631, 632-33 (2009) (indicating that the United States is the country that receives the largest number of children through intercountry adoption; usually amounting to almost half of all children internationally adopted in a given year).

<sup>23</sup> Mary Ann Candelario McMillan, Comment, *International Adoption: A Step Toward a Uniform Process*, 5 PACE INT'L L. REV. 137, 138 (1993).

bility to protect and support them by establishing state orphanages.<sup>24</sup>

It is estimated that 113,000 children have entered Russian orphanages every year since 1996.<sup>25</sup> In 2009, there were approximately 700,000 Russian children who were voluntarily relinquished to the state orphanages.<sup>26</sup> As of 2012, there were around 650,000 children not in parental custody in Russia.<sup>27</sup> Additionally, children are more likely to be abandoned to orphanages if they have mental or physical disabilities.<sup>28</sup> The orphanages for disabled children have little funding and limited resources to care for these children.<sup>29</sup>

The increase in the number of children available for adoption in Russia coincided with a period when many Americans had given up on their domestic adoption process.<sup>30</sup> As a result, many American families turned to Russia when looking for adoption options. In 1991, for the first time, American citizens were able to adopt Russian children.<sup>31</sup> Since 1991 the number of American adoptions from Russia steadily increased before reaching its peak in 2004, when Americans adopted 5,862 chil-

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<sup>24</sup> Ministry of Education and Science of the Russian Federation, *Adoption in Russia, History of Adoptions in Russia*, <http://www.usynovite.ru/experience/history/chapter1/> (accessed Mar. 31, 2013) [hereinafter *Adoption in Russia*] (indicating that after the October Revolution of 1917 and the subsequent Russian Civil War, Soviet Russia faced the problem of a massive number of abandoned and homeless children. As a consequence, state orphanages became the basic form of arrangement for those children. By the end of World War II, more than 600,000 children were placed in state-run orphanages).

<sup>25</sup> Cheryl L. Allen, Note, *The US-Russian Child Adoption Agreement: An End to Failed Adoptions?*, 35 *FORDHAM INT'L L.J.* 1690, 1701 (2012).

<sup>26</sup> UNICEF, *UNICEF Annual Report for Russian Federation 2*, (2010), [http://www.unicef.org/about/annualreport/files/Russian\\_Federation](http://www.unicef.org/about/annualreport/files/Russian_Federation).

<sup>27</sup> Aleksandr Natruskin, *Astahov: In the Beginning of 2012 There were 650,000 Registered Russian Orphans*, *RIA NOVOSTI* (May 16, 2012), <http://ria.ru/society/20120516/650551504.html> (accessed Mar. 31, 2013).

<sup>28</sup> David M. Smolin, *Child Laundering and the Hague Convention on Intercountry Adoption: The Future and Past of Intercountry Adoption*, 48 *U. LOUISVILLE L. REV.* 441, 466-67 (2010) (noting that disabled children in Russia are abandoned in large numbers to the state orphanages).

<sup>29</sup> Allen, *supra* note 25, at 1702.

<sup>30</sup> Mary Hora, Note, *A Standard of Service that All Families Deserve: The Transformation of Intercountry Adoption Between the United States and the Russian Federation*, 40 *BRANDEIS L.J.* 1017, 1020 (2002).

<sup>31</sup> McMillan, *supra* note 23, at 145.

dren.<sup>32</sup> After 2005, the number of Russian children adopted by Americans has decreased with every year. In 2011, Americans adopted 962 Russian orphans.<sup>33</sup> That did not change the fact that Russia ranked as the third favorite place for adoption by American families, after China and Ethiopia.<sup>34</sup> However, from 1995 to 2011, there were 58,000 Russian children adopted by American citizens, showing the United States as a primary international destination for Russian orphans.<sup>35</sup>

Generally, the increase in intercountry adoptions by U.S. citizens has been mutually beneficial to both the United States and various sending countries, including Russia. Adoptive parents get a child they have wished for while providing an orphan with a suitable home abroad, and simultaneously reducing the poverty burden in the sending country.<sup>36</sup> However, intercountry adoption between Russia and the United States has ceased due to the recent changes in Russian adoption laws.

### III. Russian Intercountry Adoption Laws

#### A. *Laws Governing Intercountry Adoptions in Russia*

The intercountry adoption laws in Russia are found in four primary sources: Family Code of the Russian Federation of 1995 (“Family Code”), Civil Procedure Code of the Russian Federation of 2002, Federal Law No. 44-FZ of 2001 “On the State Databank on Children Without Parental Care,” and Federal Law

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<sup>32</sup> *Intercountry Adoption*, *supra* note 20 (indicating that of 22,991 children adopted by American families in 2004, 5,862 were from Russia).

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

<sup>34</sup> *Id.*

<sup>35</sup> *Adoption in Russia*, *supra* note 24, *Distribution of Russian Adoptions by Foreign Citizens*, <http://www.usynovite.ru/statistics/2011/7/> (accessed Mar. 31, 2013) (indicating that out of 3,400 Russian children adopted abroad in 2011, 956 were adopted to the United States. The country that adopted the second most Russian children in 2011 was Italy with 798 adoptions); See U.S. Dep’t of State, Bureau of Consular Affairs, Intercountry Adoption: Statistics, <http://www.adoptionknowhow.com/russia/statistics> (Mar. 2, 2014).

<sup>36</sup> Lindsay K. Carlberg, Note, *The Agreement Between the United States and Vietnam Regarding Cooperation on the Adoption of Children: A More Effective and Efficient Solution to the Implementation of the Hague Convention on Intercountry Adoption or Just Another Road to Nowhere Paved with Good Intentions?*, 17 *IND. INT’L & COMP. L. REV.* 119, 125 (2007).



No. 62-FZ of 2002 “On Citizenship of the Russian Federation.”<sup>37</sup> There are also a number of international conventions and agreements relating to adoption signed and ratified by Russia. In addition, the issue of intercountry adoptions is governed by the provisions of the Russian government regulations in the forms of orders, as well as letters of instruction of ministries and agencies of Russia.<sup>38</sup>

Laws regarding the care and creation of the family are located in the Family Code. The Russian Code contains laws similar to the U.S. laws regarding parental rights and termination of those rights.<sup>39</sup> According to the Family Code, “the adoption of children by foreign citizens or by stateless persons shall be admitted only in the cases when it is impossible to give these children upbringing in the families of the citizens of the Russian Federation.”<sup>40</sup>

This regulation does not have a big effect on the decrease of intercountry adoptions due to the large number of orphaned and abandoned children in Russia. The 1998 amendments to the Family Code increased the control over adoptions, called for the formation of a state database on available children, and banned intermediary involvement in adoptions.<sup>41</sup> Specifically, Russia increased the duration an orphaned child had to remain in the state database before being adopted by a non-Russian national from three to six months.<sup>42</sup>

Foreign citizens may adopt a Russian child through the offices of foreign agencies and organizations that have received ac-

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<sup>37</sup> *Adoption in Russia*, *supra* note 24; *Legislative Acts*, <http://www.usynovite.ru/documents/federal/legislative/> (accessed Mar. 31, 2013) (listing Russian legislative acts that govern intercountry adoptions).

<sup>38</sup> *Id.*, *Regulations*, <http://www.usynovite.ru/documents/federal/regulations/> (accessed Mar. 31, 2013) (listing various agreements, orders and ordinances).

<sup>39</sup> Family Code of the Russian Federation art. 140-143, Dec. 29, 1995, No. 223-FZ.

<sup>40</sup> Family Code of the Russian Federation art. 124, Dec. 29, 1995, No. 223-FZ.

<sup>41</sup> Thompson, *supra* note 16, at 710.

<sup>42</sup> Laura Ashley Martin, Comment, “*The Universal Language Is Not Violence. It’s Love [:] the Pavlis Murder and Why Russia Changed the Russian Family Code and Policy on Foreign Adoptions*,” 26 PENN. ST. INT’L. L. REV. 709, 724-25 (2008).

creditation to conduct such activities in Russia.<sup>43</sup> Prospective parents may obtain information about available orphans from a regional database agency that provides the parents with permission for visitation of the selected children in Russia.<sup>44</sup> After the visit, a foreign citizen is required to make a decision of adopting or rejecting the child.<sup>45</sup> If the prospective parents decide to adopt the child, the case goes to court where a judge decides if the adoption is in the best interest of the child.<sup>46</sup> If the result of the hearing is positive, the adoption is formally registered with the State<sup>47</sup> and the Consulate of the Russian Federation.<sup>48</sup>

Furthermore, Russia signed and ratified the 1989 United Nations Convention on the Rights of the Child (“CRC”) in 1990.<sup>49</sup> The CRC mandates that all actions concerning children should have “the best interest of the child” as a “primary consideration.”<sup>50</sup> The CRC also provides that all children have the right to an education, a home, a family, health and medical care, and protection from abuse and neglect.<sup>51</sup> The CRC limits these rights with respect to intercountry adoption, stating that it is “an alternative means of [a] child’s care, if the child cannot be placed in a foster or adoptive family or cannot in any suitable manner be

<sup>43</sup> Family Code of the Russian Federation art. 126 (The Family Code limits the role of third parties in the adoption process. All adoption agencies must be registered as non-governmental organizations and accredited by the Ministry of Education and Science of the Russian Federation).

<sup>44</sup> Government Decree No. 217 “On State Databank on Children Without Parental Care and the Monitoring of Its Formation and Use,” Apr. 4, 2002, based on the Federal Law on the State Bank of Data on Children Without Parental Care, Apr. 16, 2001, No. 44-FZ, <http://www.usynovite.ru/international/ru/> (accessed Mar. 31, 2013).

<sup>45</sup> *Adoption in Russia*, *supra* note 24, *Intercountry Adoption*, <http://www.usynovite.ru/international/ru/> (accessed Mar. 31, 2013).

<sup>46</sup> Family Code of the Russian Federation art. 125.

<sup>47</sup> Family Code of the Russian Federation art. 126.

<sup>48</sup> Family Code of the Russian Federation art. 165.

<sup>49</sup> UN Treaty Collection, Convention on the Rights of the Child, status tbl, [http://treaties.un.org/Pages/ViewDetails.aspx?%20src=TREATY&mtmsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?%20src=TREATY&mtmsg_no=IV-11&chapter=4&lang=en) (accessed Mar. 31, 2013) (providing a table with listed dates of signature and ratification for the 140 signatories and 193 parties).

<sup>50</sup> Convention on the Rights of the Child art. 3 (opened for signature Nov. 20, 1989, entered into force Sept. 2, 1990), 1577 U.N.T.S. 3.

<sup>51</sup> *Id.* art. 9, 19, 24, 27, 28.

cared for in the child's country of origin."<sup>52</sup> This correlates with the Russian position that intercountry adoption is an alternative arrangement for children where domestic placement of the children is not possible.

B. *Recent Changes to the Laws Governing American Adoptions of Russian Orphans*

Although intercountry adoptions are supposed to follow the best interest of the child, that is often not the case. Various problems have arisen in American and Russian adoptions. There was a general lack of prospective parent screening and follow-up reporting of the adoptee's transition.<sup>53</sup> Post-adoption follow-ups with the adoptive parents to ensure they were receiving the assistance they needed in raising their adopted children were non-existent.<sup>54</sup> Lack of oversight of the adoption agencies led to corruption and poor adoptive procedures.<sup>55</sup> The Adoption Agreement was an attempt to remedy these issues and to provide better adoptive practices between the two countries. However, before the agreement showed any result, the Russian government issued a ban on American adoptions of Russian orphans.

1. *The United States-Russia Adoption Agreement*

Political history between the United States and Russia played an integral part leading up to the creation of the intercountry adoption agreement. Heavy tension has existed between the two countries throughout the last century. In the past decade, leaders of the United States and Russia have attempted to connect the cultures in various ways. On July 13, 2011, U.S. Secretary of State, Hillary Clinton, and Russian Foreign Minister, Sergey Lavrov, signed the Adoption Agreement, which aimed to strengthen procedural safeguards in intercountry adoptions between the countries.<sup>56</sup> Since Russia required a ratification process, the agreement was approved by the Russian Parliament, the

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<sup>52</sup> *Id.* art. 21.

<sup>53</sup> Allen, *supra* note 25, at 1726.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Office of the Spokesperson, U.S. Dept. of State, *Agreement Between the United States of America and the Russian Federation Regarding the Cooperation in Adoption of Children* (July 13, 2011), <http://www.state.gov/r/pa/prs/ps/>

Duma, on July 10, 2012, and by the Russian Federation Council on July 18, 2012.<sup>57</sup> Russian President Vladimir Putin signed it into law on July 28, 2012.<sup>58</sup> The Adoption Agreement entered into force on November 1, 2012, following the exchange of diplomatic notes between the American and Russian governments.<sup>59</sup>

The Adoption Agreement provided a framework and safeguards to better protect the welfare and interests of all parties involved in intercountry adoptions.<sup>60</sup> The major changes implemented by the Adoption Agreement were the introduction of a pre-approval process for the prospective parents and various requirements to American adoption agencies, including post-adoption monitoring and reporting to Russian authorities.<sup>61</sup> The agreement also required preparation and training by the prospective parents depending upon the needs of the adoptees. This was intended to help ensure that the parents receive all available information about the child's social and medical history and any possible special needs before the adoption is granted.<sup>62</sup> This also aimed to prevent the possibility of the wrongful adoption claims and adoption cancellations.<sup>63</sup>

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2011/07/168180.htm (accessed Mar. 31, 2013) (announcing the signing of the agreement).

<sup>57</sup> U.S. Citizenship and Immigration Services, *Bilateral Adoption Agreement Between the United States and Russia Entered into Force on November 1, 2012*, (Nov. 13, 2012), <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=cad8cb2560bfa310VgnVCM100000082ca60aRCRD&vgnnextchannel=ecab18a1f8b73210VgnVCM100000082ca60aRCD> (accessed Mar. 31, 2013).

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

<sup>59</sup> *Id.*

<sup>60</sup> U.S. Dept. of State, *FAQs: Bilateral Adoption Agreement with Russia* (Oct. 15, 2012), [http://tsgsandbox.his.com/adoptions/country\\_information/country\\_specific\\_alerts\\_notices.php?alert\\_notice\\_type=alerts&alert\\_notice\\_file=russia\\_2](http://tsgsandbox.his.com/adoptions/country_information/country_specific_alerts_notices.php?alert_notice_type=alerts&alert_notice_file=russia_2) [hereinafter *FAQs Adoption Agreement*].

<sup>61</sup> *FAQs Adoption Agreement*, *supra* note 60; *Adoption Agreement*, *supra* note 7.

<sup>62</sup> *Adoption Agreement*, *supra* note 7, art. 10(1)(b) (providing what steps prospective parents should take if required by domestic law before becoming approved for the adoption and what information should be provided about the child).

<sup>63</sup> *Harshaw v. Bethany Christina Child Serv.*, 714 F. Supp. 2d 771 (W.D. Mich. 2010) (the adoptive parents sued the adoption agency for intentional misrepresentation, neglect misrepresentation, and negligent failure to disclose medical information both before and after adoption. The court determined that

Although the Adoption Agreement came into force in November 2012, it was terminated on January 1, 2013, by the ban on American adoptions of Russian children.<sup>64</sup> On January 22, 2013, the Deputy Chairman of the Russian Supreme Court issued a letter to courts clarifying that adoption cases in which court decisions involving American citizens were made before December 31, 2012, should be upheld and children should be transferred to the custody of their adoptive parents.<sup>65</sup> All other cases were cancelled and children were forced to remain in orphanages.

## *2. The Russian Law Banning American Adoptions and Controversy over the Ban*

### *a. The American Adoption Ban and Its Effect on Intercountry Adoption of Russian Orphans*

On January 1, 2013, Russia introduced changes in its international relationships with the United States by signing a new federal law “On Sanctions for Individuals Violating Fundamental Human Rights and Freedoms of the Citizens of the Russian Federation.”<sup>66</sup> The law provides for three sets of penalties. First, it sets visa and financial sanctions against U.S. citizens involved in

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the agency had the duty to disclose the child’s medical history); Will Stewart, *Fury as U.S. Woman Adopts Russian Boy, 7, Then Send Him Back Alone with Note Saying: “I Don’t Want Him Anymore,”* DAILY MAIL (U.K.) (Apr. 9, 2010), <http://www.dailymail.co.uk/news/article-1264744/American-sends-adopted-Russian-boy-behavioural-problems.html> (the adoptive mother of Artyom Savelyev sent him back to Russia with a note asking to cancel the adoption. She claimed she was misled about the child’s behavioral problems).

<sup>64</sup> Federal L. No. 272-FZ. art. 4.

<sup>65</sup> *Intercountry Adoption*, *supra* note 20, [http://adoption.state.gov/country\\_information/country\\_specific\\_alerts\\_notices.php?alert\\_notice\\_type=alerts&alert\\_notice\\_file=russia\\_10](http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=alerts&alert_notice_file=russia_10) (alerting about the Russian Supreme Court Letter on Implementation of Federal L. No. 272-FZ); Cong. Doc. and Publications, *With Negotiations to Lift Russian Adoption Ban Seemingly Stalled, Schumer Urges Russian Officials to Allow the Hundreds of Parents Who Had Already Started Adoption Process Before Ban Went into Effect to Bring Children to U.S.* (Feb. 19, 2013), <http://search.proquest.com/docview/1289068911?accountid=40968> (indicating that since the ban, only twenty five cases have been completed and 884 cases remained open and were at various stages of the adoption process. There were 337 cases in which the parents have already met with their adoptive child in Russia and there were 56 cases in which the parents have already been matched with a child before meeting with the child in Russia).

<sup>66</sup> Federal L. No. 272-FZ.

violations of fundamental human rights and freedoms in relation to Russian citizens.<sup>67</sup> Sanctions include an entry ban for American citizens involved in such violations, disposal of their financial and other assets within Russian territory, and suspension of any business dealings with respect to property and investments of those American citizens.<sup>68</sup> Further, the law restricts the activities of non-government organizations receiving funding from the United States and prohibits U.S. citizens from working in non-government organizations in Russia.<sup>69</sup>

Finally, the law prohibits U.S. citizens from adopting Russian children and any activity in organizations with relation to selection and placement of Russian children for adoption in the United States.<sup>70</sup> In this section, the recently signed Adoption Agreement between Russia and the United States is formally terminated.<sup>71</sup> In one case, the potential adoptive parents argued their foster parent registration was completed before the January 1 deadline and was valid.<sup>72</sup> The Russian appellate court held the foster parenting right was terminated upon enactment of the ban and was therefore void.<sup>73</sup> The law also provides that the same consequences await any country that prohibits entry and arrests Russian citizens because of their supposed involvement in human rights violations within Russian territories.<sup>74</sup>

Since the implementation of the ban, there still have been cases of Russian children being adopted by U.S. citizens.<sup>75</sup> The whereabouts of these adopted children have been kept under tight seal, since the United States has maintained its standard of protecting the best interest of the child. A loop hole seems to exist within adoption procedures, as the language of the ban clearly restricts all American adoptions. More importantly, the

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<sup>67</sup> *Id.* art. 1.

<sup>68</sup> *Id.* art. 2.

<sup>69</sup> *Id.* art. 3.

<sup>70</sup> *Id.* art. 4.

<sup>71</sup> *Id.*

<sup>72</sup> Fed. L. No. 272-FZ § 4(1) (2012).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* art. 6.

<sup>75</sup> See High, *supra* note 8, at 533, n.212 (2014); See generally Candice Ruud, *Local Family Skirts By Ban on Russian Adoption*, NEWSDAY (Mar. 11, 2013), available at <http://www.newsday.com/long-island/towns>.

potential of continuing secret adoptions evidences a social pull of Russian citizens to remove the ban on American adoptions.

b. *Arguments in Support of and in Opposition to the American Adoption Ban in Russia*

The part of the Russian law that caused the most outrage in Russia and abroad was the adoption ban, especially considering that the countries have been working on the Adoption Agreement for the last two years and it went into force just a month before the ban was issued. The controversy around the adoption ban centers on two points: whether it was a necessary decision to protect Russian orphans from abuse and death by their American parents, or whether the ban was implemented as a response to the Magnitsky Act.

i. *Support for the American Adoption Ban*

Proponents of the ban believe that it is necessary for Russia to protect its children from uncontrolled and unsupervised adoptions in the United States, citing various incidents of deaths and neglect of Russian orphans by American parents. Americans have adopted more than 60,000 Russian children over the past twenty years.<sup>76</sup> For the most part, the adoptions resulted in successful placements and content families. However, a very small percentage of adoptions have resulted in abuse, neglect, and even death of children.<sup>77</sup> According to Russia's children's ombudsman, Pavel Astakhov, since 1992, at least nineteen adopted Russian children have died as a result of accidents or have been killed by their adoptive parents in the United States.<sup>78</sup>

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<sup>76</sup> Crary, *supra* note 2.

<sup>77</sup> Allen, *supra* note 25, at 1703 (providing an example of Masha Allen's adoption by a divorced American father who raped and sexually exploited the girl for nearly five years, posting videos of the abuse online. He was sentenced to more than fifteen years in federal prison for possessing and distributing child pornography, and further sentenced to thirty-five to seventy years in a state prison).

<sup>78</sup> Kristin M. Hall, *Adoption: Judge Upholds Child Support in Russian Adoption Charges*, CHRISTIAN SCI. MONITOR (July 16, 2012), <http://www.csmonitor.com/The-Culture/Family/2012/0716/Adoption-Judge-upholds-child-support-in-Russian-adoption-charges> (indicating that a judge upheld the requirement for Artyom Savelyev's adoptive mother to pay \$150,000 in child sup-

In 2010, the adopted Russian child, Justin Hansen, was sent back to Russia by his American mother who claimed the child had severe mental instability along with other issues.<sup>79</sup> The court ruled that the mother must pay child support even though the child remained in a Russian orphanage. The Russian Foreign Minister made a statement that “serious doubts arise as to the legitimacy of the practice of transferring our children for adoption to a country where their rights, primarily the right to life, turn out to be unprotected.”<sup>80</sup> While Russia holds the United States responsible for the incident, its own adoption procedures regarding health screening of potential adoptive children should have been more closely scrutinized.

To further sentiment for holding the ban in place, Russian news sources claimed the adopted Russian child, Max Shatto, died as a result of severe injuries in 2013.<sup>81</sup> Pavel Astakhov stated the American adopted parents beat the child to death.<sup>82</sup> Notably, a Texas court dismissed the case after finding no evidence the parents had any involvement with the death of the child; investigators later determined the child inflicted lethal injury on himself.<sup>83</sup> Even though the American parents were exonerated, Russian news failed to follow up with the story. Unfortunately, a single case such as Shatto continues adoption-ban sentiment within Russia.

Proponents of the ban argue that banning American adoptions of Russian children would stimulate domestic adoption within the Russian population. Russian authorities are embar-

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port for the boy); Stewart, *supra* note 63 (providing an example of Artyom Savelyev who was sent back to Russia).

<sup>79</sup> Ellen Barry, *Russian Furor over U.S. Adoptions Follows American’s Acquittal in Boy’s Death*, N.Y. TIMES (Jan. 3, 2009), available at <http://www.nytimes.com/2009/01/04/world/europe/04adopt.html>.

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

<sup>81</sup> Irina Titova, *International Adoption: The American Dream?*, ST. PETERSBURG TIMES (May 2, 2012), <http://www.sptimes.ru/story/35558>; See David M. Herszenhorn & Andrew Roth, *Russians Renew Fury After Death of Adopted Boy in Texas Is Ruled Accidental*, N.Y. TIMES (Mar. 2, 2013), available at <http://www.nytimes.com/2013/03/03/world/europe/russians-renew-fury-after-death-of-adopted-boy-in-texas-is-ruled-accidental.html>.

<sup>82</sup> Herszenhorn & Roth, *supra* note 81.

<sup>83</sup> *Id.*



rassed that the country cannot take care of its own children.<sup>84</sup> Some Russians are concerned about “cultural genocide,”<sup>85</sup> and others national pride, both of which are perceived to be threatened when Americans adopt Russian orphans. The national pride is evidenced by the result of a public opinion survey by the state-run Public Opinion Fund showing that 56% of Russians support the proposed adoption ban, while just 21% oppose the ban.<sup>86</sup>

ii. *Opposition to American Adoption Ban*

Opponents of the ban claim that banning American adoptions would prove most harmful to Russian orphans themselves, many of whom are disabled. It is estimated that there are more than 600,000 orphans in Russia, one-third of whom live in state institutions.<sup>87</sup> Adoptions by Russian families remain modest, with some 7,400 adoptions in 2011, compared to 3,400 total adoptions of Russian children by foreigners.<sup>88</sup> Fewer Russian families are able to adopt children each year due to the increasingly dire economic situation in Russia.<sup>89</sup> With Russians economically una-

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<sup>84</sup> Nastassia Astrasheuskaya & Alissa de Carbonell, *Children, Many Ill, Would Be Victims of Russia Ban on U.S. Adoption*, THOMSON REUTERS (Dec. 26, 2012), <http://www.reuters.com/article/2012/12/26/us-russia-usa-adoption-idUSBRE8BP06120121226> (citing the statement of Prime Minister of the Russian Federation, Dmitry Medvedev: “Foreign adoption is a result of the state and society’s lack of attention to orphans. It is a result of our indifference”).

<sup>85</sup> Donovan M. Steltzner, *Note, Intercountry Adoption: Toward a Regime that Recognizes the “Best Interest” of Adoptive Parents*, 35 CASE W. RES. J. INT’L. L. 113, 125 (2003).

<sup>86</sup> Fred Weir, *Russia’s Adoption Ban Exposes Political Rift*, CHRISTIAN SCI. MONITOR (Dec. 26, 2012), <http://search.proquest.com/docview/1243605626?accountid=40968>.

<sup>87</sup> Human Rights Watch, *Abandoned to the State: Cruelty and Neglect in Russian Orphanages*, (Dec. 16, 1998), <http://www.hrw.org/news/1998/12/15/report-documents-brutal-treatment-russian-orphanages>; *Adoption in Russia*, *supra* note 24 (indicating that by the end of 2011, there were 654,355 children without parental control in Russia, 110,000 of them lived in state institutions).

<sup>88</sup> Astrasheuskaya & de Carbonell, *supra* note 84; *Adoption in Russia*, *supra* note 26.

<sup>89</sup> Kimberly A. Chadwick, *Comment, The Politics and Economics of Intercountry Adoption in Eastern Europe*, 5 J. INT’L. LEG. STUD. 113, 130 (1999) (indicating that despite its substantial natural resources, diversified industrial base, and well-educated population, Russia has been unable to complete the transformation from a centrally planned economy to a market economy).

ble to adopt and Americans legislatively precluded from adopting, the children inevitably remain in institutions.<sup>90</sup> Orphanages in Russia are known for the inhumane care of the orphans due to neglect, abuse, and lack of trained staff, who are often overworked and underpaid.<sup>91</sup> Emancipated orphans do not have the same opportunities as children growing up in families because of a lack of skills and education and a cultural bias among many Russians that orphans are defective.<sup>92</sup> Only 2% of emancipated Russian orphans enter a university. Among the rest of the orphans: 40% end up involved in crime, another 40% become addicted to alcohol and/or drugs, and 10% commit suicide or simply disappear.<sup>93</sup>

Under Russian law, a child is not eligible for foreign adoption until the child has been rejected at least three times by prospective Russian adoptive parents, which usually happens for health reasons.<sup>94</sup> According to Albert Likhanov, president of the non-governmental Russian Children's Fund, the proposed ban would result in the institutionalization of approximately one thousand orphans adopted each year by American families, instead of them ending up in loving homes.<sup>95</sup> Considering the poor economic position of potential Russian parents and the stigma attached to the orphans, especially the ones with special needs, foreign families might be the last chance for better lives for many Russian orphans languishing in orphanages.<sup>96</sup>

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<sup>90</sup> Thompson, *supra* note 16, at 710.

<sup>91</sup> Human Rights Watch, *supra* note 87 (describing inhumane care in understaffed and under-funded institutions. Although the quality of care varies from orphanage to orphanage, the report exposed poor living and learning conditions and stigmatization based on notions about the heritability of mental deficiencies and social incompetence).

<sup>92</sup> Andrew C. Brown, *Comment, International Adoption Law: A Comparative Analysis*, 43 INT'L. LAW. 1337, 1357 (2009).

<sup>93</sup> Richard Sargent, *New Hope for Russian Orphans*, BBC NEWS (U.K.) (Oct. 20, 2003), <http://news.bbc.co.uk/2/hi/world/europe/3159582.stm>.

<sup>94</sup> Weir, *supra* note 86.

<sup>95</sup> *Id.* (citing statement of Albert Likhanov, president of the non-governmental Russian Children's Fund, "I fully understand the wish of many Russians that our children would all be adequately cared for in Russia. But this is not the situation today, and a child cannot wait for everything to get stabilized").

<sup>96</sup> *Adoption in Russia*, *supra* note 24, *Distribution of Russian Adoptions by Foreign Citizens*, at <http://www.usynovite.ru/statistics/2011/7/> (showing that

Moreover, opponents claim that the Russian government adopted the ban to make a political point. They argue that the ban is in retaliation for the United States' Magnitsky Act that punishes Russian citizens suspected of being involved in violations of human rights by banning them from entering the United States.<sup>97</sup> Interestingly, the Russian government adopted the bill extremely quickly. The Russian Duma worked on it for about a week, the Federation Council examined the law within an hour, and the President signed it within two days.<sup>98</sup> Additionally, the ban was signed just two weeks after President Obama signed the Magnitsky Act. Given the quick turnaround, it is likely that there is a causal relationship between the Russian adoption ban and the American legislation.

Additionally, the adoption ban violates the CRC, which provides that governments shall ensure that children deprived of a family environment are entitled to an alternative case, including adoption in which "the best interest of the child shall be the paramount consideration."<sup>99</sup> The CRC upholds intercountry adoption "as an alternative means of [a] child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's county of origin."<sup>100</sup> It is hard to argue that remaining in the underfunded and underperforming Russian orphanages is in the best interests of the children.

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out of the 956 Russian children adopted by U.S. citizens in 2011, 89 were disabled).

<sup>97</sup> H.R. 6156, 120th Cong. § 4; Human Rights Watch, *Russia, Reject Adoption Ban Bill* (Dec. 21, 2012) <http://www.hrw.org/news/2012/12/21/russia-reject-adoption-ban-bill> (indicating that the law was named after Sergey Magnitsky, a Russian lawyer who died in prison after he exposed a massive tax fraud scheme by the Russian government officials. President Obama signed the law on Dec. 14, 2012).

<sup>98</sup> Alex Grigoriev et al., *Dima Yakovlev Law: Punishment Without Crime?*, GOLOS AMERIKI (Dec. 29, 2012), <http://www.golos-ameriki.ru/content/yakovlev-law-russia-adoptions/1574162.html> .

<sup>99</sup> Convention on the Rights of the Child, *supra* note 50, art. 21.

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

#### **IV. Proposed Solutions for Improving American and Russian Intercountry Adoptions Without Banning American Adoptions**

Whether the ban is an act of retaliation or a need to protect Russian orphans abroad, it is obvious that the adoption system in Russia needs improvements on both the domestic and international fronts. This proposal calls for Russia to lift the ban on American adoption of Russian orphans, uphold the most recent Adoption Agreement, and improve the domestic adoption environment. Also, Russia should ratify the Hague Adoption Convention for overall uniformity in the intercountry adoption process.

##### *A. Lift the Ban and Uphold the United States-Russia Adoption Agreement*

The main concern of the Russian government in regards to the American adoption of the Russian orphans are: the necessity of control and supervision of the adoptions in the United States, as well as providing the best possible placement for the children, and eliminating the possibility of abuse and neglect. Russia should allow American citizens to adopt Russian children and consequently uphold the Adoption Agreement because the Agreement attempts to remedy these concerns and provides better adoptive practices for intercountry adoptions. First, it addresses the current system's failure to discover red flags in prospective adopters' backgrounds and to perform accurate and thorough follow-ups post-placement.<sup>101</sup> Post-adoption follow-ups with the adoptive parents ensure that they would receive the assistance they need in raising their adopted child.<sup>102</sup> Further, the agreement requires psychological testing of prospective adoptive parents to select people that are fit to be parents.<sup>103</sup> The Adoption Agreement provides for increased disclosure of prospective adoptee medical records to alert prospective adoptive parents to any potential issues before the adoption is finalized, so the parents would be properly notified and trained in

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<sup>101</sup> Allen, *supra* note 25, at 1704.

<sup>102</sup> *Id.* at 1726.

<sup>103</sup> *Id.* at 1706.

how to deal with their adoptive children's challenging medical histories.<sup>104</sup>

As seen in the prior examples, the benefits of intercountry adoption with the United States far outweigh the very few negative parenting situations. Another benefit would be the increase in commerce between the two countries. Opening the door to adoptions would positively affect multiple levels of trade and business, and ultimately promote a good relationship between the countries.

Russia should learn from other countries that banned intercountry adoption and admit that its current supply of abandoned children outweighs the domestic demand. Romania is one of the examples of how cutting off foreign adoptions can negatively affect children. In 2001, the Romanian government imposed a ban on intercountry adoption to implement a new framework for Romania's child welfare system.<sup>105</sup> As a result of the ban, children have been forced to live with destitute families or placed in orphanages.<sup>106</sup> In 2006, there were an estimated 77,866 abandoned children in Romania who were in public or private care; 28,516 of them were living in institutions; only 474 were placed in any sort of adoption system.<sup>107</sup>

The United States should also take steps to aid Russia in lifting the ban on intercountry adoptions. First, screening procedures for potential adoptive parents and documentation of adoptees' progress should be better detailed and made available to Russia. Second, the United States should encourage collaboration with Russia on enforcement procedures of adoption screenings, and proposed penalties for violations. For example, in the rare case a Russian adoptee has to be sheltered from a

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<sup>104</sup> *Id.* at 1727.

<sup>105</sup> Cong. Coalition on Adoption Inst., *General Overview on Romania Adoption*, 2011, <http://www.ccaainstitute.org/romania.html> (indicating that Romania banned intercountry adoption due to allegations of corruption, fraud, child trafficking, illegal adoptions and pressure from the European Union to reform its adoption system. The ban was signed into law on June 21, 2004, effectively excluding all intercountry adoptions with the only exception of the biological grandparents of Romanian orphans).

<sup>106</sup> Worthington, *supra* note 14, at 581.

<sup>107</sup> UNICEF, *Children on the Brick 2006: A Focused Situation Analysis of Vulnerable, Excluded, and Discriminated Children in Romania* (2006), [http://www.unicef.org/romania/sitan\\_engleza.pdf](http://www.unicef.org/romania/sitan_engleza.pdf).

U.S. adoptive parent, the United States should offer special placement for that child, extra funding to care for the child, and harsher penalties on the adoptive parent. If specialized emergency procedures are laid out, Russia may be more inclined to lift the ban. The United States should create a charity organization specifically geared towards implementing these procedures in an effort to lift the ban.

Ultimately, Romania's outright ban on intercountry adoptions, while intended to help protect the children and families involved, ended up doing greater harm to children than good.<sup>108</sup> Russia is more likely to follow in the steps of Romania by cutting off American adoptions. Although Russia does not ban all intercountry adoptions, America has adopted the most orphaned Russian children of any country. When there is a low domestic demand on adoption in a country, any restrictive policies on intercountry adoptions are very harmful.<sup>109</sup>

#### *B. Improve the Domestic Environment for Orphans in Russia*

On the day he endorsed the adoption ban, President Putin signed an executive order aimed at improving support for domestic adoptions and foster care arrangements, simplifying adoption procedures, and changing attitudes in Russia about adoption.<sup>110</sup> The order also calls for introducing tax breaks for Russians who adopt orphaned children, increasing salaries for orphanage staff, and increasing monthly state welfare payments for children with disabilities and those who care for children with disabilities.<sup>111</sup> However, until the government passes the laws implementing these improvements to the adoption situation in Russia and sees positive results, there should be no refusal of intercountry adoptions to any country.

When attempting to improve the domestic adoption situation, the Russian government should encourage domestic adoptions and reform the orphanage system to eliminate corruption, bureaucracy, and neglect in state-run institutions. Although there is no suggestion of the elimination of the orphan care system in Russia, there is some sign of hope that orphanages might

<sup>108</sup> Worthington, *supra* note 14, at 581-82.

<sup>109</sup> *Id.* at 572.

<sup>110</sup> Human Rights Watch, *supra* note 97.

<sup>111</sup> *Id.*

produce positive results. The village called Kitezh is a model for reforming the Russian orphan care system. The village is a sort of orphan collective that “combines features of an orphanage with those of foster care.”<sup>112</sup> In Kitezh, orphans live with foster parents in homes (as opposed to orphanage dormitories), help run the village, and receive education and training.<sup>113</sup> The foster parents are trained teachers, medical professionals, or psychologists, whose goals are not simply the physical care of the orphans, but also their intellectual and psychological development.<sup>114</sup> Thus far, Kitezh has produced incredible results: approximately forty children have graduated from the village school system; sixty percent of those have gone on to enroll in institutions of higher education; and nearly every graduate has found a job outside of the village.<sup>115</sup>

It is undisputed that Russian policies towards orphan care are ineffective and must undergo a massive overhaul. An overhaul of the system will require not only a change in policies, but also in cultural attitudes towards orphans that would allow the widespread introduction of a foster-care system. In addition, because of the staggering numbers of orphaned children in Russia, the government should take proactive steps that would further encourage adoption by qualified foreign individuals<sup>116</sup> and not ban intercountry adoption.

### *C. Russia Should Ratify the Hague Adoption Convention*

Although Russia is a signatory of the CRC, it is not enough to address the concerns of Russia with regards to intercountry adoption problems. The CRC provides a general framework for intercountry adoption, but its major detriment is the lack of oversight and enforceability.<sup>117</sup> The Hague Adoption Convention was designed as a means to supplement and help enforce the

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<sup>112</sup> Michael Schwartz, *In a Fairy-Tale Village, Russian Orphans Thrive*, N.Y. TIMES (Oct. 1, 2008), [http://www.nytimes.com/2008/10/02/world/europe/02russia.html?\\_r=2&adxnnl=1&pagewanted=1&adxnnlx=1361372647-KrPAg9lKfmpcQc6dzzyt3w](http://www.nytimes.com/2008/10/02/world/europe/02russia.html?_r=2&adxnnl=1&pagewanted=1&adxnnlx=1361372647-KrPAg9lKfmpcQc6dzzyt3w).

<sup>113</sup> Brown, *supra* note 92, at 1359.

<sup>114</sup> Schwartz, *supra* note 112.

<sup>115</sup> *Id.*

<sup>116</sup> Brown, *supra* note 92, at 1359.

<sup>117</sup> Allen, *supra* note 25, at 1720 (explaining that although the CRC is a legally binding instrument, there is no judicial forum to ensure enforcement of

CRC.<sup>118</sup> The objectives of the Hague Adoption Convention are “to establish safeguards to ensure that intercountry adoption is in the best interests of the child and with respect of his fundamental rights” and “to establish a system of co-operation amongst contracting states to ensure that those safeguards are respected.”<sup>119</sup> The Hague Adoption Convention does not specify clear rules for intercountry adoption, but instead provides a general framework and best practices guide for intercountry adoption.<sup>120</sup> The major provisions include a focus on the best interests of the child, the subsidiary principles (recognition that a child should be raised by the birth family if possible), anti-trafficking, and cooperation between the states.<sup>121</sup> While there are some enforcement concerns with the Hague Adoption Convention,<sup>122</sup> the gaps seem to necessitate bilateral agreements provided under Article 39(2) of the

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the provisions and reporting procedures are only methods of sanctioning a country which doesn't uphold aspects of the agreement).

<sup>118</sup> Hague Conf. on Priv. Intl. Law, *Welcome to the Intercountry Adoption Section*, [http://www.hcch.net/index\\_en.php?act=text.display&tid=45](http://www.hcch.net/index_en.php?act=text.display&tid=45) (accessed Mar. 31, 2013) (noting that the Hague Adoption Convention reinforces art. 21 of the Convention on the Rights of the Child).

<sup>119</sup> Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, art. 1 (May 29, 1993), 1870 U.N.T.S. 167 [hereinafter Hague Adoption Convention].

<sup>120</sup> Hague Conf. on Priv. Intl. Law, *Outline of the Hague Adoption Convention*, [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=69](http://www.hcch.net/index_en.php?act=conventions.text&cid=69) (May 29, 1993) (indicating that the Hague Adoption Convention gives effect to the Convention on the Rights of the Child by adding substantive safeguards and procedures to the broad principles and norms laid down in the Convention on the Rights of the Child. The Hague Adoption Convention establishes minimum standards, but does not intend to serve as a uniform law of adoption. While making the rights and interests of the child paramount, it also respects and protects the rights of families of origin and adoptive families).

<sup>121</sup> Allen, *supra* note 25, at 1722.

<sup>122</sup> *Id.* at 1720 (indicating that the Hague Adoption Convention provides with general guidelines for adoption procedures but leaves the details up to the contracting states); Caeli Elizabeth Kimball, *Barriers to the Successful Implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 33 *DENV. J. INT'L. L. & POL'Y* 561, 572 (2005) (“The problem with leaving punishment, such as sanctions or fines, up to the individual countries is that self-regulation could encourage corrupt adoption practices that will go unpunished without a non-partisan governmental organization monitoring compliance and administering enforcement”).



Convention.<sup>123</sup> Bilateral agreements allow sending and receiving nations to adjust the general framework of the Hague Adoption Convention to their specific needs.

The United States signed the Hague Adoption Convention in 1994 and implemented it in the Intercountry Adoption Act of 2000.<sup>124</sup> The Convention entered into force in 2008.<sup>125</sup> Russia is a signatory of the Hague Adoption Convention, but has not yet ratified it.<sup>126</sup> Russia should ratify the Convention because it will make intercountry adoptions better for the children and prospective parents. The objectives of the Hague Adoption Convention could serve to reinforce Russia's objectives of improving intercountry adoptions.<sup>127</sup> The Hague Adoption Convention would give Russia a framework for challenging the intercountry adoption procedures with the United States. The Hague Adoption Convention would provide Russian officials with procedural mechanisms through which they could demand assurances that their children will be protected in the United States.<sup>128</sup>

Additionally, the fact that the Adoption Agreement with the United States was modeled after the Hague Adoption Convention<sup>129</sup> shows the importance of the Convention to Russia. Russia should take the steps necessary to ratify the Hague Adoption Convention, thereby assuring compliance with accepted international standards to the international community and providing

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<sup>123</sup> Hague Adoption Convention, *supra* note 119, art. 39(2) ("Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of art. 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention").

<sup>124</sup> Intercountry Adoption Act of 2000, 42 U.S.C. §§ 14901-14944 (2000).

<sup>125</sup> *Intercountry Adoption*, *supra* note 20.

<sup>126</sup> Allen, *supra* note 25, at 1739.

<sup>127</sup> *Id.* at 1740.

<sup>128</sup> Thompson, *supra* note 16, at 724 (indicating that art. 22 of the Hague Adoption Convention allows participating states to condition adoption of their citizens upon prospective parents' use of accredited agencies. Under art. 16 § 1(b) of the Convention, the Central Authorities must pay due consideration to the child's "ethnic, religious, and cultural background." Russian officials could invoke this section to maintain more control over selecting prospective parents likely to nurture and respect the adopted Russian child's cultural identity).

<sup>129</sup> Allen, *supra* note 25, at 1740.

more uniformity of the intercountry adoption principles overall.<sup>130</sup>

An important consideration is the lack of legal arguments challenging the constitutionality of the ban by the Constitutional Court and the European Court of Human Rights (hereinafter ECtHR).<sup>131</sup> ECtHR reviews cases where a violation of a protected right occurs; the protected rights are created by the international treaty European Convention on Human Rights (hereinafter ECHR).<sup>132</sup> In 1996, Russia became a member of ECHR, agreeing to uphold the treaty's human rights protections.<sup>133</sup> ECHR protects "rights without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."<sup>134</sup> It is concerning that the ban on Americans adopting Russian children has not been argued on its constitutionality, as it directly conflicts with ECHR protected fundamental freedoms. The United States should make a plea to ECHR to question Russian's ban denying adoption to a person based on national origin.

## V. Conclusion

Intercountry adoption has proved to be very helpful in addressing the needs of orphaned children around the world to find homes and loving prospective parents. Unfortunately, not all of

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<sup>130</sup> Freeman Klopott, *U.S. Urges Russia to Sign Adoption Treaty*, EXAMINER (Mar. 19, 2012), <http://washingtonexaminer.com/u.s.-urges-russia-to-sign-adoption-treaty/article/106074> (indicating that although the Adoption Agreement has many policies adopted from the Hague Adoption Convention, Russian ratification of the treaty would be beneficial to both children adopted from Russia and to the worldwide adoption community. As more countries sign the treaty, it is likely that adoption agencies will start applying the treaty's standards to all countries regardless of their signing it).

<sup>131</sup> European Convention on Human Rights, European Court of Human Rights, F-67075, Art. 8., 10 (June, 2010), *available at* <http://www.echr.coe.int>.

<sup>132</sup> See generally Country Fact Sheets 1959-2010, Eur. Ct. Hum. Rts. 46, [http://www.echr.coe.int/Documents/Country\\_Factsheets\\_1959\\_2010\\_ENG.pdf](http://www.echr.coe.int/Documents/Country_Factsheets_1959_2010_ENG.pdf) (last visited May 13, 2014) (detailing examples of cases before the ECtHR filed against Russia and the respective alleged violations of the ECHR).

<sup>133</sup> European Convention on Human Rights, European Court of Human Rights, F-67075, Art. 8., 10 (June, 2010), *available at* <http://www.echr.coe.int>.

<sup>134</sup> *Id.* art. 14.

the adoptions are successful, and there are rare documented incidents of neglect, abuse and even death of adopted children by their adoptive parents.<sup>135</sup> The Russian government thinks that the only way to address its concerns about adopted Russian children in the United States is to ban American citizens from adopting from Russia.<sup>136</sup> Unfortunately, Russia refuses access by the country that welcomes the most Russian orphans.<sup>137</sup> The Russian government promises to improve the adoption situation in the country so there would be more domestic adoptions.<sup>138</sup> However, in reality, domestic adoptions may not be enough to make sure that Russian orphans will be cared for considering the large number of abandoned and orphaned children and the poor economic situation of the Russian population. As a result of not being adopted domestically, the children will remain in the state-run institutions, which is not in the best interest of the children given the current failures of the Russian orphanage system.<sup>139</sup>

While domestic adoption should be encouraged, Russia should realize that by banning American citizens from adopting from Russia, the Russian orphans they seek to protect end up paying the highest price. To address the concerns regarding intercountry adoption with the United States, Russia should uphold the Adoption Agreement that was implemented specifically to eliminate the negative issues of adoptions to the United States. Furthermore, Russia should ratify the Hague Adoption Convention to indicate that it is ready to become more cooperative and involved with the global community, and to promote uniformity of intercountry adoption principles. It is undisputable that intercountry adoption between the United States and Russia needs procedural change, but playing politics with any child's future is no way to start this process.

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<sup>135</sup> Allen, *supra* note 25, at 1704-05.

<sup>136</sup> Barry, *supra* note 79.

<sup>137</sup> *Adoption in Russia*, *supra* note 24.

<sup>138</sup> Human Rights Watch, *supra* note 87.

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

