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The US-Russian Child Adoption Agreement- An End to Failed Adoptions

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THE US–RUSSIAN CHILD ADOPTION
AGREEMENT: AN END TO FAILED ADOPTIONS?

*Cheryl L. Allen**

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INTRODUCTION

Russian authorities removed Artyom Savelyev from his biological mother due to her inability to care for him when he was six years old.¹ Subsequently, Torry Hansen, an American,

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1. See Will Stewart, *Fury as U.S. Woman Adopts Russian Boy, 7, Then Sends 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/worldnews/article-1264744/Russian-boy-7-adopted-American-couple-arrives-Moscow-note-saying-dont-want-anymore.html> (noting that Artyom's biological mother was an alcoholic who gave birth to him at nineteen and cared for him until he was six years old); see also Nataliya Vasilyeva, *Driver Says Russian Boy Looked Normal*, ASSOCIATED PRESS, Apr. 14, 2010, available at http://www.boston.com/news/world/europe/articles/2010/04/14/driver_says_russian_boy_looked_normal (noting that Artyom was abandoned by his alcoholic mother and raised in an orphanage in Partizansk).

adopted Artyom from a Russian orphanage in September 2009.² What initially seemed to be a happy ending to a story with a rough beginning took a dramatic turn. In April 2010, Artyom (renamed Justin Hansen) was sent back to Moscow, alone, with a letter stating that his adoptive mother no longer wanted him.³ Ms. Hansen claimed that the Russian orphanage workers misled her family about the boy's condition and had not alerted her to his severe mental and psychological issues.⁴ The Russian public was outraged and accusations arose from both the United States and Russia, as authorities and the media tried to determine what went wrong.⁵

This was, however, not the first instance of a Russian adoption gone awry.⁶ In fact, compared to other events, this instance was relatively mild.⁷ Nevertheless, for the Russian public

2. See Stewart, *supra* note 1 (stating that Ms. Hansen adopted Artyom in September 2009); see also Nataliya Vasilyeva & Kristin M. Hall, *Russia Furious over Adopted Boy Sent Back from U.S.*, ASSOCIATED PRESS, Apr. 10, 2010 available at LEXISNEXIS NEWSWIRE (noting that Artyom was adopted in September from the town of Partizansk in Russia's far east).

3. See Stewart, *supra* note 1 (including a picture of the attached note signed by Ms. Hansen stating, "I no longer wish to parent this child"); see also Editorial, *A Safe, Loving Home*, N.Y. TIMES, Apr. 18, 2010, at WK 9 (noting that Ms. Hansen wished to return the boy to the orphanage).

4. See Stewart, *supra* note 1 (citing the attached letter, "[t]his child is mentally unstable. He is violent and has severe psychopathic issues/behaviors. I was lied to and misled by the Russian Orphanage workers and director regarding his mental stability and other issues."); see also *A Safe, Loving Home*, *supra* note 3 (noting Ms. Hansen's complaints of the boy's condition and accusations against the orphanage).

5. See Clifford J. Levy, *Adoptions from Russia Continue, Official Says*, N.Y. TIMES, May 6, 2010, at A6 (noting the Russian outcry and Russian President Dmitri A. Medvedev's declaration for new adoption regulations); see also David Morgan, *Sheriff: Family Was Afraid of Russian Boy*, CBS NEWS (Apr. 13, 2010), <http://www.cbsnews.com/stories/2010/04/12/carlyshow/main6387514.shtml> (claiming that the Hansen family feared for their safety as Artyom threatened to burn their house down and kill family members).

6. See discussion *infra* Part I.B. (detailing various examples of failed Russian adoptions). While the international community viewed Ms. Hansen's behavior as shocking, Russia has experience with caretakers returning children. The chairwoman of the parliamentary committee on family and children, Yelena B. Mizulina, noted that "30,000 children in the last three years inside Russia were sent back to institutions by their adoptive, foster, or guardianship families." Clifford J. Levy, *A Russian Orphanage Offers Love and Care, but Few Ways Out*, N.Y. TIMES, May 4, 2010, at A1.

7. See *infra* Part I.B (discussing the Masha Allen sexual abuse and exploitation case and the Nathaniel Craver murder case).

and authorities, this was “the last straw.”⁸ In response to the event, the Ministry of Education and Science of the Russian Federation (“Russian Ministry”), the government agency that is responsible for regulating international adoptions, suspended the license of the adoption agency from which Ms. Hansen adopted her son, while the Ministry of Foreign Affairs threatened to suspend all pending US-Russian adoptions, and demanded that the two countries sign an agreement with the aim of preventing similar incidents in the future.⁹ After a year of negotiations, US-Russian adoptions continued, and the countries signed the Agreement between the United States and the Russian Federation Regarding Cooperation in Adoption of Children (“US–Russian Agreement”).¹⁰ The Russian State Duma, the country’s lower parliamentary body, the Federation Council, the upper parliamentary body, and Russian President,

8. See Vasilyeva & Hall, *supra* note 2 (quoting Russian Foreign Minister Sergey Lavrov that the family’s actions were “the last straw” in a series of US adoptions gone wrong); see also Josh Anderson, *Boy Sent Back to Russia; Adoption Ban Urged*, ASSOCIATED PRESS, Apr. 9, 2010, available at http://www.msnbc.msn.com/id/36322282/ns/world_news-europe/t/boy-sent-back-russia-adoption-ban-urged (discussing Russia’s outrage and Pavel Astakhov’s push for an adoption treaty which would enable Russian authorities to monitor the adopted children).

9. See *Mission*, MINISTRY OF EDUC. & SCI. OF THE RUSSIAN FED’N, <http://eng.mon.gov.ru/str/mon/mis> (last visited Apr. 16, 2012) (providing information on the Ministry of Education and Science of the Russian Federation); see also Damien Cave, *At a Family’s Home in Tennessee, Reminders of a Boy Returned to Russia*, N.Y. TIMES, Apr. 11, 2010, at A16 (noting that the Russian Ministry suspended the license of the adoption agency and that some officials have called for a halt to all adoptions of Russian children by Americans); Anderson, *supra* note 8 (noting Russian Foreign Minister Sergey Lavrov’s comments regarding the implementation of an agreement prior to allowing more intercountry adoptions between the United States and Russia).

10. See Levy, *supra* note 5 (noting that Russian adoptions have not yet ceased). On February 11, 2012, however, the Russian Foreign Ministry asked the Russian government to suspend US adoptions of Russian children until the United States signs an accord that allows Russian monitors to visit the homes of adopted children. See *Russia to Halt U.S. Adoptions Amid Domestic Violence Claims*, USA TODAY (Feb. 11, 2012), <http://www.usatoday.com/news/world/story/2012-02-11/Russia-US-adoptions/53048064/1>; see also Agreement between the United States and the Russian Federation Regarding Cooperation in Adoption of Children, U.S.–Russ., July 13, 2011, available at http://adoption.state.gov/content/pdf/us-russia_adoption_agmt-713%2011-signed_english.pdf [hereinafter US–Russian Agreement] (providing the official text of the US–Russian Agreement); U.S. DEP’T OF STATE, FAQs: BILATERAL ADOPTION AGREEMENT WITH RUSSIA (2011), available at http://adoption.state.gov/content/pdf/FAQs_rc_Agreement1_07_13_2011_FINAL2.pdf [hereinafter FAQs BILATERAL ADOPTION AGREEMENT] (noting the title and purpose of the agreement).

Vladimir Putin, have ratified the US–Russian Agreement, but the two countries need to finalize implementation procedures before the Agreement enters into force.¹¹ Consequently, whether the US–Russian Agreement is effective in solving the problems surrounding international adoptions between Russia and the United States is subject to debate.

The US–Russian Agreement stands to greatly impact US adoptions as thousands of international adoptions are processed in the United States every year.¹² Various procedures govern these legal adoptions.¹³ Some countries adhere to the guidelines established by the Hague Convention of May 29, 1993 on the Protection of Children and Co-operation in Respect of Intercountry Adoption (“Hague Adoption Convention”) while others have a more individualized approach.¹⁴ The United States is a party to the Hague Adoption Convention, and adheres to its

11. See *Gosudarstvennaia Duma Ofitsial'nyĭ Saĭt* (State Duma Official Site), STATE DUMA OF THE RUSSIAN FED'N, available at <http://www.duma.gov.ru> (last visited Apr. 16, 2012) (providing information on the Russian State Duma); see also *Notice: President Putin signs the Agreement between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children*, OFF. OF CHILDREN'S ISSUES, U.S. DEP'T OF STATE, July 31, 2012, available at http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=russia_7 (noting the ratification and the procedure for the Agreement between the United States and the Russian Federation Regarding Cooperation in Adoption of Children (“US–Russian Agreement”) to enter into force); Nataliya Vasilyeva, *Russian Parliament Passes Russian–US Adoption Law*, ASSOCIATED PRESS, July 10, 2012, available at <http://news.yahoo.com/russian-parliament-passes-russia-us-adoption-law-133328281.html>. The US–Russian Agreement is slated to enter into force on November 1, 2012. UNITED STATES–RUSSIA BILATERAL ADOPTION AGREEMENT MEDIA NOTE, U.S. DEP'T OF STATE, Oct. 18, 2012, available at <http://www.state.gov/r/pa/prs/ps/2012/10/199322.htm> (providing the projected entry date for the treaty).

12. See *Intercountry Adoption Statistics*, OFF. OF CHILDREN'S ISSUES, U.S. DEP'T OF STATE, http://adoption.state.gov/about_us/statistics.php (last visited Feb. 28, 2012) [hereinafter *Statistics*] (noting that a total of 233,934 adoptions have been performed between 1999 and 2011).

13. See *Intercountry Adoption: How to Adopt*, OFF. OF CHILDREN'S ISSUES, U.S. DEP'T OF STATE, http://adoption.state.gov/adoption_process/how.php (last visited Mar. 6, 2012) (describing the many nuanced adoption procedures for different countries).

14. See *Intercountry Adoption: Hague vs Non-Hague Adoption Process*, OFF. OF CHILDREN'S ISSUES, U.S. DEP'T OF STATE, http://adoption.state.gov/hague_convention/hague_vs_nonhague.php (last visited Mar. 6, 2012) (comparing Hague Adoption Convention procedures with Non-Hague Adoption Convention procedures); see also Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, Hague Conference on Private International Law, May 29, 1993, 1870 U.N.T.S. 167 [hereinafter *Hague Adoption Convention*] (providing the official text of the convention).

guidelines when collaborating with other nations who are also parties to it.¹⁵ As Russia is not a party to the Hague Adoption Convention, adoptions between the United States and Russia follow another process.¹⁶

The Hague Adoption Convention has been ratified by eighty-five nations, yet Russia prefers to negotiate individualized bilateral adoption agreements with other nations, instead of subscribing to the general internationally recognized requirements provided in the Hague Adoption Convention.¹⁷ Bilateral agreements may be a more effective regulatory tool for international adoptions than widely accepted international agreements like the Hague Adoption Convention. If bilateral agreements prove to better regulate the international adoption system, then general agreements like the Hague Adoption Convention could be replaced as the premier standard in the international community.

This Note explores the international adoption process between the United States and Russia, and discusses the potential changes to the international adoption regulatory scheme posed by the recent bilateral agreement. Part I sets forth the history of US adoptions from Russia, and details a few incidents of failed US-Russian adoptions. Part II describes the major provisions and implications of the US–Russian Agreement and discusses Russia’s bilateral agreement with Italy, an example of a successful bilateral agreement in the field of international adoption. Part III of this Note examines the US–Russian

15. See *Convention Countries*, OFF. OF CHILDREN’S ISSUES, U.S. DEP’T OF STATE, http://adoption.state.gov/hague_convention/countries.php (last visited Mar. 6, 2012) (noting that “Convention Countries,” meaning those who are parties to the Hague Adoption Convention, must follow Hague procedures for adoption whereas “non-Convention countries” do not).

16. See *Status Table*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, http://www.hcch.net/index_en.php?act=conventions.status&cid=69 (last updated June 1, 2012) (noting Russia’s signature date but absence of a ratification date).

17. See *Status Table*, *supra* note 16 (noting Russia’s signature date); see, e.g., Yelena Kovacic, *Russia, France Sign Agreement on Child Adoption*, VOICE OF RUSSIA (Nov. 18, 2011), <http://english.ruvr.ru/2011/11/18/60645603.html> (noting that Russia is currently seeking similar bilateral agreements on child adoption with Ireland, Israel, Spain, and the United Kingdom); *Russia to Sign Child Adoption Deals with European Countries*, RIA NOVOSTI (Russ.) (Nov. 14, 2011), <http://en.rian.ru/russia/20111114/168687502.html> (highlighting the declaration of Russia’s ombudsman for children’s rights, Pavel Astakhov, which said that international child adoptions should be executed “only on the basis of bilateral agreements”).

Agreement's likelihood of success, and evaluates whether bilateral agreements are an effective or even superior manner of regulating international adoptions than multilateral agreements like the Hague Adoption Convention. Ultimately, this Note argues that bilateral agreements provide the added protections that the Hague Adoption Convention lacks, while accounting for country-specific nuances. Bilateral agreements will not supersede the importance of the Hague Adoption Convention, but the inclusion of bilateral agreements with the Hague Adoption Convention as a base guideline is a goal all countries should seek to achieve.

I. *EXPLORING THE ISSUE: THE NEED FOR CHANGE IN THE INTERNATIONAL ADOPTION REGULATORY SYSTEM*

Part I explains the international adoption system in the context of US-Russian relations. Specifically, Part I.A discusses American motivations for adopting Russian children. Next, Part I.B details four examples of failed adoptions and the United States and Russian responses to those failed adoptions. Finally, Part I.C focuses on the current regulatory structure of international adoption.

A. *A Brief History of US–Russian Adoptions*

Adoptions between the United States and the Soviet Union prior to the 1990s were sparse.¹⁸ The fall of the Soviet Union in 1991 led to an increase in American adoptions from former Soviet states.¹⁹ Initially, Americans adopted few Russian children in the early years after the Soviet Union disbanded.²⁰ After 1993,

18. JOSEPHINE A. RUGGIERO, *EASTERN EUROPEAN ADOPTION: POLICIES, PRACTICE, AND STRATEGIES FOR CHANGE* 3, 5 (2007) (noting that between 1957 and 1963, there were only two reported adoptions from the Soviet Union).

19. *See id.* at 5 (declaring that there was an absence of adoptions prior to 1991); *see also* 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, 1617 (2007) (noting that the adoption rate for the area increased after the fall of the Soviet Union in 1991).

20. RUGGIERO, *supra* note 18, at 5 (noting that 444 Russian children were adopted by Americans in 1991 and 1992, but thereafter the numbers increased dramatically); *see also* *Russian Adoption Statistics*, [ADOPTIONKNOWHOW.COM](http://www.adoptionknowhow.com/russia/statistics), <http://www.adoptionknowhow.com/russia/statistics> (last visited Apr. 16, 2012).

the number of adoptions steadily increased before reaching its peak in 2004.²¹ The leading sending countries, countries from which Americans elect to adopt children, shifted from Colombia and Korea in 1990 to China and Russia by 1995.²² Approximately 47,000 Russian children were adopted by American families between 1993 and 2005.²³ Eighty-three percent of Russian adopted children were adopted by Americans during the 1990s.²⁴

American families choose to adopt internationally for several reasons, namely the social and cultural changes that occurred in the 1970s dramatically impacted adoption in the United States.²⁵ First, the increased use of contraceptives enabled women to delay childbirth until they were prepared for motherhood; further, the stigma of single parenthood

(showing the increase in the number of Russian adoptions from 746 in 1993 to 1,530 in 1994).

21. RUGGIERO, *supra* note 18, at 5 (showing in Tbl.1.1 that the numbers steadily increased); see also *Russian Adoption Statistics*, OFF. OF CHILDREN'S ISSUES, U.S. DEP'T OF STATE, http://adoption.state.gov/country_information/country_specific_info.php?country-select=russia (last visited Mar. 19, 2012) (listing statistics on Russian adoptions).

22. See HEATHER JACOBSON, *CULTURE KEEPING: WHITE MOTHERS, INTERNATIONAL ADOPTION, AND THE NEGOTIATION OF FAMILY DIFFERENCE* 22 (2008) (displaying a chart entitled "Number of Immigrant Visas Issued to Adopted Children from 1990–2007," based on US Department of State, Bureau of Consular Affairs data). Russia became the second largest sending country in 1993 according to the statistics. *Id.*; see *International Adoption Facts, Top 40 Countries Experience Fluctuation in International Adoption in Last Decade*, EVAN B. DONALDSON ADOPTION INST., <http://www.adoptioninstitute.org/FactOverview/international.html> (last visited Mar. 19, 2012) (providing a chart on Russian adoption numbers from 1992–2001).

23. RUGGIERO, *supra* note 18, at 5 (providing data from the US Customs and Immigration Services authority placing the total number of adoptions for the time period at 47,215); see also *Russian Adoption Statistics*, *supra* note 20 (placing the total number of adoptions for this time period higher at 48,805).

24. See RUGGIERO, *supra* note 18, at 17 (citing International Social Science Resource Center for the Protection of Children in Adoption ("ISS/IRC") data); see also *International Adoption Statistics: Russian Federation*, AUSTRALIAN INTERCOUNTRY ADOPTION NETWORK, <http://www.aican.org/statistics.php?region=0&type=birth> (last visited Mar. 19, 2012) (showing generally the number of Russian children adopted by US citizens as compared to other countries).

25. See JACOBSON, *supra* note 22, at 16 (explaining that a variety of social factors made domestic adoption of white infants more difficult, thus leading to changes in adoption practices); see O'Keeffe, *supra* note 19, at 1618 (articulating that cultural changes in the United States led to an increase in international adoption).

diminished while the number of abortions increased.²⁶ These factors resulted in a decrease in the number of adoptable children in the United States.²⁷ Second, fertility problems caused prospective parents to seek children and family expansion by way of adoption.²⁸ For couples facing fertility problems, fertility treatments and in vitro fertilization became the alternatives to natural conception.²⁹ Fertility treatments, however, have marginal rates of success.³⁰

Domestic adoption can be a long and trying process in the United States. While the domestic adoption process can take up to two years, adopting from Russia generally takes six months to a year.³¹ Further, in the United States, parents who release their

26. See JACOBSON, *supra* note 22, at 16 (positing that “increased access to birth control” and the legalization of abortion in the 1973 landmark Supreme Court case *Roe v. Wade*, 410 U.S. 113 (1973), led to a decrease in children available for adoption, while changing attitudes towards single parenthood and child relinquishment also decreased the numbers of adoptable children); see also E. WAYNE CARP, *FAMILY MATTERS: SECRECY AND DISCLOSURE IN THE HISTORY OF ADOPTION* 196 (1998) (noting that “innovations in contraceptive technology, cultural values, and constitutional law . . . transformed the institution of adoption”).

27. See JACOBSON, *supra* note 22, at 16 (noting that the numbers of white women relinquishing their white children decreased in this time period); see also O’Keefe, *supra* note 19, at 1618 (noting the decline in the number of children available for domestic adoption).

28. See Shani King, *Challenging Monohumanism: An Argument for Changing the Way We Think About Intercountry Adoption*, 30 MICH. J. INT’L L. 413, 424 (2009) (discussing the changing cultural situation, including infertility, in the United States which led to an increase in international adoption); see also Alison Fleisher, *The Decline of Domestic Adoption: Intercountry Adoption as a Response to Local Adoption Laws and Proposals to Foster Domestic Adoption*, 13 S. CAL. REV. L. & WOMEN’S STUD. 171, 175 (2003) (stating that “[a]nother factor is that infertility has significantly risen, partly due to a 50% decrease in sperm counts over the last century”).

29. See JACOBSON, *supra* note 22, at 28 (discussing the desire of infertile women to reproduce); see also I. Glenn Cohen & Daniel L. Chen, *Trading-Off Reproductive Technology and Adoption: Does Subsidizing IVF Decrease Adoption Rates and Should It Matter?*, 95 MINN. L. REV. 485, 490–93 (2010) (discussing that in vitro fertilization and other assisted reproductive technologies are one way to deal with infertility).

30. See JACOBSON, *supra* note 22, at 28–29 (presenting data from the Center for Disease Control that the success rate of live births resulting from in vitro fertilization in 1995 was just under twenty percent, and that this number dropped to seven percent in forty-two-year-old women); see also Cohen & Chen, *supra* note 29, at 491 (noting that in vitro fertilization treatments had minimal success rates in 2006).

31. See *Russian Adoption Statistics*, *supra* note 21 (noting that the typical adoption process from Russia takes six to twelve months from the time the immigration petition is approved); see also RUGGERO, *supra* note 18, at 22 (placing the adoption process time at six to eight months).

child for adoption occasionally return to claim their child.³² Although official national statistics on adoption disruptions are unavailable, it is still an issue of concern for prospective adoptive parents.³³ The lengthy duration of domestic adoption procedures, and fears of adoption disruptions lead some families to adopt internationally where biological parents rarely hinder the adoption process.³⁴

According to Dr. Josephine A. Ruggiero, a professor, sociologist, and adoptive parent of three Russian-born children, there are several reasons that Russia became a major sending country to the United States.³⁵ First, Russia historically had lenient adoption policies.³⁶ Second, Russia satisfied the demand

32. See JACOBSON, *supra* note 22, at 35–36 (describing the anxiety adoptive parents felt at failed agreements due to the birth parents' changed preferences); see also *Scarpetta v. Spence-Chapin Adoption Servs.*, 28 N.Y.2d 185, 195 (1971) (holding that the adoption agency must return the child to the natural mother even though adoption procedures were already under way). The court noted that “the status of a natural parent’ is so important ‘that in determining the best interests of the child, it may counterbalance, even outweigh, superior material and cultural advantages which may be afforded by adoptive parents.’” *Id.* at 192. This case was later superseded by statute New York Domestic Relations Law § 115-b, yet prospective adoptive parents are still concerned about this issue. N.Y. DOM. REL. LAW § 115-b at 4.iv (McKinney 2011) (stating that the rights of the natural parent is not superior to the rights of the adoptive parents).

33. See CHILD WELFARE INFO. GATEWAY, NUMBERS ADOPTION DISRUPTION AND DISSOLUTION: NUMBERS AND TRENDS 1 (Dec. 2004), http://www.childwelfare.gov/pubs/s_disrup.pdf (providing definitions, statistics, and reasons for adoption disruptions); see also Elena Schwieger, *Getting to Stay: Clarifying Legal Treatment of Improper Adoptions*, 55 N.Y.L. SCH. L. REV. 825, 826–27 (2010–2011) (indicating that a possible draw to international adoption was the reduced rate of pre- and post-adoption disruptions).

34. See Donovan M. Steltzner, *Intercountry Adoption: Toward a Regime That Recognizes the “Best Interests” of Adoptive Parents*, 35 CASE W. RES. J. INT’L L. 113, 120 (2003) (noting that “[i]nternational adoptions mitigate such fears because they are finalized in the host country before the child comes to the United States”); see also RUGGIERO, *supra* note 18, at 22 (noting that international adoption is, in part, motivated by the belief that the birth parents will not attempt to reclaim their children at a later date).

35. See RUGGIERO, *supra* note 18, at xi–xv, 21–22 (describing her background and motivations for writing her book, and noting the many factors that led to an increase in international adoptions).

36. See *id.* at 22 (noting that the relaxed policies may push some families into the arena of international adoption). Russia’s policies have increasingly become more stringent, however, due to the various negative incidents discussed in this Note. See *infra* Part I.B.1 (focusing on the stories of Masha Allen, Nina Hilt, David Polreis, and Nathaniel Craver).

for Caucasian children.³⁷ Third, reports of poor treatment in Russian orphanages inspired some adoptive parents to adopt Russian children in order to save them from these conditions.³⁸

Russia, unlike the United States, allowed for single-parent adoption and same-sex partner adoptions.³⁹ This enabled many who would be ineligible to adopt in the United States, specifically unmarried persons, individuals over sixty, and same-sex couples to do so in Russia.⁴⁰ Also, adopting from Russia took less time than adopting domestically in the United States.⁴¹

Racial preference and cultural similarities are also influential factors that draw adoptive parents to Russian children.⁴² In the United States, the children up for adoption tend to be African-American while those who are most likely to adopt are Caucasian.⁴³ For some time, the US policy preference was to avoid interracial placements, resulting in a relatively small

37. See RUGGIERO, *supra* note 18, at 21–22 (declaring that the possibility of selecting the ethnic background of the child is a “pull factor” for some families).

38. See *id.* at 22 (referencing the negative media attention regarding the treatment of institutionalized children and its impact on prospective adoptive parents).

39. See *id.* (mentioning the looser criteria for adoptive parents); see also JACOBSON, *supra* note 22, at 38 (noting that the restrictions regarding adoptive parent age and marital status led many to Russia where policies toward lesbian, single, divorced, and older parents were more lenient).

40. See LOIS GILMAN, *THE ADOPTION RESOURCE BOOK 23* (1984) (noting that many prospective adoptive parents are disqualified because of their age, financial status, or marital status); see also Fleisher, *supra* note 28, at 179 (stating that “[t]he evaluation criteria used in the screening process of adoptive parents are detrimental to domestic adoption. By taking into account age, race, marital status, religion, disability and sexual orientation, the system closes its doors to many potential adoptive parents.”).

41. See RUGGIERO, *supra* note 18, at 22 (stating that most international adoptions take six to eight months compared to the prospect of waiting several years for domestic adoptions); see also JACOBSON, *supra* note 22, at 39–40 (mentioning that during the early 1990s, Russia required only one trip to the country and had fairly quick paperwork processing and adoption procedure times).

42. See RUGGIERO, *supra* note 18, at 23, 25 (noting that Russia offered an increasing supply of white children whereas the United States offered more minority and older children for adoption); see also Laura McKinney, *International Adoption and the Hague Convention: Does Implementation of the Convention Protect the Best Interests Of Children?*, 6 *WHITTIER J. CHILD & FAM. ADVOC.* 361, 375 (2007) (indicating that a possible reason for the desire to adopt from Russia could stem from prospective adoptive parents seeking children who resemble their physical characteristics).

43. See JACOBSON, *supra* note 22, at 40–42 (discussing the desire specifically for white children as opposed to children of color); see also *id.* at 33 (quoting Katherin M. Flower Kim, saying: “[f]or most parents, ‘domestic’ adoptions were understood and coded almost exclusively as the search for healthy, *white* infants”) (citation omitted).

pool of adoptable children for Caucasian parents.⁴⁴ Russia, therefore, effectively offered a new market for Caucasian babies.⁴⁵ Essentially, for some prospective adopters, they could now adopt children who looked like them and thus would easily blend into their family.⁴⁶

Another draw to international adoption is the humanitarian component and concerns for child welfare in Russia.⁴⁷ After the Soviet Union disbanded, Russian children were increasingly abandoned by parents or removed from their parents' homes by the state due to their inability to care for or financially support their children.⁴⁸ Parents either relinquished their children voluntarily or by court order.⁴⁹ It is estimated that 113,000 children have entered Russian orphanages every year since 1996.⁵⁰ As of 2000, there were an estimated 700,000

44. See Fleisher, *supra* note 28, at 179–80 (discussing racial placement preferences and noting that even with legislative efforts to ban racial preference, the practice still continues); see also RUGGIERO, *supra* note 18, at 23 (discussing the placement policies which preferred racially similar households).

45. See Mary Hora, *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) (noting that the period in which Russia opened its doors to foreign adoption coincided with the period in which many Americans gave up on domestic adoption thereby leading to an increase in Russian adoption); see also RUGGIERO, *supra* note 18, at 22 (calling the supply “a pipeline to Caucasian children”).

46. See JACOBSON, *supra* note 22, at 33 (noting the concept of “total acceptance in the family” and the fear of possible familial backlash at adopting a child of another race); see also McKinney, *supra* note 42 and accompanying text (discussing the importance of race as a factor in adoption).

47. See King, *supra* note 28, at 420–23 (discussing the humanitarian draw towards international adoption stemming from compassion and the desire to rescue children from less fortunate circumstances); see also Linda J. Olsen, Comment, *Live or Let Die: Could Intercountry Adoption Make the Difference?*, 22 PENN ST. INT'L L. REV. 483, 489 (2004) (noting that motivations for international adoption stem from humanitarian concerns).

48. See Kimberly A. Chadwick, *The Politics and Economics of Intercountry Adoption in Eastern Europe*, 5 J. INT'L LEGAL. STUD. 113, 113 (1999) (noting that war and immense poverty in the former Soviet states led to an increase in the number of children in orphanages later); see also JACOBSON, *supra* note 22, at 22 (noting Russia's economic instability as well as the high rates of unemployment during the time period).

49. See JACOBSON, *supra* note 22, at 21–23 (discussing the economic challenges Russia faced in the early 1990s which lead to an increase in child abandonment); see also JUDITH HARWIN, *CHILDREN OF THE RUSSIAN STATE: 1917–95*, 49–52 (1996) (discussing the general routes through which Russian children entered public care and the State's role in stripping parental rights and punishing the parents).

50. See CLEMENTINE K. FUJIMURA ET AL., *RUSSIA'S ABANDONED CHILDREN: AN INTIMATE UNDERSTANDING* 5 (2005) (citing information obtained from Human Rights

orphans in Russia.⁵¹ These numbers burdened the system and stories of abuse and neglect in orphanages became prevalent in the media.⁵² The same financial issues that led so many to Russian orphanages also resulted in an inability of the state to care for the children once there.⁵³

Moreover, children were also often abandoned immediately upon birth at the hospital when it was discovered that they had mental or physical disabilities.⁵⁴ Mothers were also often counseled by doctors to abandon their children if they were found to have physical or mental disabilities.⁵⁵ Furthermore, some parents immediately relinquished their deformed children to orphanages.⁵⁶ These orphanages have little funding and limited resources to care for disabled children.⁵⁷

Watch); *see also* Levy, *supra* note 5 (placing the figure higher at 115,000 children in 2008).

51. *See* FUJIMURA ET AL., *supra* note 50, at 5 (citing data from the Russian Ministry); *see also* Levy, *supra* note 5 (estimating the total number of children at 700,000).

52. *See* KATHLEEN HUNT, HUMAN RIGHTS WATCH, ABANDONED TO THE STATE: CRUELTY AND NEGLECT IN RUSSIAN ORPHANAGES 6 (1998) (noting the surplus of images and reports on the deplorable orphanage conditions even in the wake of increased Russian legislation to address the rights of the child). *See also* FUJIMURA ET AL., *supra* note 50, at 24–26 (discussing the orphanage worker’s perspective on caring for the volume of children and the stigmas they face in doing so); Sara Dillon, *The Missing Link: A Social Orphan Protocol to the United Nations Convention on the Rights of the Child*, 1 HUM. RTS. & GLOBALIZATION L. REV. 39, 71 (2007–08) (describing images of infants with their mouths taped shut to prevent them from crying captured on a woman’s cell phone in 2007).

53. *See* 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, 467 (2010) [hereinafter Smolin, *Intercountry Adoption*] (noting that the Russian preference for institutionalized care over foster care, coupled with the collapse of the economy yielded a poor quality care of institutionalized children); *see also* Levy, *supra* note 5 (highlighting that the Russian government spends roughly three billion US dollars a year on institutionalized care, yet the money leads more to corruption of the officials who work there).

54. *See* Smolin, *Intercountry Adoption*, *supra* note 53, at 466–67 (noting that disabled children were abandoned in large numbers); *see also* Chadwick, *supra* note 48, at 117 (discussing in general the medical conditions and treatment of children found in Russian orphanages).

55. *See* Eleanor Stables, *From Russia with Love*, AMER. SPECTATOR, June 17, 2005, <http://spectator.org/archives/2005/06/17/from-russia-with-love> (noting that Russian doctors often suggest parents give up their disabled children); *see also* JACOBSON, *supra* note 22, at 45 (discussing the high rates of alcoholism in Russia yielding an increased risk of utero alcohol exposure and therefore leading to fears of health defects in adopted Russian children).

56. *See* FUJIMURA ET AL., *supra* note 50, at 50 (claiming that deformed children are often released to orphanages due to the parents’ fear of the stigma that will attach to

B. *Russian Adoptions Gone Wrong, Temporary Solutions, and Early Attempts at Reform*

American families have adopted 45,112 Russian children since 1999.⁵⁸ For the most part, the adoptions resulted in successful placements and content families.⁵⁹ A small percentage of adoptions, however, have resulted in sexual exploitation of the child, abuse, neglect, and even death.⁶⁰ While these numbers are minimal compared with the total number of adoptions, the stories of problematic adoptions have garnered much media attention and led to outcries for reform of the international adoption system.⁶¹

1. Problems with Prospective Parent Pre-Screening: Masha Allen (Maria Nikolaevna Yashenkova)

Masha Allen's story is atypical of most Russian adoptions, but it highlights serious weaknesses in the international adoption system.⁶² Masha's adopter, Matthew Mancuso, a

them); *see also* Stables, *supra* note 55 (noting the Russian government's push towards institutionalization).

57. *See* Olivia Ward, *More and More Children Exported Russia Tightens Adoption Rules UNICEF Reports Abuse Widespread*, TORONTO STAR, June 18, 2005, at A18 (noting that the Russian orphanages are often understaffed and underfunded); *see also* Smolin, *Intercountry Adoption*, *supra* note 53 and accompanying text.

58. *See Statistics*, *supra* note 12 (providing an interactive graph totaling the number of adoptions from 1999 to 2011); *see also* Levy, *supra* note 5 (declaring that Americans have adopted over 50,000 Russian children since 1991 but mentioning that the number of adoptions has since declined due to tightened regulations).

59. *See* Ward, *supra* note 57 (noting that stories of abuse in foreign adoptions are rare); *see also* Russell Working, *Adoptee Deaths Rare, Experts Say: 12 Russian Cases Troubling, Puzzling*, CHI. TRIB., May 21, 2004, at C24 (noting Adam Pertman's, of the Evan B. Donaldson Adoption Institute, assertion that far more children die from abuse or neglect in biological families than in adoptive families).

60. *See infra* Parts I.B.1–3 and accompanying text and footnotes (detailing four examples of failed Russian adoptions).

61. *See Moscow Slams Sentence to U.S. Couple Killed Russian Adopted Son*, RIA NOVOSTI (Russ.) (Nov. 19, 2011), <http://en.ria.ru/russia/20111119/168845680.html> (noting that seventeen adopted Russian children have died worldwide since 1991); *Russia May Open Case Against Man Cleared of Russian Toddler Death*, RIA NOVOSTI (Russ.) (Dec. 2, 2011), <http://en.rian.ru/russia/20111202/169250952.html> (placing the figure at nineteen deaths worldwide since 1991).

62. *See* Smolin, *Intercountry Adoption*, *supra* note 53, at 474–75 (discussing the weaknesses and problems in the international adoption process, especially noting the Masha Allen case); *see also* Ward, *supra* note 57 (noting the general shock at the Masha Allen story).

divorced American father, was apparently thoroughly vetted by the American adoption authority, Family Adoption Center.⁶³ It was only later discovered that Mr. Mancuso was a pedophile who had molested his own daughter.⁶⁴ By the time the Federal Bureau of Investigation arrested Mr. Mancuso in 2003, Masha had been raped and sexually exploited via the Internet for nearly five years.⁶⁵ Mr. Mancuso was sentenced to more than fifteen years in a US federal prison for possessing and distributing child pornography, and further sentenced to thirty-five to seventy years in a Pennsylvania state prison.⁶⁶ While the public was generally outraged, adoption agencies were defensive.⁶⁷ Instead of acknowledging the system's failure to discover red flags in a prospective adopter's background and to perform accurate and thorough follow-ups post-placement, the

63. See David M. Smolin, *Child Laundering as Exploitation: Applying Anti-Trafficking Norms to Intercountry Adoption Under the Coming Hague Regime*, 32 *VT. L. REV.* 1, 20–22 (2007) [hereinafter Smolin, *Anti-Trafficking Norms*] (discussing the several steps Mr. Mancuso took to adopt Masha including home visits); David Conti, *Child Abuse 'Monster' Gets 35–70 Years*, *PITT. TRIB.-REV.*, Nov. 18, 2005, available at [LEXISNEXIS NEWSWIRE](#) (describing the various American adoption agencies which enabled Mr. Mancuso to adopt); see also *Sexual Exploitation of Children over the Internet: What Parents, Kids and Congress Need to Know About Child Predators: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 108th Cong. (2006) (testimony submitted by Masha Allen), [hereinafter Masha Allen Testimony] (declaring that the adoption agencies never fully inspected Mr. Mancuso).

64. See Smolin, *Anti-Trafficking Norms*, *supra* note 63, at 22 (noting that Mr. Mancuso's biological daughter was never contacted by the adoption agency and it was only later discovered that she had been sexually abused by her father); Masha Allen Testimony, *supra* note 63 (stating similarly that Mr. Mancuso molested his own daughter); see also Conti, *supra* note 63 (explaining that Mancuso displayed no questionable behavior during his home study).

65. See Smolin, *Anti-Trafficking Norms*, *supra* note 63, at 23–24 (discussing Mr. Mancuso's behavior and gradual increase in sexual exploitation of Masha); see also Lilia Khabibullina, *International Adoption in Russia: "Market," "Children for Organs," and "Precious" or "Bad" Genes*, in *INTERNATIONAL ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN* 174, 176 (Diana Marre & Laura Briggs eds., 2009) (noting Mr. Mancuso's conviction of rape of Masha).

66. See Conti, *supra* note 63 (detailing Mr. Mancuso's federal sentence and Pennsylvania state sentence); see also Masha Elizabeth Allen, *CHILD LAW BLOG*, <http://www.childlaw.us/masha.html> (noting that Mr. Mancuso's Pennsylvania sentence was set to begin after his federal sentence was completed).

67. See Smolin, *Anti-Trafficking Norms*, *supra* note 63, at 25 (noting the response of the adoption agency community); see also Conti, *supra* note 63 (noting that Rick Baird, the president of Adagio Health, which took over the Family Adoption Center—the agency responsible for Mr. Mancuso's pre-screening, asserted that Mr. Mancuso learned how to beat the system and that the agency followed all state guidelines at the time).

agencies placed the blame on Mr. Mancuso's deceptive behavior.⁶⁸ Parental pre-screening and post-adoption follow-ups are two major issues addressed by the recent US–Russian Agreement.⁶⁹

2. Problems with Prospective Parent Post-Screening and the Adoption Process: Nina Hilt (Viktoria Bazhenova)

Nina Hilt died of blunt trauma to the abdomen at the hands of her adoptive mother, Peggy Sue Hilt.⁷⁰ After a year-and-a-half of frustration, on July 1, 2005, Mrs. Hilt admittedly lost her temper and hit, punched, and kicked Nina.⁷¹ When the Hilt family first began the adoption process, Mrs. Hilt felt something was strange about the procedure.⁷² Although she and her husband only saw Nina once; Russian adoption agency officials insisted the Hilt family sign paperwork indicating that they had spent more time with Nina than they had.⁷³ Mrs. Hilt, unable to deal with

68. See Smolin, *Anti-Trafficking Norms*, *supra* note 63, at 25 (noting adoption agencies' comments regarding Mr. Mancuso). Mr. Mancuso's daughter was never questioned as part of the vetting process, but this step was not required of the procedures at the time. *Id.* at 22–23. Adoptions require post-adoption follow-ups; however, none occurred. *Id.* at 23–24. The one report of such a follow-up was apparently fraudulent. *Id.* at 23. See Conti, *supra* note 63 (detailing the Pennsylvania judge's comments regarding Mr. Mancuso's motivations behind adopting Masha). The agency responsible for the adoption and post-adoption follow-ups, Reaching Out Through International Adoption, could not be reached for comment in their involvement in the Mancuso adoption. *Id.*

69. See US–Russian Agreement, *supra* note 10 (detailing the requirements for intercountry adoption); see also FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (detailing the major provisions regarding prospective parent screening and post-adoption follow-ups in the Agreement).

70. See *U.S. Woman Pleads Guilty of Murdering Adopted Russian Daughter*, RIA NOVOSTI (Russ.), Mar. 1, 2006 (detailing the extent of Nina's injuries); see also Theresa Vargas, *Mother Sentenced to 25 Years*, WASH. POST (May 26, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/05/25/AR2006052501022.html> (describing Nina's injuries and Mrs. Hilt's sentence).

71. See Pat Wingert, *When Adoption Goes Wrong*, NEWSWEEK, Dec. 17, 2007, at 58 (describing Mrs. Hilt's violent actions of grabbing Nina around the neck, shaking her, dropping her to the floor, kicking her, then dragging her upstairs while repeatedly punching her); see also Vargas, *supra* note 70 (describing the Judge's comments who presided over the case, that the death resulted from a series of events and attacks).

72. See Wingert, *supra* note 71 (discussing the Hilt's interaction with the adoption agency in Russia, specifically noting that they came to adopt two other girls).

73. See *id.* (noting that the Hilt family had suspected a "bait-and-switch" when they discovered that only Nina was adoptable). Previously, they had hoped to adopt two sisters but upon their arrival in Russia, they were told the sisters were no longer available. *Id.* Still hoping to adopt two girls, the Hilt family agreed to adopt a child named

her daughter's disruptive and often violent behavior after the adoption, became depressed and turned to alcohol.⁷⁴ The child's death caused uproar in Russia and the Russian Ministry sought to enact legislation that would require psychological testing for adoptive parents.⁷⁵ Possible psychological testing of prospective adoptive parents is a requirement of the US–Russian Agreement.⁷⁶

3. Problems with Acknowledgment and Disclosure of the Adoptive Child's Medical History: David Polreis (Konstantin Shlepin) and Nathaniel Craver (Ivan Skorobogatov)

David Polreis, Jr., spent just six months in the United States before dying at the age of two with severe lacerations and bruises covering his body.⁷⁷ His adoptive mother, Rene Polreis was charged with child abuse resulting in the child's death and sentenced to twenty-two years in prison.⁷⁸ Mrs. Polreis's defense

Tatiana as well as Nina. The Hilt frequently met with Tatiana, while only meeting Nina once. When they returned to Russia in January 2004, the Russian agency said only Nina was available for adoption. *Id.*

74. See *id.* (describing how since Nina's arrival, Mrs. Hilt had taken to drinking and that the morning of the event she had consumed several beers); see also *Adoptive Mother Given 25 Years for Killing 2-Year-Old Daughter*, WRAL.COM (May 25, 2006), <http://www.wral.com/news/local/story/1091739> (noting that Mrs. Hilt's lawyer stated that Mrs. Hilt was an alcoholic with untreated mental health problems).

75. See *New Adoption Rules Urged After Murder*, CHI. TRIB., July 13, 2005, at C8 (suggesting that the Russian response was a direct result of Mrs. Hilt's actions); see also *Tighter Rules Sought for Adoptions*, MOSCOW TIMES (July 13, 2005), <http://www.themoscowtimes.com/news/article/tighter-rules-sought-for-adoptions/221937.html> (noting that the Russian Ministry called for tougher adoption regulations).

76. See US–Russian Agreement, *supra* note 10, art. 10(1)(b) (providing that the authorities of the receiving country should confirm that the prospective adoptive parents received “psycho-social preparation” if required by domestic law, prior to the final adoption decision); see also FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (describing the prospective parent screening and parenting skills training required of the U.S.–Russian Agreement).

77. See Katharine Q. Seelye, *Woman Sentenced to 22 years in Death of Adopted Son*, N.Y. TIMES, Sep. 23, 1997, at A18 (describing the boy's injuries and adoptive mother, Rene Polreis's admission to therapists that she may have injured the boy); see also Louis Sahagun & Marlene Cimons, *Who Killed David Polreis?*, L.A. TIMES (Feb. 21, 1997), http://articles.latimes.com/1997-02-21/news/ls-30804_1_david-polreis (noting the extent of David's injuries and evidence later discovered at the scene).

78. See Seelye, *supra* note 77 (stating that Mrs. Polreis was convicted in Colorado in two hours); see also Sahagun & Cimons, *supra* note 77 (describing the charges Mrs. Polreis faced).

was that the boy suffered from a disease called Reactive Attachment Disorder (RAD) that caused him to hurt himself.⁷⁹ Testimony as to the boy's condition was heard, however, evidence discovered in the home and Mrs. Polreis's phone call to the family therapist suggested that she inflicted the final blows.⁸⁰ Following this incident, Russia reformed their adoption procedures as laid out in the Russian Family Code.⁸¹ The US–Russian Agreement provides for increased disclosure of prospective adoptee medical records to alert prospective adoptive parents to any potential issues before the adoption is finalized.⁸²

The story of Nathaniel Craver also caused outrage. Nathaniel and his twin sister were adopted in 2003 from the Russian city of Chelyabinsk; in August of 2009 Nathaniel died of brain injuries.⁸³ Nathaniel's adoptive parents were charged with first-degree murder, third-degree murder, involuntary manslaughter, endangering child welfare, and criminal homicide.⁸⁴ In their defense, the Cravers claimed that Nathaniel

79. See Seelye, *supra* note 77 (discussing the lawyer's accusations that the child's condition caused his injuries); see also Sahagun & Cmons, *supra* note 77 (discussing Mrs. Polreis's defense and including a discussion the disorder itself and its prevalence among adopted children from former Soviet states).

80. See Seelye, *supra* note 77 (discussing the lawyer's accusations that the child's condition caused his injuries); see also Karen Bowers, *Little Boy Lost; Accused Murderer Renee Polreis Pulls Out All the Stops in a Pre-Trial Hearing*, DENVER WESTWORD NEWS, May 22, 1997 (describing the conflicting theories regarding the boy's death presented by Mrs. Polreis's lawyer).

81. See Khabibullina, *supra* note 65, at 175 (noting that new legislative restrictions were instituted after the child's death); SEMEINYI KODEKS ROSSIJSKOI FEREDATSII [SK RF] [FAMILY CODE OF THE RUSSIAN FEDERATION] [hereinafter FAMILY CODE] (providing all of Russia's domestic relations laws).

82. See US–Russian Agreement, *supra* note 10, arts. 10(1)(b)(i)–(iv) (providing for disclosure of pertinent social and medical information of both the child and child's family members); see also FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (detailing the added requirements of social and medical history disclosure in the US–Russian Agreement).

83. See *Russia to Investigate Death of Child Adopted by U.S. Couple*, RADIO FREE EUR/RADIO LIBERTY (Mar. 7, 2010, 10:37 AM), http://www.rferl.org/content/Russia_To_Investigate_Death_Of_Child_Adopted_By_US_Couple_/1976755.html (discussing briefly the boy's background). The twin sister is currently living with an aunt in the United States. David M. Herszenhorn, *Russia Attacks Sentence of Adoptee's Parents*, N.Y. TIMES, Nov. 19, 2011, at A8.

84. See Michael Craver, *York County Court of Common Pleas Case Summary* (No. CP-67-CR-0002753-2010), <http://ujsportal.pacourts.us/DocketSheets/CourtSummaryReport.aspx?docketNumber=CP-67-CR-0002753-2010> (last visited Aug.

was predisposed to destructive behavior and self-mutilation.⁸⁵ The seven year-old's autopsy revealed that he had over eighty external injuries including twenty to his head.⁸⁶ On November 28, 2011, the Cravers were sentenced to sixteen months to four years in Pennsylvania prison for involuntary manslaughter of their adopted child Nathaniel.⁸⁷ This arguably lenient sentence by the Pennsylvania court outraged the Russian public and officials.⁸⁸ Alexander Lukashovich, a Russian Foreign Ministry spokesman, called the court verdict "amazingly and flagrantly irresponsible."⁸⁹ Russian officials then threatened to initiate their own investigation of the couple and added the couple to the international wanted list; officials also sought to initiate an investigation into the legality of Nathaniel's adoption.⁹⁰

13, 2012) (listing the charges and dispositions); Nanette Craver, *York County Court of Common Pleas Case Summary* (No. CP-67-CR-0002752-2010), <http://ujportal.pacourts.us/DocketSheets/CourtSummaryReport.ashx?docketNumber=CP-67-CR-0002752-2010> (last visited Aug. 13, 2012) (listing the charges and the dispositions).

85. See *Another Adopted Russian Boy Beaten to Death in US*, RT (Russ.), Mar. 4, 2010, <http://rt.com/usa/news/adopted-russian-boy-murdered> (noting the accusations against the Cravers, while the Cravers claimed the boy fell from the stairs and hit his head on an oven head); see also Lara Brenckle, *Russian Officials Call for Suspension of Adoptions to U.S. Parents After Death of Dillsburg-Area Boy*, PATRIOT NEWS, Mar. 5, 2010, available at http://www.pennlive.com/midstate/index.ssf/2010/03/nathaniel_craver_is_15th_or_16.html (noting the charges against the Cravers while comparing the boy's death to that of another adopted Russian boy, Viktor Matthey).

86. See *Another Adopted Russian Boy Beaten to Death in US*, *supra* note 85 (noting that the boy's death was the result of traumatic brain injury); see also Brenckle, *supra* note 85 (stating that the eighty injuries were "in various states of healing").

87. See Herszenhorn, *supra* note 83 (describing the Cravers' sentences). The Cravers will not serve anymore time, however, because they already spent nineteen months in prison. *Id.* See also Pavel Koshkin, *Russia Raises Eyebrows at U.S. Adoption Decision*, RUSS. BEYOND THE HEADLINES (Nov. 21, 2011), http://rbth.ru/articles/2011/11/20/russia_raises_eyebrows_at_us_adoption_decision_13773.html (noting Craver's sentence).

88. See Herszenhorn, *supra* note 83 (noting the government's response to the "unjustly lenient sentence"); see also Koshkin, *supra* note 87 (noting the displeasure of several members of Russia's State Duma with the verdict).

89. See Herszenhorn, *supra* note 83 (quoting Mr. Lukashovich).

90. See *Investigators Put U.S. Adoptive Couple Who Killed Russian Boy on Wanted List*, RIA NOVOSTI (Russ.) (Nov. 21, 2011), <http://en.rian.ru/russia/20111121/168906014.html> (noting that the Russian Investigative Committee had added the couple to the list); see also Brenckle, *supra* note 85 (noting that Russia's prosecutor general's office planned to begin an investigation of the Cravers); *Another Adopted Russian Boy Beaten to Death in US*, *supra* note 85 (noting that Russia's Investigative Committee launched an investigation into the Cravers' conduct); *Craver Couple Wanted by Interpol*, INTERPOL RED NOTICE REMOVAL LAWYERS (Nov. 29, 2011),

Moscow's Basmany Court later declined to issue an arrest warrant for the Cravers.⁹¹ Further, the Russian Prosecutor General's Office said that Russia's criminal prosecution of the United States couple is illegal, noting that, "there is no proof that they are hiding from the Russian side [sic] or may continue criminal activity."⁹² Still, Russia seeks to increase the accountability for these failed adoptions.⁹³

4. The American Response to Failed Adoptions—Temporary Solutions to Ongoing Problems

In light of these and several other incidents, American families have responded to problematic adoptions in several ways. First, the number of children adopted from Russia has declined.⁹⁴ The number began declining in 2005, fell to 1079 adoptions in 2010, and has dropped to a total of 970 adoptions for the 2011 fiscal year.⁹⁵ The reasons for the decline are difficult to ascertain, but commentators contend that the decline is due to stricter policy requirements for adoption.⁹⁶ The

<http://interpolnoticereoval.com/2011/11/29/craver-couple-wanted-by-interpol> (stating that the couple had been added to the list despite Russia's Basmany Court's decision to the contrary).

91. See *Russian Court Rules Against Issue of Arrest Warrant for Michael, Nanette Craver*, RIA NOVOSTI (Russ.) (Nov. 28, 2011), <http://en.rian.ru/society/20111128/169118325.html> (claiming that the Basmany Court supported the position of the Russian Prosecutor General's Office).

92. *Id.* (quoting the Prosecutor General's Office).

93. See FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (discussing the reporting requirements mandated by the US–Russian Agreement); see also *Russia to Halt U.S. Adoption Amid Domestic Violence Claims*, *supra* note 10 (noting that Russian authorities wish to cease US adoptions of Russian children until an agreement allowing Russian authorities to inspect the homes of adopted children is reached).

94. See *Russian Adoption Statistics*, *supra* note 21 (noting Russian adoption statistics).

95. See *Statistics*, *supra* note 12 (providing Russian adoption statistics showing a noticeable decline since 2005); see also OFF. OF CHILDREN'S ISSUES, U.S. DEP'T OF STATE, FY 2011 ANNUAL REPORT ON INTERCOUNTRY ADOPTION 2 (Nov. 2011), available at http://adoption.state.gov/content/pdf/fy2011_annual_report.pdf (placing the total number of Russian adoptions at 970).

96. See Scout Baldauf et. al., *International Adoption: A Big Fix Brings Dramatic Decline*, CHRISTIAN SCI. MONITOR, Mar. 14, 2010 (claiming the dramatic decline is the result of increased regulation); see also Twila L. Perry, *Transracial and International Adoption: Mothers, Hierarchy, Race, and Feminist Legal Theory*, 10 YALE J.L. & FEMINISM 101, 162 (1998) (positing that the decline in international adoption may be due to nationalism and improved economic conditions in sending countries).

US–Russian Agreement does not discuss the decline in US–Russian child adoptions.⁹⁷

Another response employed by adoptive families is to seek community support if they encounter trouble within their new families. Non-profit organizations, such as Families for Russian and Ukrainian Adoption, among other groups, were created as a way to build support communities and provide tips for dealing with troubled children from the region.⁹⁸ The US Department of State also references websites where adoptive families can find support.⁹⁹ There are also special facilities, such as the Ranch for Kids, which help troubled children transition to their new lives.¹⁰⁰

Some parents not only seek help for their troubled children but also a legal remedy from the adoption agencies. Although claims of wrongful adoptions are relatively new in the United States, several cases have been filed.¹⁰¹ Specifically, “[c]laims of wrongful adoption are made by parents against adoption agencies when they discover that the children they have adopted

97. See *Transcript of July 12, Background Briefing on the U.S.–Russia Bilateral Adoptions Agreement*, U.S. DEP’T OF STATE, July 13, 2011, available at <http://www.state.gov/r/pa/prs/ps/2011/07/168480.htm> [hereinafter *Background Briefing*] (noting that a senior State Department Official said that there are no projections as to how the agreement may affect the total number of adoptions).

98. See *Including Neighboring Countries: Hope, Help and Community for Adoptive Families*, FAMILIES FOR RUSSIAN & UKRAINIAN ADOPTION, <http://www.frua.org> (last visited Mar. 23, 2012) (providing information on the adoption process, what to expect and useful links for assistance); see also EASTERN EUROPEAN ADOPTION COALITION, INC., <http://www.eeadopt.org> (last visited Mar. 21, 2012) (providing support mailing lists as well as articles on adoption and dealing with medical and behavioral issues).

99. See *Russian Adoption Statistics*, *supra* note 21 (providing links to sources for support groups).

100. See RANCH FOR KIDS PROJECT, <http://www.ranchforkids.org/index.htm> (last visited Mar. 21, 2012) (describing the ranch as a “care home for adopted children who are experiencing difficulties in their families due to reactive attachment disorder, prenatal exposure to alcohol and drugs as well as struggling with adoption and post institutional issues”); see also *Montana Ranch Helps Troubled Adopted Children*, KFBB NEWS (Apr. 12, 2010), <http://www.kfbb.com/news/local/90705659.html> (noting that the ranch provides “schooling, psychological care, and horse therapy” for troubled children and is a place where adoptive parents send their children when they have exhausted all other options).

101. RUGGIERO, *supra* note 18, at 135 (noting that wrongful adoption was first recognized in 1986 in an Ohio Supreme Court case, *Burr v. Board of County Commissioners*, 23 Ohio St. 3d 69 (Ohio 1986)); see, e.g., *Ferenc v. World Child, Inc.*, 977 F. Supp. 56 (D.D.C. 1997); *Roe v. Catholic Charities of the Diocese*, 225 Ill. App. 3d 519 (Ill. App. Ct. 5th Dist. 1992); *Mohr v. Commonwealth*, 653 N.E.2d 1104 (Mass. 1995).

are suffering from physical and/or mental illnesses of which they were not made aware.”¹⁰² Parents contend that they would not have adopted the child had they been aware of the child’s condition.¹⁰³ In a 2010 case, *Harshaw v. Bethany Christian Child Services*, the adoptive parents sued the adoption agency for intentional misrepresentation, negligent misrepresentation, and negligent failure to disclose medical information both before and after the adoption.¹⁰⁴ The court ultimately determined that, under Virginia state law, the agency had a duty to disclose the child’s medical history.¹⁰⁵ The US–Russian Agreement does emphasize timely disclosure of pertinent medical information as well as adding requirements to adoption agencies.¹⁰⁶

5. The Russian Response to Failed Adoptions—Pride, Anger, and Early Reforms

Russians responded to the above detailed episodes with anger, resentment, and procedural changes. After the Artyom Savelyev incident, former Russian President Dmitry Medvedev said, “[i]t is a monstrous deed on the part of his adoptive parents, to take the kid and virtually throw him out with the airplane in the opposite direction . . . [I]t is not only immoral

102. See Hora, *supra* note 45, at 1017–18; see also RUGGIERO, *supra* note 18, at 135 (noting that the tort claim focuses on the actions of the adoption agency).

103. See Hora, *supra* note 45, at 1018 (claiming that non-disclosure negates the prospective parent’s ability to make an informed decision); see also Madelyn Freundlich & Lisa Peterson, *Wrongful Adoption: Litigation/Practice Issues*, EVAN B. DONALDSON ADOPTION INST., <http://www.adoptioninstitute.org/policy/wrongful.html> (last visited July 22, 2012) (providing historical information on the development of wrongful adoption suits).

104. *Harshaw v. Bethany Christian Svcs.*, 714 F. Supp. 2d 771, 773–74 (W.D. Mich. 2010) (describing the plaintiffs’ preference for a child with minimal medical problems, their efforts to determine this information, and the agency’s failure to provide the complete file of the child’s medical and family history).

105. *Id.* at 794 (holding that the Virginia Supreme Court would likely recognize a duty to disclose medical and family records to prospective adopters at least before finalization of the adoption). The court applied Michigan choice of law rules (the adoption agency is based in Michigan) in deciding to use Virginia substantive law because the Harshaws were Virginia state residents, and the adoption proceeding and finalization were authorized by a Virginia court. *Id.* at 773–74.

106. See US–Russian Agreement, *supra* note 10, arts. 5, 10(1)(b)(i) (providing for disclosure of medical information and detailing the additional requirements for authorized adoption organizations); see also FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (discussing the disclosure requirements and additional requirements for adoption agencies).

but also against the law.”¹⁰⁷ It is unclear what law President Medvedev was referring to but Russia does have specific provisions regarding child upbringing in its constitution and laws regarding adoption found in the Russian Family Code.¹⁰⁸

In 1993, Russia ratified its constitution.¹⁰⁹ The constitution sets forth rights and responsibilities and establishes Russia as a civil law country.¹¹⁰ Specifically, Article 38 of the constitution declares child rearing a responsibility of the parent as opposed to the state.¹¹¹ The constitution thereby provides a strict standard of individual responsibility, but it is still questionable how rigidly the Russian constitution is enforced.¹¹²

Laws regarding the care and creation of the family are located in the Russian Family Code (“Family Code”).¹¹³ Chapter 19 of the Family Code provides for protections of adopted children and enumerates the obligations of prospective adopters.¹¹⁴ Various provisions of the Family Code have been amended as a result of some of the international adoption scandals.¹¹⁵ For example, the Russian government revised the

107. See *Medvedev Blasts U.S. Couple for Sending Adoptive Child Back to Russia*, RIA NOVOSTI (Russ.) (Apr. 10, 2011), <http://cn.rian.ru/society/20100410/158505703.html> (quoting President Medvedev).

108. See KONSTITUTSIYA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 38–39, 43 (Russ.) (describing Chapter 2, Human and Civil Rights and Freedoms); FAMILY CODE, *supra* note 81, arts. 124–44. President Medvedev did not specifically mention which Russian law Torry Hansen violated.

109. KONSTITUTSIYA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] (Russ.) (providing the full text of the constitution).

110. *Id.* See specifically Chapters 1 and 2 of the Russian Constitution for a list of designated rights and obligations of citizens and Article 71(n) of the Russian Constitution establishing the Civil Code. WILLIAM BURNHAM, PETER B. MAGGS & GENNADY M. DANILENKO, *LAW AND LEGAL SYSTEM OF THE RUSSIAN FEDERATION* 309 (4th ed. 2009).

111. KONSTITUTSIYA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION] art. 38 (Russ.) (“1. Maternity, childhood and family shall be protected by the State. 2. Care for children and their upbringing shall be the equal right and duty of parents.”).

112. See BURNHAM, MAGGS, & DANILENKO, *supra* note 110, at 10–11 (noting that the Russian Supreme Court ruled on the supremacy of the Russian Constitution while mentioning that constitutional challenges to Russian laws tend to be successful); Dana Dallas Atchison, *Notes on Constitutionalism for a 21st-Century Russian President*, 6 *CARDOZO J. INT’L & COMP. L.* 239, 268 (1998) (discussing the lack of clarity of enforcement under the constitution).

113. See FAMILY CODE, *supra* note 81 (providing the text of the code).

114. See FAMILY CODE, *supra* note 81, ch. 19.

115. See Joan Oleck, *From Russia—With Red Tape*, *BLOOMBERG BUSINESSWEEK*, May 18, 1998, at 200, 201 [hereinafter Oleck, *Red Tape*] (discussing the revisions to the

Family Code in response to the death of Russian child, Alexei Geiko (Alex Pavlis) in 2003.¹¹⁶ 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.¹¹⁷ Additionally, all non-Russian adoption agencies had to be registered as non-governmental organizations.¹¹⁸

Before revisions to the adoption process and amendments to the Family Code were instituted, American families who wanted to adopt Russian orphans had to use the aid of a facilitator.¹¹⁹ The facilitator would assist the American agency by translating and working with Russian officials and orphanages.¹²⁰

Russian Family Code post-adoption scandals); *see also* 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 *TRANSNAT'L L. & CONTEMP. PROBS.* 703, 708–10 (1999) (discussing generally the series of events spawning revisions to the Russian Family Code and all international adoption procedures). The Family Code was ratified in 1995, went into effect in 1996, and was amended and revised on November 15, 1997, June 27, 1998, January 2, 2000, August 22, December 28, 2004, June 3, December 18, 29, 2006, July 21, 2007, and June 30, 2008. *See* FAMILY CODE, *supra* note 81 (providing a list of amendment dates).

116. *See* Laura Ashley Martin, “*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, 709–10 (2008) (noting that soon after the conviction, Russia changed its Family Code); *see also* Fred Weir, *Adoptions from Russia Face a Chill*, *CHRISTIAN SCI. MONITOR*, June 23, 2005, at 1 (noting that the State Duma revised the Family Code to make international adoptions more difficult).

117. *See* Martin, *supra* note 116, at 724–25 (noting that the change took effect on January 10, 2005 and has been attributed to the Pavlis murder); *see also* Gulnoza Saidazimova, *Russia: Boy’s Death, Mother’s Sentencing Lead to Appeals for Adoption Restrictions*, *RADIO FREE EUROPE/RADIO LIBERTY* (May 6, 2005, 3:43 PM), <http://www.rferl.org/content/article/1058762.html> (noting that the increase was from four months to eight months).

118. *See* Martin, *supra* note 116, at 725–26 (noting that adoption agencies were already facing additional requirements but that the requirements became even stricter after the Pavlis murder); *A Russian Rule Rewrite*, *RUSSIAN ADOPTION HELP BLOG*, <http://russianadoptionhelp.com/index.php?feed=101> (last updated July 7, 2011) (noting that the 2006 Russian NGO (“non-governmental organizations”) Law included adoption agencies and mandated registration with Russian authorities).

119. *See* Hora, *supra* note 45, at 1021 (describing the history and purpose of Russian facilitators); Charles Digges, *Foreigners Face New Hurdles to Adoptions*, *MOSCOW TIMES* (Russ.), Apr. 8, 2000, (noting the law signed by then President-elect, Vladimir Putin, effectively ended the use of “middlemen” or facilitators in Russian international adoptions).

120. *See* Olceck, *Red Tape*, *supra* note 115 (noting the work of the facilitator is to guide the adoptive parents through the process and pay local bureaucrats to process

Several facilitators were suspected of corruption; taking bribes to expedite the process.¹²¹ Facilitators are in part responsible for the high costs of adopting Russian children as typical adoptions could cost US\$20,000–US\$30,000.¹²² Because of corrupt practices, Russia sought to revise the Family Code to prevent the use of these facilitators.¹²³ Specifically, Article 126.1 of the Family Code prohibits third party intermediaries in adoptions.¹²⁴ These and other revisions made adoptions more time consuming and difficult for non-Russians.¹²⁵

Russians generally disfavor international adoption, yet poor economic conditions prevent many Russians from adopting local children in need.¹²⁶ Russians see themselves as able to take

paperwork); *see also* Part II.B.1 (discussing the Italian adoption scandal and the role a facilitator played in illegally processing adoptions while substantially profiting).

121. *See* Hora, *supra* note 45, at 1021 (noting the adoption process utilizing a facilitator and the instances of corruption that stemmed from the use); *see also* MADELYN FREUNDLICH, *ADOPTION AND ETHICS: THE MARKET FORCES IN ADOPTION* 49 (2000) (discussing various instances of bribery of Russian officials); Boris Aliabyev, *Russia's Wanted Children*, *MOSCOW TIMES* (Russ.), Feb. 28, 1998 (noting the influence of corruption on the Russian international adoption process).

122. *See* *Russian Adoption Statistics*, *supra* note 21 (noting that the Russian adoption process costs US\$20,000–US\$30,000 including travel, lodging and fees); *see also* *Adoption from Russia*, *THE ADOPTION GUIDE*, <http://www.theadoptionguide.com/options/adoption-from-russia> (placing the average cost of an adoption from Russia between US\$40,000 and US\$50,000); FREUNDLICH, *supra* note 121, at 49 (reporting that one adoptive parent was told to bring US\$1,000 for “gifts” and that another was told “not to ask [Russian officials] where the money was going”) (internal citations omitted).

123. *See* Hora, *supra* note 45, at 1025 (noting the abolishment of free-lance facilitating after former President Vladimir Putin’s decree); Thompson, *supra* note 115, at 709–10 (discussing the proposed changes to the Family Code to consider the prohibition of intermediaries).

124. *FAMILY CODE*, *supra* note 81, art. 126.1 (“Any intermediary activity in the adoption of children, that is, any activity of third parties with the purpose of selecting and transferring children for adoption in the name and in the interest of persons wishing to adopt children shall be impermissible.”).

125. *See* Ward, *supra* note 57 (noting that some are concerned that the added time in institutions is worse than the small risk of a rushed adoption). “Few people, however, object to tougher regulations if they put a stop to child abuse. But some worry that the conditions in Russian orphanages, chronically cash-strapped and understaffed, make the prospect of even longer waiting periods troubling.” *Id.*

126. *See* Aliabyev, *supra* note 121 (discussing economic issues preventing many Russian families from adopting Russian children as well as the Russian attitude toward adoption); *see also* Joan Oleck, *In Russia, Mixed Feelings About Foreign Adoptions*, *BLOOMBERG BUSINESSWEEK* (MAY 7, 1988), <http://www.businessweek.com/1998/20/b3578150.htm> [hereinafter Oleck, *Mixed Feelings*] (quoting Irina Volodina, who previously headed the Russian Education

care of their own; international adoption, then, is viewed skeptically.¹²⁷ In fact, the Family Code considers international adoption as a last resort after domestic adoption for Russians.¹²⁸ As a result of the constitutional and Family Code provisions and of the failed Russian adoptions, Russia has become more skeptical of the international adoption process and has tightened procedures.¹²⁹

Russia has threatened to suspend adoptions to Americans and suspend various adoption agencies' practices after the Artyom Savelyev incident and several times before.¹³⁰ "In 2000, and again in 2003, Russia insisted foreign adoptions be handled only by accredited agencies that would be required to provide Russia with reports including at-home visits by a social worker at six months and one, two, and three years post-placement."¹³¹

Ministry's department for children's rights and social welfare: "[a] number of people have wanted to adopt but have put it off because they can't afford to feed another mouth").

127. See Hora, *supra* note 45, at 1022 (noting the Russian sentiment at the care for their children and the wariness towards American motivations for adoption Russian children); Oleck, *Mixed Feelings*, *supra* note 126 (describing the Russian people's uncertain feelings about intercountry adoption and commenting that some Russians dislike the commodification of the child adoption process); see also Chadwick, *supra* note 48, at 121–22 (noting that international adoption "is still disfavored" by Russians).

128. See FAMILY CODE, *supra* note 81, art. 124.4 ("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 for upbringing into the families of citizens of the Russian Federation, who permanently reside on the territory of the Russian Federation, or for adoption to the children's relatives, regardless of the citizenship or the place of residence of these relatives.").

129. See Khabibullina, *supra* note 65, at 174 (noting that international adoption in Russia is controversial and that the various scandals have resulted in revisions to Russian laws); Saidazimova, *supra* note 117 (noting that the Pavlis incident in particular was used as "ammunition" to strengthen Russian adoption procedures).

130. See *US and Russia Agree on Rules to Make Adoption Safer*, BBC NEWS (July 13, 2011), <http://www.bbc.co.uk/news/world-us-canada-14148431> (noting that Russia threatened to suspend adoptions to the United States). An official moratorium after the Artyom Savelyev incident was never instituted. See Levy, *supra* note 5 (noting that American officials stated a formal adoption ban was not instituted by Russian officials). *But see Notice: Regional Suspensions on Adoption Processing in Russia*, OFF. OF CHILDREN'S ISSUES, U.S. DEP'T OF STATE (Mar. 1, 2012), http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=russia_4 (noting that the State Department has received reports of "a de facto freeze" on US adoptions but has yet to receive official notification of a formal adoption suspension); *Russia to Halt US Adoptions Amid Domestic Violence Claims*, *supra* note 10 (discussing Russia's most recent calls for suspension).

131. Mirah Riben, *Facing the Real Issues in International Adoption*, RUSS. BEYOND THE HEADLINES (May 21, 2010), http://rbth.ru/articles/2010/05/21/facing_issues_

Russia did “temporarily stop accepting new applications from American adoption agencies as part of an overhaul of its accreditation process.”¹³² In April 2006, the Russian Prosecutor General’s Office attempted to “prevent further abuses by calling for the revocation of the accreditation of [twelve] [US] adoption agencies, stating that the companies had failed to file post-adoption reports on the condition of Russian children.”¹³³ In 2008, Russia unsuccessfully attempted to pass a bill that would suspend the practice of independent adoptions.¹³⁴

Russia also sought to introduce legislation requiring “mandatory training programs and psychological testing for foreigners seeking to adopt Russian children.”¹³⁵ Also, Russian Prosecutor-General Vladimir Ustinov suggested that Russia enter agreements with countries who adopt Russian children in order to enable Russian officials to monitor Russian adoptees.¹³⁶ The

international_adoptions.html (highlighting the previous difficulty of follow-ups due to the American citizenship status of the adoptees).

132. Lynette Clemetson, *Working on Overhaul, Russia Halts Adoption Applications*, N.Y. TIMES, Apr. 12, 2007, at A10 (noting that Russia allowed fifty adoption agency licenses to expire); see also Laura Christianson, *Russia Halts All International Adoptions*, EXPLORING ADOPTION BLOG, <http://www.laurachristianson.com/laura/russia-halts-all-international-adoptions> (last visited Feb. 26, 2012) (noting that seventy-six adoption agency licenses expired, halting adoptions for several months).

133. See Riben, *supra* note 131 (citing the failure of those agencies to provide post-adoption reports); see also *12 U.S. Adoption Agencies Targeted*, MOSCOW TIMES (Russ.) (Apr. 19, 2006), <http://www.themoscowtimes.com/news/article/12-us-adoption-agencies-targeted/205485.html> (noting that the Prosecutor General’s office claimed that the agencies “were in violation of laws and regulations”); *Adoption News Central: Country News: Russia*, FAMILY HELPER, <http://www.familyhelper.net/news/russia.html> (last visited Feb. 26, 2012) (listing the twelve US agencies).

134. See *Russian Ministry Drafts Bill That Could Stop Independent Child Adoptions*, WORLD NEWS CONNECTION, Apr. 23, 2008, available at WESTLAW WRLDNWSC (noting that the bill specifically sought to prevent independent adoptions by non-Russian families).

135. *New Adoption Rules Urged After Murder*, *supra* note 75 (noting that these provisions were taken in response to the Nina Hilt incident).

136. See *Russian Prosecutor-General Suggests Monitoring Future of Children Adopted by Foreigners*, RIA NOVOSTI (Russ.) (May 4, 2005), <http://en.rian.ru/society/20050504/39861737.html> (noting Mr. Ustinov’s desire to draft private agreements which would allow Russian intervention should problems arise). Lack of monitoring and enforcement was a major complaint for Russian officials. “‘One of the major problems for us is that under US legislation on adoption passed in 2000, children adopted abroad become US citizens immediately after crossing the US border on the way to their foster homes,’ Alexander Demkin, Russia’s vice consul in New York, said.” *U.S. Woman Pleads Guilty*, *supra* note 70.

US–Russian Agreement provides for several of these suggestions Russia proposed years before.¹³⁷

C. *The Adoption Process: Regulations Explored*

International adoptions to the United States reached their peak in 2004 at 22,894 adoptions.¹³⁸ Since then, there has been a noticeable decline.¹³⁹ Although several industrialized nations adopt children from developing or economically disadvantaged countries, the United States is by far the leading receiver of these adoptions.¹⁴⁰

To create consistency in the process, international guidelines were established. The first international document to recognize the rights and special needs of children was the Declaration of the Rights of the Child of 1924 (“Declaration”).¹⁴¹ The document did not speak to international adoption nor was it legally binding, but it constituted an important first step in recognizing the rights of children in an international setting.¹⁴² The Declaration was reaffirmed by the

137. See FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (discussing in general the major provisions required of adoptive parents and adoption agencies); see generally US–Russian Agreement, *supra* note 10 (providing text of the US–Russian Agreement).

138. Elizabeth Bartholet, *International Adoptions Should Be Encouraged*, in INTERNATIONAL ADOPTIONS 20, 27 (Margaret Haerens ed., 2011) (providing a graph of adoptions to the United States).

139. See *Statistics*, *supra* note 12 (noting the steady decline in adoptions from Russia); see also Karen Smith Rotabi, *Inter-country Adoption: Steep Declines in International Adoptions by U.S. Parents Reflect Mixed Record*, RH REALITY CHECK (Nov. 18, 2011, 1:28 PM), <http://www.rhrealitycheck.org/article/2011/11/18/intercountry-adoption-steep-declines-in-the-us> (noting that since 2004, international adoption to the United States has declined more than fifty percent).

140. See JACOBSON, *supra* note 22, at 16 (noting that the United States was the leading receiver from 1950s–1970s). For an interesting discussion on colonialism and ideas on industrialized nations’ exploitation of disadvantaged children, see King, *supra* note 28.

141. See Geneva Declaration of the Rights of the Child, Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (providing the text of the declaration); TREVOR BUCK ET AL., INTERNATIONAL CHILD LAW 89, 89 (2d ed. 2011) (discussing the historical background of the international document as the first international human rights document).

142. See BUCK ET AL., *supra* note 141, at 89 (noting that although the document was non binding, “it carried significant moral force”); see also O’Keefe, *supra* note 19, at 1625 (noting that the document was the foundation for later conventions regarding children’s rights).

League of Nations in 1934 and the General Assembly of the United Nations adopted the text of the Declaration in 1959.¹⁴³ No movement was made regarding the international status of children for twenty years; then in 1979, the United Nations General Assembly deemed it the 'International Year of the Child' and created a working group to expand Poland's draft text of the Convention on the Rights of the Child from 1978.¹⁴⁴ After ten years of revisions and negotiations, the United Nations adopted the Convention on the Rights of the Child ("CRC").¹⁴⁵

1. United Nations Convention on the Rights of the Child

The CRC has fifty-four articles and two optional protocols.¹⁴⁶ The CRC has been ratified by 193 countries.¹⁴⁷ Russia signed and ratified the Convention in 1990.¹⁴⁸ The United States, on the other hand, signed the Convention in 1995 but has yet to ratify it.¹⁴⁹ There are several reasons why this might be the case, including issues of sovereignty and federalism, but the fact that the country that adopts the largest number of international children is not a party to the agreement

143. See BUCK ET AL., *supra* note 141, at 89 (discussing the procedural development of the document); see also Olsen, *supra* note 47, at 492–94 (discussing the progression of children's rights).

144. See BUCK ET AL., *supra* note 141, at 89–90 (noting the stagnation of the development of international child law between the adoption of the text and further actions regarding child law and discussing the major revisions to the text and inclusion of ideas from member states in order to account for the twenty year gap).

145. See *id.* at 90 (discussing the many revisions and additions to the CRC as well as the process by which member states debated and participated in its creation); see also O'Keefe, *supra* note 19, at 1626 (describing the various changes to the Convention on the Rights of the Child).

146. See generally Convention on the Rights of the Child, UNICEF, <http://www.unicef.org/crc> (last updated May 25, 2012) (noting the general outline of the Convention on the Rights of the Child); Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (providing full text of the convention).

147. See *Convention on the Rights of the Child Status Table*, UNITED NATIONS TREATY COLLECTION, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Mar. 7, 2012) (providing a list of all signatories and parties to the convention); O'Keefe, *supra* note 19, at 1626 (noting that the Convention is the most universally adopted treaty regarding children's rights).

148. See *Convention on the Rights of the Child Status Table*, *supra* note 147 (providing table with listed dates of signature and ratification for the 140 signatories and 193 parties).

149. See *id.* (noting the United States signature date of Feb. 16, 1995).

minimizes its significance.¹⁵⁰ Signatories are obligated to not frustrate the purpose of the agreement according to Article 18 of the Vienna Convention on the Law of Treaties, thereby suggesting that the United States may be bound to follow the provisions of the convention to a certain extent.¹⁵¹ Nevertheless, there have been calls for the United States to ratify the Convention.¹⁵²

Article 21 of the CRC specifically addresses international adoption:

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) *Ensure that the adoption of a child is authorized only by competent authorities* who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary; . . . (c) *Ensure that the child concerned by inter-*

150. See BUCK ET AL., *supra* note 141, at 162–64 (discussing the obstacles to United States ratification of the CRC despite calls for ratification); see also McKinney, *supra* note 42, at 365 (noting that the United States' failure to ratify the CRC may be explained in part by its traditional focus on privacy in the family sphere, strong parental rights, and freedom from state interference, rather than the granting of affirmative rights.)

151. See BUCK ET AL., *supra* note 141, at 162 (noting the impact of other international agreements on US actions); see also Vienna Convention on the Law of Treaties, art. 18, May 23, 1969, 1155 U.N.T.S. 331 (“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.”). The United States is a signatory, but not a party to, the Vienna Convention suggesting that the United States may not be bound by the principles in the Vienna Convention.

152. See BUCK ET AL., *supra* note 141, at 162 (noting that both the US Congress and US Senate called for ratification of the Convention in the 1990s). See generally *The Campaign for the US Ratification of the CRC*, CHILD RIGHTS CAMPAIGN, <http://childrightscampaign.org/why-ratify> (last visited Mar. 21, 2012) (providing reasons why the United States should ratify the CRC).

country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.¹⁵³

The CRC highlights the importance of the use of “competent authorities” and procedural safeguards; Section (b) relegates international adoption as a means of last resort, preferring in-country placement.¹⁵⁴ Based on the stories of failed Russian adoptions presented above and the apparent trends in such failed adoptions, Russia would appear to be in violation of CRC Article 21 (a), (c), and (d).¹⁵⁵ At the same time, Russia’s calls for bilateral agreements seem to be in compliance with Article 21(e).¹⁵⁶

While the CRC does provide a general framework for international adoption, a major detriment of the CRC is the lack of enforceability. The CRC is a legally binding instrument but there is no judicial forum to ensure enforcement of the provisions; reporting procedures are the only method of sanctioning a country which does not uphold aspects of the agreement.¹⁵⁷ Although Article 21 lays out clear goals and ideals,

153. See Convention on the Rights of the Child, *supra* note 146, art. 21 (emphasis added).

154. *Id.*; see Dillon, *supra* note 52, at 207–08 (mentioning provision (b) and suggesting that parties to the convention may need not recognize intercountry adoption at all).

155. See *supra* Part I.B and accompanying text (suggesting that the cases may be a violation of Article 21(c) and that the use of facilitators may be a violation of Article 21(d)).

156. See *supra* Part I.B and accompanying text (noting specifically Mr. Ustinov’s calls for private agreements).

157. See BUCK ET AL., *supra* note 141, at 91–92 (noting the lack of enforcement procedures in the convention itself but highlighting that the Committee on the Rights of the Child recommends the use of other treaties as a means of remedying inappropriate actions by parties). Reporting procedures are taken by the committee. *Id.*

with no way to enforce the goals or even effective means of monitoring the adoption procedures, much is left to the parties.

2. The Hague Adoption Convention

The Hague Adoption Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (“Hague Adoption Convention”) was concluded as a means to supplement and help enforce Article 21 of the CRC.¹⁵⁸ The Hague Adoption Convention specifically sought to counteract the concerns about child trafficking and faulty adoption processes.¹⁵⁹

The main objectives of the Hague Adoption Convention are listed in Article 1. It seeks to establish safeguards to ensure that international adoptions take place in the best interests of the child, a system of cooperation among contracting states and thereby prevent the abduction, the sale of, or traffic in children, and to secure the recognition in contracting states of adoptions made in accordance with the Hague Adoption Convention.¹⁶⁰ The Hague Adoption Convention does not specify clear rules for international adoption but instead provides a general framework and a best practices guide for international adoption.¹⁶¹ The major provisions include a focus on the best

158. See *Welcome to the Intercountry Adoption Section*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, http://www.hcch.net/index_en.php?act=text.display&tid=45 (last visited Mar. 6, 2012) (noting that the Hague Adoption Convention reinforces Article 21 of the CRC); see also SYLVAIN VITÉ & HERVÉ BOÛCHAT, ARTICLE 21: ADOPTION 5 (Andre Alen, et al. eds, 2008) (noting that the fundamental principles of the Hague Adoption Convention mirrors those of the CRC).

159. See Hague Adoption Convention, Preamble, *supra* note 14 (suggesting that one of the purposes of the Convention is to prevent child trafficking); see also Ruth-Arlene W. Howc, *Adoption Laws and Practices: Serving Whose Interests?*, in *BABY MARKETS: MONEY AND THE NEW POLITICS OF CREATING FAMILIES* 86 (Michele Bratcher Goodwin ed., 2010) (noting the Hague Adoption Convention’s purpose was to operate in the best interests of the child).

160. See Hague Adoption Convention, *supra* note 14 (providing the full text of the convention).

161. See Chadwick, *supra* note 48, at 137 (noting that the Convention does not provide substantive rules but sets out a minimal framework of cooperation); see also *Hague Convention Outline: Hague Intercountry Adoption Convention*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, available at <http://www.hcch.net/upload/outline33c.pdf> (“The 1993 Hague Convention gives effect to Article 21 of the *United Nations 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 1993 Convention establishes minimum standards, but does not intend to

interests of the child, the subsidiarity principle (meaning that Contracting States recognize that a child should be raised by his or her birth family or extended family whenever possible), anti-trafficking, cooperation between states, recognition of adoption decisions, and Central Authorities and Accredited bodies.¹⁶²

The Hague Adoption Convention offers many benefits which closely follow the stated objectives.¹⁶³ Another potential benefit of the Hague Adoption Convention is found in Article 39. Article 39(2) provides for specialized agreements between contracting states.¹⁶⁴ While there is no requirement for bilateral agreements that would provide additional protections to children, the Hague Adoption Convention does not discourage their use.¹⁶⁵ Yet even in *The Hague Guide to Good Practices*, little reference is made to Article 39(2).¹⁶⁶

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.”).

162. See Hague Adoption Convention, *supra* note 14 (detailing the major objectives of the Hague Adoption Convention).

163. Annette Schmit, *The Hague Convention: The Problems with Accession and Implementation*, 15 *IND. J. GLOBAL LEGAL STUD.* 375, 379 (2008) (highlighting the reasons to sign and ratify the Hague Adopting Convention: “Benefits include more uniform requirements for processes between member countries, safeguards for parents adopting from member countries, [providing] families for children that meet their best interests, and common recognition of adoptions among member countries.”).

164. See Hague Adoption Convention, *supra* note 14, 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 Articles 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.”).

165. See *id.*; see also Laura Beth Daly, *To Regulate or Not to Regulate: The Need for Compliance with International Norms by Guatemala and Cooperation by the United States In Order to Maintain Intercountry Adoptions*, 45 *FAM. CT. REV.* 620, 629 (2007) (“Taken on its face, this language indicates that member countries of the Hague Convention can create arrangements with other member countries that may deviate from certain provisions of the Hague Convention in order to develop a more beneficial adoption relationship.”)

166. See HAGUE CONFERENCE ON PRIVATE INT’L LAW, *THE IMPLEMENTATION AND OPERATION OF THE 1993 HAGUE INTERCOUNTRY ADOPTION CONVENTION: GUIDE TO GOOD PRACTICE*, GUIDE No. 1 ¶¶ 365, 462 (2008) [hereinafter *GUIDE TO GOOD PRACTICE*] (mentioning only the possibility of use of bilateral agreements). The Guide to Good Practice is a manual to assist states in the implementation of the Hague Adoption Convention. *Id.* ¶ 1.

As with the CRC, there are serious enforcement and oversight concerns.¹⁶⁷ The Hague Adoption Convention provides general guidelines for adoption procedures but leaves the details up to the contracting nations.¹⁶⁸ These details include restrictions or punishment for non-compliance with procedural requirements.¹⁶⁹ The gaps in the Hague Adoption Convention seem to necessitate bilateral agreements provided for under Article 39(2).¹⁷⁰ Bilateral agreements allow sending and receiving nations to establish punishments for procedural inconsistencies because bilateral agreements do not suffer from the same compliance and enforcement issues as large multilateral agreements, like the CRC and Hague Adoption Convention.¹⁷¹

167. See William L. Pierce, *International Commentaries: Accreditation of Those Who Arrange Adoptions Under the Hague Convention on Intercountry Adoption as a Means of Protecting, Through Private International Law, the Rights of Children*, 12 J. CONTEMP. HEALTH L. & POL'Y 535, 540–41 (1996) (noting that the structure of the Hague Adoption Convention, which allows for oversight of adoption agencies by “Central Authorities” creates a substantial challenge to uniform enforcement of procedures); see also GUIDE TO GOOD PRACTICE, *supra* note 166, ¶ 613 (noting that criminal sanctions for adoption abuses are beyond the scope of the convention and therefore should be handled via national and international criminal law).

168. See Thompson, *supra* note 115, at 721–23 (noting the issues of individualized home studies and potential costs of creating a uniform Central Authority to regulate all the accredited bodies); see also GUIDE TO GOOD PRACTICE, *supra* note 166, ¶ 249 (noting that the entirety of Part II provides both a national and international framework for children).

169. See 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”); see also GUIDE TO GOOD PRACTICE, *supra* note 166, ¶ 614 (noting that Chapter 10 provides various suggestions for country specific implementing procedures to combat adoption abuses).

170. See *supra* notes 162–63 and accompanying text (discussing the potential uses of bilateral agreements in conjunction with the Hague Convention); see also GUIDE TO GOOD PRACTICE, *supra* note 166, ¶ 452 (noting specifically that “the Convention provides only a basic framework for co-operation and additional requirements may be imposed by means of a bilateral agreement. Bilateral arrangements or agreements of this kind may be established with the minimum of formality. They may also be formal bilateral agreements in the sense of Article 39(2).”).

171. See Lindsay K. Carlberg, *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, 124 (2007)

Another major concern of the Convention is that fewer countries have signed and ratified the Convention than have signed and ratified the CRC.¹⁷² The United States signed the Convention in 1994 but did not ratify the convention until 2007 with the act going into effect in 2008.¹⁷³ Russia is a signatory to the Convention (signed in 2000) but has yet to ratify it.¹⁷⁴ The lack of ratification, however, does not preclude parties to the Convention from engaging in international adoption with non-parties.¹⁷⁵ Adoption between two parties to the Convention provides certain protections and obligations, but this is not to say that adoption between a contracting party and a non-party member is free of protections; a contracting party is still required to adhere to the Hague Adoption Convention guidelines.¹⁷⁶ In fact, additional protections and procedures regarding the adoption process are exactly what the US–Russian Agreement seeks to establish.¹⁷⁷

(noting that bilateral agreements do not suffer from the same weaknesses as multilateral agreements and therefore better suit the individual needs of countries); *see also* GUIDE TO GOOD PRACTICE, *supra* note 166, ¶ 613–41 (noting that Chapter 10 provides various suggestions for country specific implementing procedures to combat adoption abuses).

172. Compare *Convention on the Rights of the Child Status Table*, *supra* note 147 (noting the number of nations that signed and ratified the convention), with *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption Status Table*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, http://www.hcch.net/index_en.php?act=conventions.status&cid=69 (last visited Apr. 27, 2012) [hereinafter *Hague Adoption Convention Status Table*] (noting the countries that signed and ratified the Hague Adopting Convention).

173. *See Hague Adoption Convention Status Table*, *supra* note 172 (noting the United States ratification date).

174. *See id.* (noting the absence of a Russian ratification date).

175. *See Understanding the Hague Convention*, OFF. OF CHILDREN'S ISSUES, U.S. DEP'T OF STATE, http://adoption.state.gov/hague_convention/overview.php (last visited Mar. 7, 2012) (noting the primary difference between adopting for a member and a non-member is the protections offered); *see also* GUIDE TO GOOD PRACTICE, *supra* note 166, ¶ 635 (noting that the parties to the Convention should apply the principles of the Convention to non-parties).

176. *See Understanding the Hague Convention*, *supra* note 175 (stating that the United States must adhere to the convention when performing international adoptions by working both with member and non-member states and that in general, parties to the Convention receive more protections).

177. *See US–Russian Agreement*, *supra* note 10, art. 3 (noting that the purpose of the Agreement is to ensure the protection and rights of the adopted child); *FAQS BILATERAL ADOPTION AGREEMENT*, *supra* note 10 (describing generally the added provisions geared toward the protection of the adoptees).

3. Specifics of the US Adoption Process

When a United States citizen seeks to adopt a child from another country which is a party to the Hague Adoption Convention, she must follow six steps.¹⁷⁸ These steps are: “1) choose an accredited adoption service provider, 2) apply to be found eligible to adopt, 3) be referred for a child [meaning matched with a specific child], 4) apply for the child to be found eligible to immigrate to the United States, 5) adopt the child, and 6) obtain an immigrant visa for the child.”¹⁷⁹ The US Department of State provides that “[o]nly accredited agencies (or temporarily accredited agencies, or approved persons)” can provide adoption services.¹⁸⁰

The adoption process between the United States and a non-party member is similar to the two contracting party member process.¹⁸¹ There are also six steps which include: choosing a licensed adoption service provider, applying to be found eligible to adopt, being referred for a child, adopting the child, applying for the child to be found eligible to immigrate to the United States, and obtaining an immigrant visa for the child.¹⁸² Notably, the first step regarding the accreditation of the adoption agency is different for non-Hague parties.¹⁸³ Steps four and five also differ as they are reversed.¹⁸⁴ The US Department of State issued

178. See *Hague Adoption Process*, OFF. OF CHILDREN'S ISSUES, U.S. DEP'T OF STATE, http://adoption.state.gov/adoption_process/how_to_adopt/hague.php (last visited Mar. 7, 2012) (listing the six steps and providing other important adoption related information).

179. *Id.* (providing a discussion on the requirements for each step).

180. *Id.* (listing the applicable US statutes regarding agency accreditation as well as listing the accrediting bodies).

181. Compare *Hague Adoption Process*, *supra* note 178 (listing the six steps and providing other important adoption related information), with *How to Adopt: Non-Hague*, OFF. OF CHILDREN'S ISSUES, U.S. DEP'T OF STATE, http://adoption.state.gov/adoption_process/how_to_adopt/nonhague.php (last visited Mar. 7, 2012) (listing the six steps for the non-Hague adoption process).

182. See *How to Adopt: Non-Hague*, *supra* note 181 (listing the six steps).

183. Compare *Hague Adoption Process*, *supra* note 178 (requiring an accredited adoption service provider), with *How to Adopt: Non-Hague*, *supra* note 181 (suggesting a licensed adoption service provider). The main difference being the accredited service provider has to be in substantial compliance with US federal regulations. *Hague Adoption Process*, *supra* note 178.

184. Compare *Hague Adoption Process*, *supra* note 178 (noting that the application for the child's immigration eligibility comes before the actual adoption), with *How to Adopt: Non-Hague*, *supra* note 181 (noting that the immigration eligibility application occurs after the child has been adopted).

an important note regarding child eligibility differences between countries.¹⁸⁵ The US Department of State website also includes a chart which highlights the major differences between the two processes.¹⁸⁶ Besides the agency accreditation and question of whether the child will be deemed adoptable, the Hague party process provides an itemized adoption services contract, parental education, disclosure of medical records and preservation of the adoption records for seventy-five years.¹⁸⁷

II. *SETTING THE GROUNDWORK FOR CHANGE: BILATERAL AGREEMENTS TAKE CENTER STAGE*

As noted earlier, problems have arisen in United States–Russia adoptions.¹⁸⁸ There was a general lack of prospective parent screening and follow-up reports of the adoptee’s transition.¹⁸⁹ Post-adoption follow-ups with the adoptive parents to ensure they were receiving the assistance they needed in raising their adopted child were non-existent.¹⁹⁰ Third, adoptive parents were not properly notified and trained in how to deal with their adoptive children’s challenging medical histories.¹⁹¹ Last, a lack of oversight of the adoption agencies led to corruption and poor adoptive procedures.¹⁹² The US–Russian

185. See *How to Adopt: Non-Hague*, *supra* note 181 (“A foreign country’s determination that the child is an orphan does not guarantee that the child will be considered an orphan under the US Immigration and Nationality Act (“INA”), and eligible to come to the United States to live. Foreign country may use different legal rules to determine if a child is an orphan.”).

186. See *Hague vs Non-Hague Adoption Process*, *supra* note 14 (noting the depth of information provided by the Hague countries compared with the non-Hague countries).

187. *Id.* (comparing and contrasting the two processes).

188. See *supra* Part I.B.1–3 (discussing examples of failed US–Russian adoptions).

189. See *supra* notes 62–68 and accompanying text (describing the Masha Allen story as an example of the failure of the current international adoption system to carefully screen prospective parents and check in on the children once they have transitioned to their new homes).

190. See *supra* notes 70–75 and accompanying text (discussing the Nina Hilt story and highlighting that parents also need assistance when transitioning with their new children).

191. See *supra* notes 77–92 and accompanying text (describing both the David Polreis and Nathaniel Craver incidents and their families trying to deal with their children’s conditions).

192. See *supra* notes 120–26 and accompanying text (discussing the use of facilitators and the corruption that resulted prior to changes implemented by the Russian government).

Agreement attempts to remedy these country-specific issues and provide better adoptive practices for international adoptions. Part II details the specifications proposed in the US–Russian Agreement and describes an Italian adoption scandal that led to the creation of the first Russian bilateral adoption agreement.

A. Major Changes to the Adoption Process Proposed by the U.S.-Russia Bilateral Adoption Agreement

The Artyom Savelyev incident may have spawned the recent US–Russian Agreement but as noted above, the changes in the international adoption process were a long time in the making.¹⁹³ On July 13, 2011, US Secretary of State Hillary Rodham Clinton and Russian Foreign Minister Sergey Lavrov signed the US–Russian Agreement, which aims to strengthen procedural safeguards in adoptions.¹⁹⁴ The US–Russian Agreement took over a year to negotiate and has yet to enter into force.¹⁹⁵ The US–Russian Agreement has been ratified by the Russian government but internal procedures must still be addressed before it enters into force.¹⁹⁶ The two countries have

193. See *supra* notes 115–18, 130–36 and accompanying text (discussing various changes Russia proposed to the international adoption system after the Nina Hilt, David Polreis, and Alex Pavlis incidents).

194. See Press Release, Office of the Spokesperson, US Dep't of State, Agreement Between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children (July 13, 2011), available at <http://www.state.gov/r/pa/prs/ps/2011/07/168180.htm> (announcing the signing of the agreement).

195. See *Background Briefing*, *supra* note 97 (noting that negotiations began in April 2010 immediately after the Artyom Savelyev incident and that Russia will need to take actions before the Agreement comes into force); see also *Notice: President Putin signs the Agreement between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children*, *supra* note 11 (noting the ratification and the procedure US–Russian Agreement to enter into force).

196. See FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (“The Agreement will enter into force upon the exchange of diplomatic notes from the US and Russian governments. The exchange of notes will take place only after both sides have completed internal procedures necessary for entry into force, which for Russia means approval by its Duma and establishment of other internal procedures for implementing the Agreement”); see also *Notice: President Putin signs the Agreement between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children*, *supra* note 11 (noting that the United States and Russia will work together to establish procedures in order to implement the Agreement).

met to discuss implementation procedures but these additional guidelines are not yet available.¹⁹⁷

The US–Russian Agreement incorporates many aspects of the Hague Adoption Convention but three aspects of the current adoption process will change in particular: 1) independent adoptions are prohibited, 2) prospective adoptive parents will have to undergo special preparation and training, and 3) prospective parents will have to undergo a pre-approval process before the adoption will be permitted.¹⁹⁸ Also, the US–Russian Agreement adds various additional requirements to adoption agencies in the United States including post-adoption follow-ups and reports to Russian authorities.¹⁹⁹

The US–Russian Agreement stipulates that “non-relative adoptions from Russia must take place with the facilitation of an authorized organization.”²⁰⁰ This provision essentially does away with independent adoptions.²⁰¹ Previously, prospective US adoptive parents were allowed to have independent adoptions

197. See *Joint Statement on the US–Russian Consultations on the Bilateral Agreement Regarding Cooperation in Adoption of Children*, EMBASSY OF THE UNITED STATES—MOSCOW, RUSSIA, U.S. DEP’T OF STATE, Sept. 28, 2012, http://moscow.usembassy.gov/pr_092812_adoptions.html (noting that the United States and Russia met on September 26 and 27, 2012 to discuss implementation of the Agreement); see also *The Agreement Between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children: Fact Sheet and QA*, U.S. CITIZENSHIP & IMMIGR. SERVS., July 13, 2011, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35c66f614176543f6d1a/?vgnnextoid=263554ddc321310VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD> [hereinafter *USCIS Fact Sheet*] (noting that the United States and Russia will have to meet to discuss implementation of the Agreement before clear guidelines and procedures can be published).

198. See *FAQS BILATERAL ADOPTION AGREEMENT*, *supra* note 10 (specifying which procedures will change and what the requirements mean for prospective parents); see generally *US–Russian Agreement*, *supra* note 10 (providing the text of the Agreement).

199. See *FAQS BILATERAL ADOPTION AGREEMENT*, *supra* note 10 (describing the provisions of the agreement applicable to adoption agencies); see also *US–Russian Agreement*, *supra* note 10, art. 5 (detailing the requirements of authorized adoption organizations).

200. See *US–Russian Agreement*, *supra* note 10, art. 4(4) (“The adoption of a child from the Russian Federation, in accordance with this Agreement, shall occur only with the assistance of an Authorized Organization.”).

201. See *GUIDE TO GOOD PRACTICE*, *supra* note 166, ¶ 191 (stating that “[i]ndependent adoptions are those in which the prospective adoptive parents, after being approved by their Central Authority or accredited body, are permitted to go to the State of origin and find a child to adopt, without the assistance of the Central Authority or an accredited body or approved (non-accredited) person in the State of origin.”).

from Russia although the US Department of State strongly advised against such procedures.²⁰²

The US–Russian Agreement also requires prospective parent preparation and training depending upon the prospective adoptee’s needs.²⁰³ This step will help ensure that prospective parents receive all available information about the child’s social and medical history and any possible special needs before the adoption occurs.²⁰⁴ Adoptions between the United States and Russia previously did not have this requirement.²⁰⁵ Prospective adoptive parent training was dependent upon the specific regulations of the US state of residence or if the adoption agency voluntarily provided such training.²⁰⁶ Third, the US–Russian Agreement requires a pre-approval process after the prospective adoptive parents are matched with the prospective adoptee.²⁰⁷ At this stage, Russian authorities will provide all pertinent information about the child to ensure that United State Citizenship and Immigration Services (“USCIS”) can

202. See *Working with an Agency*, OFF. OF CHILDREN’S ISSUES, U.S. DEP’T OF STATE, http://adoption.state.gov/adoption_process/how_to_adopt/agencies.php (last visited Aug. 13, 2012) (stating that “[s]ome families seek to save adoption services costs by completing an ‘independent adoption.’ However, we strongly recommend that you work with a reputable adoption service provider in a non-Convention adoption case and that you retain an accredited adoption service provider in a Convention adoption case. There are many critical social work tasks and other functions that must be completed in a professional manner for an intercountry adoption to go smoothly. In addition, some US states and some countries prohibit independent adoptions.”).

203. See US–Russian Agreement, art. 10(1)(b), *supra* note 10 (providing what steps prospective parents should take if required by domestic law before becoming approved for the adoption).

204. See US–Russian Agreement, arts. 10(1)(b)(i)–(iv), *supra* note 10 (detailing what information should be provided about the child); see also FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (noting that this step should assist prospective adoptive parents in obtaining all relevant medical information about the child and what special treatments the child may require if any).

205. See *supra* notes 178–87 (discussing the previous adoption procedures between the United States and Russia).

206. See *Hague vs Non-Hague Adoption Process*, *supra* note 14 (noting that under the Hague Adoption Convention, member countries require ten hours of parent education whereas non-member countries may or may not require parent education).

207. See US–Russian Agreement, *supra* note 10, art. 10(1) (“After the prospective adoptive parents have personally become acquainted with the child and have expressed their consent to adopt this child but before the decision on adoption of the child is made by the Country of Origin’s Competent Authority . . . the Receiving Country must provide certain information regarding the status of the prospective adoptive parents.”).

review the parents' suitability and eligibility for the child.²⁰⁸ Essentially, this step takes place before training and education of the prospective adoptive parents and determines what type of training and education are needed.²⁰⁹ Previously, prospective adoptive parents could file an application for eligibility at the same time they filed an application to qualify an orphan as an immediate relative.²¹⁰ In responding to questions about the US–Russian Agreement, the USCIS stated:

Under the current system, USCIS cannot review information about the child being adopted until after the parents have completed adoption proceedings in Russia and become legally responsible for the child. Many times prospective adoptive parents only receive full medical and psycho-social information about the child immediately before the court proceedings to complete the adoption. Parents then have a very brief time to decide whether to complete the adoption or obtain an amended home study and Form I-600A approval, if necessary. Pre-approval will allow USCIS to make a preliminary determination on a child's orphan status and to flag any concerns before the adoption takes place.²¹¹

The US–Russian Agreement thus determines eligibility before allowing the adoption to be processed.²¹²

Adoption agencies also face several additional requirements under the US–Russian Agreement. First, all US agencies seeking

208. See FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (describing the anticipated cooperation between Russian authorities and USCIS); see also US–Russian Agreement, *supra* note 10, art. 10(2) (“In accordance with its domestic laws, the Country of Origin shall assist in the provision of the information referenced in the Article to the prospective adoptive parents.”).

209. See FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (noting that this step is crucial to ensuring prospective parents receive the training and education they need before the adoption is finalized on the Russian side).

210. See *Hague vs Non-Hague Adoption Process*, *supra* note 14 (describing the different forms the prospective parents are required to file and when they are required to do so).

211. USCIS Fact Sheet, *supra* note 197 (discussing the importance and impact of the new pre-approval step).

212. See US–Russian Agreement, *supra* note 10, arts. 8, 10(1)(c) (providing for a written conclusion about the prospective adoptive parents' suitability and eligibility to adopt a child prior to the final adoption decision); see also FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (noting the interaction between the three new provisions and implications on the adoption process).

to perform adoption services of Russian children must apply to the Russian Ministry of Education and meet the domestic Russian criteria to be authorized to operate in Russia.²¹³ Prior to the Agreement, adoption agencies only needed to be licensed by the US state in which they operated.²¹⁴ Second, adoption agencies will be responsible for providing post-adoption services, including monitoring the living conditions and upbringing of adopted children as well as submitting periodic reports to Russian authorities regarding the child's psychological development and adaptation to their new home.²¹⁵ Post-placement reports were part of the previous adoption process, but it is possible that the number of reports will increase or become more frequent as a result of the US–Russian Agreement.²¹⁶

B. *The Pre-Cursor to the US–Russian Agreement: The Italian-Russian Child Adoption Agreement*

Like the United States, Italy is a major receiving nation of Russian children.²¹⁷ Also like the United States, adoption

213. FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (noting the first of several new requirements for both Russian and American adoption agencies). Those criteria have not yet been publicly posted, but agencies will have sixty days to comply with the requirements once listed. *Id.* See also US–Russian Agreement, *supra* note 10, art. 5 (detailing the additional requirements imposed upon authorized adoption organizations).

214. See *Hague vs Non-Hague Adoption Process*, *supra* note 14. Although only state licensing was required, many, if not all, agencies were also licensed under the Hague Adoption Convention standards because the United States was a signatory party. Russia has signed the Hague Adoption Convention but has not yet ratified it; therefore Russia is not bound by its procedures. The Agreement is modeled on the Hague Adoption Convention, but in certain respects, goes a step further in its requirements.

215. See US–Russian Agreement, *supra* note 10, arts. 5(1)(a)–(b) (noting the required documentation regarding continued monitoring of the adopted child that is to be delivered to the authorities of the Country of Origin); FAQs BILATERAL ADOPTION AGREEMENT, *supra* note 10 (generally noting the new requirements Russian officials may require of adoption agencies).

216. See *Russian Adoption Statistics*, *supra* note 21 (noting specific post-adoption report filing requirements).

217. See *International Adoption Statistics: Russian Federation*, *supra* note 24 (displaying statistics of various receiving nations of Russian children from 1995 through 2009); see also UNICEF INT'L CHILD DEV. CTR., INNOCENTI DIGEST: INTERCOUNTRY ADOPTION 4 (1998) (describing Russia as one of Italy's top sending nations from 1993 to 1997).

scandals in Italy have led to a push for adoption reform.²¹⁸ Italy was the first country to sign a bilateral child adoption agreement with Russia; Russian authorities anticipate many more agreements to follow.²¹⁹

1. The Nadezhda Fratti Adoption Scandal

Nadezhda Fratti, both a Russian and Italian citizen, orchestrated one of the “worst” adoption scandals ever witnessed in Russia.²²⁰ Between 1993 and 2000, Ms. Fratti arranged approximately 600 illegal adoptions of Russian children by Italian citizens.²²¹ When the Federal Security Service of the Russian Federation (“FSB”) raided Ms. Fratti’s apartment in Volgograd, Russia, they uncovered scores of falsified documents.²²² A later investigation revealed that of the 200 adoption files Russian authorities were able to recover, 173 of

218. See *infra* Part II.B.1 (describing the major adoption scandal which led to the Italian–Russian bilateral agreement).

219. See Anna Redyukhina, *Saving Foreign Adoption*, WASHINGTON POST: RUSSIA NOW, June 22, 2010, available at <http://russianow.washingtonpost.com/2010/06/saving-foreign-adoption.php> (noting that the Italian–Russian agreement was the first of its kind and now serves as a possible template for other child adoption agreements with Russia); see also *Recent Events in Russian Adoption*, RUSSIAN ADOPTION HELP BLOG (Dec. 7, 2009, 11:53 AM), http://blog.russianadoptionhelp.com/2009_12_01_archive.html (noting that the Italian–Russian agreement is the first treaty of this type Russia signed). Russia has also signed an agreement with France. See *supra* note 17 and accompanying text.

220. See Ian Traynor & Rory Carroll, *Police Raids Uncover ‘Orphans for Sale’ Racket: Arrest of Woman in Russia Reveals Web of Bureaucratic Corruption Around Adoption of 600 Children by Italians*, GUARDIAN (U.K.), Feb. 24, 2001, at 16 (detailing Ms. Fratti’s citizenship status and quoting Nikolai Bichekvost, a senior investigator in the Volgograd prosecutor’s office, on the Fratti case); see also Andrey Cherkassov, *Fratti-Shchelgacheva Case: Over a Thousand of Russian Children Illegally Exported from Russia*, PRAVDA (Russ.) (July 15, 2002), <http://english.pravda.ru/news/russia/15-07-2002/46379-0> (claiming that Ms. Fratti was a former Russian citizen but is now an Italian citizen).

221. See Traynor & Carroll, *supra* note 220 (describing that the suspected number was up to 600 at the time); see also *Italian Woman Guilty of Adoption Bribery*, GUARDIAN (U.K.) (Dec. 31, 2002), <http://www.guardian.co.uk/news/2002/dec/31/internationalnews?INTCMP=ILCNETTXT3487> (estimating the number at 600). Italy was apparently not the only country doing with business Fratti, as she was suspected of exporting over 1000 children from Russia. See Cherkassov, *supra* note 220.

222. See Traynor & Carroll, *supra* note 220 (detailing the findings of the raid to include fake documents with signatures of officials, US dollars and Russian rubles, and various office supplies to support her business).

them contained forged documents.²²³ Ms. Fratti was paid UK£1,700 per child (roughly US\$2,500) and accumulated approximately US\$1.5 million over seven years.²²⁴

Ms. Fratti did not work alone; she was a local representative with Acrobaleno (Rainbow) Adoption Agency which was established in 1993 in Padua, Italy.²²⁵ Three others assisted Ms. Fratti in her endeavors: Chief Doctor of the Mikhailovsky orphanage, Antonina Tekucheva; former director of the Kirov orphanage of Volgograd, Tatiana Chaplina; and former expert of the regional committee for education, Valentina Gerusova.²²⁶ Ms. Fratti was charged with forgery, falsification of documents, and bribery, while the three other defendants were charged with accepting bribes.²²⁷ The case fluctuated between the Volgograd Regional Court and the Russian Federation Supreme Court for several years.²²⁸ Ultimately, Ms. Fratti was given a suspended sentence of seven years for document falsification and bribery

223. See *id.* (describing the Russian investigation of the Fratti case); see also *Bolee 600 Rossiiskikh Detei Nezakonn Usynovleny v Italii* [More than 600 Children Adopted in Italy Illegally], NEWSRU (Russ.) (Feb. 18, 2001), http://newsru.com/russia/18feb2001/d_n_print.html (noting that 173 cases revealed numerous violations of both Russian and Italian laws).

224. See Traynor & Carroll, *supra* note 220 (noting that a Volgograd, Russia inspector claimed Ms. Fratti was paid UK£1,700 for every adopted child). *But see* Cherkassov, *supra* note 220 (claiming that some Italian families reported that Ms. Fratti earned as much as seven to twelve thousand dollars per child). Ms. Fratti is alleged to have earned US\$1.5 million during her time as an adoption mediator. *Id.*

225. See Traynor & Carroll, *supra* note 220 (noting that Fratti emigrated to Italy in 1989, then established herself in Volgograd, Russia in 1993 as a translator assisting Italians who wished to adopt Russian children); see also Khabibullina, *supra* note 65, at 176 (noting Fratti's affiliation with the adoption agency).

226. See *Defendants Plead Not Guilty of Illegal Kids Trafficking to Italy*, PRAVDA (Russ.) (Dec. 30, 2002), <http://english.pravda.ru/news/society/30-12-2002/19914-0> (noting the other defendants in the Fratti case); see also *Illegal Adoption to be Heard in Court Again*, KOMMERSANT (Russ.) (Jan. 19, 2005), http://www.kommersant.com/p-4137/r_500/Illegal_Adoption_to_be_Heard_in_Court_Again (recognizing the defendants in the case).

227. See *Defendants Plead Not Guilty of Illegal Kids Trafficking to Italy*, *supra* note 226 (noting the charges faced by the defendants); see also *Illegal Adoption to Be Heard in Court Again*, *supra* note 226 (stating the charges faced by the defendants).

228. See *Italian Woman Guilty of Adoption Bribery*, *supra* note 221 (describing the Volgograd court's acquittal, the Supreme Court's reversal, and the Volgograd court's subsequent conviction); see also *Opredelenie Verkhovnogo Suda RF ot 11 sentiabra 2002 g.* [Decision of the Russian Federation Supreme Court of Sept. 11, 2002], http://www.supcourt.ru/stor_pdf.php?id=18152 (overturning the Volgograd Regional Court's decision).

and the three other defendants received suspended sentences of three to seven years.²²⁹

The Russian public was outraged by the scandal, and Italian adoption agencies complained of corrupt practices that often called for extra monetary donations.²³⁰ By 2005, Russian officials had responded and made revisions to the adoption procedures.²³¹ Additionally, the official agreement between Italy and Russia came in the wake of the Fratti Adoption Scandal.

2. The Italian-Russian Child Adoption Agreement

On November 6, 2008, Italy and Russia signed the Agreement between the Russian Federation and Italian Republic on Cooperation in the Field of Adoption of Children (“Italian-Russian Agreement”).²³² The Italian-Russian Agreement did not enter into force, however, until November 2009.²³³ The purpose of the Italian-Russian Agreement was to establish a legal framework for adoption that better suited the needs of the

229. See *Italian Woman Guilty of Adoption Bribery*, *supra* note 221 (noting the parties’ convictions and sentences); see also Igor Sviriz, *Italian Citizen Summoned to Third Court*, *KOMMERSANT* (Russ.) (Mar. 21, 2005), http://www.kommersant.com/p556106/r_1/Italian_Citizen_Summoned_to_Third_Court (describing the sentences of the four individuals).

230. See Traynor & Carroll, *supra* note 220 (detailing complaints of various Italian adoption agencies and their hesitancy to operate in Russia); see also Cherkassov, *supra* note 220 (noting generally the displeasure of the handling of the Fratti case).

231. See *supra* notes 115–18, 130–36 (discussing Russia’s reforms throughout the years).

232. See *Dogovor Mezhdru Rossiiskoi Federatsii i Ital’ianskoi Respublikoi o Sotrudnichestve v Oblasti Ucynovleniia (Udocherenniia) Detei* [Agreement Between the Russian Federation and Italian Republic on Cooperation in the Field of Adoption of Children], It.–Russ., Nov. 6, 2008, available at [http://asozd.duma.gov.ru/main.nsf/\(ViewDoc\)?OpenAgent&work/dz.nsf/ByID&CEB26AF086B91D06C3257650004BAFFE](http://asozd.duma.gov.ru/main.nsf/(ViewDoc)?OpenAgent&work/dz.nsf/ByID&CEB26AF086B91D06C3257650004BAFFE) [hereinafter *Italian–Russian Agreement*] (providing the text of the agreement in Russian).

233. See *Federal’nyi Zakon RF ot 9 noiabria 2009 g., N 258-FZ o Ratifikatsii Dogovora mezhdu Rossiiskoi Federatsii i Ital’ianskoi Respublikoi o sotrudnichestve v oblasti usynovleniia (udochereniia) detei* [Federal Law of the Russian Federation of November 9, 2009 N. 258-FZ on Ratification of the Treaty between the Russian Federation and the Italian Republic on the cooperation in the field of adoption (adoption) of children], *ROSSIISKAIA GAZETA* [ROS. GAZ.], Nov. 13, 2009 (noting the Duma ratification date of October 21, 2009, presidential signature date of November 9, 2009, publication date of November 13, 2009, and agreement effective date of November 24, 2009).

child.²³⁴ Although it was modeled on both the United Nations Convention on the Rights of the Child and the Hague Adoption Convention, additional provisions were added to the Italian-Russian Agreement not contained within those multilateral conventions.²³⁵

First, Article 3(5) provides that adoption can only be carried out through an authorized organization, meaning an accredited body.²³⁶ Article 9 details various responsibilities assigned to the “Central Authority” of the Receiving State, such as a requirement that the authorized organization monitor the living conditions and upbringing of the adopted child.²³⁷ Article 10 stipulates that the prospective adoptive parents submit to a socio-psychological evaluation should the laws of the Receiving State permit such an evaluation.²³⁸ Lastly, Article 15(3) delineates various cooperative procedures between the “Central Authorities” of both the Receiving and Sending States should it be discovered that the adopted child is not transitioning well to the adoptive family.²³⁹ These provisions provide for the possibility of greater enforcement and oversight of international adoptions than allowed for by the CRC or the Hague Adoption Convention.²⁴⁰

234. See COMM. FOR FAMILY, WOMEN, & CHILDREN, RUSSIAN STATE DUMA, *Explanatory Note: The Draft Federal Law “On Ratification of the Treaty Between the Russian Federation and the Italian Republic on Cooperation in the Field of Adoption (Adoption) of the Children”* (Sept. 29, 2009), available at <http://asozd.duma.gov.ru/main.nsf/%28Spravka%29?OpenAgent&RN=258064-5&123> [hereinafter *Explanatory Note*] (noting the primary purpose of the treaty).

235. See *id.* (referencing the two multilateral agreements and highlighting various articles of the Italian-Russian Agreement).

236. See Italian-Russian Agreement, *supra* note 232, art. 3(5); see also *Explanatory Note, supra* note 234 (detailing this first provision).

237. See Italian-Russian Agreement, *supra* note 232, art. 9(1)(g)-(d) (detailing three requirements of Central Authorities of the Receiving State).

238. See *id.* art. 10(1)(g) (explaining the possibility of a socio-psychological opinion).

239. See *id.* art. 15 (providing that the Central Authority of the Receiving State should first try to place the child in another suitable environment and notify the Sending State of its actions).

240. See *Russian-Italian Bilateral Adoption Treaty*, RUSSIAN ADOPTION HELP BLOG (Oct. 9, 2009, 8:10 AM), <http://blog.russianadoptionhelp.com/2009/10/russian-italian-bilateral-adoption.html> (last visited Feb. 18, 2012) (noting that the provisions seem to provide for intervention in the cases of failed adoption). Russian officials have also claimed that agreements like the Hague Adoption Convention do not go far

The Italian-Russian Agreement is valid for five years and will be renewed automatically unless either Italy or Russia decides to terminate the Agreement.²⁴¹ The apparent success of the Italian-Russian Agreement has led Russia to seek bilateral adoption agreements with other nations, most recently with the United States and France.²⁴² The Russian State Duma Committee on Family, Women and Children recognized the possible implications of the Italian-Russian Agreement when the Committee noted that it could serve as an example for establishing bilateral agreements with other nations.²⁴³

III. MOVING FORWARD: BILATERAL AGREEMENTS LEAD THE WAY

Continued abuses in the international adoption system suggest not only a need for reform but a new way of implementing these reforms. Russia's emphasis on bilateral agreements arguably reflects the country's desire to combat those abuses that plague the international adoption system. Both the Italian-Russian and the US-Russian Agreements may serve as a guide to the rest of the world in reforming international adoption. Part III.A evaluates the US-Russian Bilateral Agreement's potential for success. Part III.B argues for Russian ratification of the Hague Adoption Convention. Parts III.C and III.D discuss the broader implications bilateral agreements might have on the international adoption system.

enough to protect Russian children in other countries, and as such they prefer the use of bilateral agreements. *Id.*

241. See Italian-Russian Agreement, *supra* note 232, art. 19(2) (providing that the contracting party seeking to terminate the agreement should notify the other party at least six months before the end of the five-year period in writing of its desire to terminate the agreement).

242. See *supra* note 17 and accompanying text (describing Russia's agreements with the United States and France, and Russia's desire for agreements with other nations).

243. See *Explanatory Note*, *supra* note 234 (describing how the Agreement could provide valuable insight towards establishing bilateral agreements with other nations). It appears that the Italian-Russian Agreement did serve as an example, if not an outline, for the US-Russian Agreement. Compare Italian-Russian Agreement, *supra* note 232, with US-Russian Agreement, *supra* note 10.

A. Success of the US–Russian Agreement in Preventing Abuses to Children is Dependent Upon How the Agreement is Implemented

Success in this case means no more stories of Russian children returned to Moscow, no more deaths of Russian children at the hands of their adopted parents.²⁴⁴ The US–Russian Agreement provides for many suggestions and procedures to better regulate international adoptions thereby attempting to minimize the instances of failed adoptions.²⁴⁵ Both countries seek a remedy to the problems which have resulted in failed adoptions but have chosen to address the issues in different ways.²⁴⁶ The United States has taken a more reactive approach in that the remedies employed only seek to help the families post-placement.²⁴⁷ Russia, on the other hand, has sought to restrict or ban international adoptions and reform its domestic laws to make adoption more difficult for non-Russians.²⁴⁸ The US–Russian Agreement combines both of these methods with the intention of directly addressing the problems the United States and Russia have encountered.²⁴⁹ The US–Russian Agreement itself is not without weaknesses. Success is possible, but dependent on the implementation.

The US–Russian Agreement as signed on July 13, 2011, leaves many questions unanswered. As noted, the two sides have met again in order to discuss implementation of the US–Russian

244. See *supra* notes 1–5, 8–9 (detailing the Artyom Savelyev incident and the adoptive mother’s relinquishment of her child back to Russia); see also *supra* notes 70–87 and accompanying text (discussing the Nina Hilt, David Polreis, and Nathaniel Craver abuse cases).

245. See *supra* notes 194–217 and accompanying text (discussing the various provisions of the Agreement and the changes they will bring to US–Russian adoption practices).

246. Compare notes 94–105 and accompanying text (discussing the American response to failed adoptions), with notes 115–36 and accompanying text (discussing the Russian response to failed adoptions).

247. See *supra* notes 94–105 and accompanying text (discussing the decline in US–Russian adoptions, the increase in community support groups and the success of wrongful adoption law suits).

248. See *supra* notes 115–18 and 130–36 and accompanying text (detailing Russia’s threats of adoption suspension and various revisions to the Family Code).

249. See *supra* notes 69, 76, 82, 194–217 (detailing which provisions in the US–Russian Agreement go to address those reasons for failure).

Agreement.²⁵⁰ First, what is the result should Russia's domestic laws and accreditation standards conflict with the US and Hague Adoption Convention standards already implemented? Agencies that are already compliant with US state and Hague Adoption Convention standards, now must comply with another set of standards.²⁵¹ This could potentially lead to future international disputes. .

Second, the US–Russian Agreement calls for better screening and training of adoptive parents.²⁵² Screening and training of adoptive parents is subject to accurate information regarding the child's conditions and medical history. With statistics that show added time in orphanages slows growth and mental development, duration in orphanages is something that needs to be addressed and disclosed to prospective parents.²⁵³ Without accurate information about the child, it is impossible to assess prospective parent eligibility and to train them accordingly. With detailed information about a child's medical and family history, prospective parents are able to adjust for the needs of the child or choose not to adopt the child which would result in fewer wrongful adoption suits.²⁵⁴

The additional requirement of training and educating prospective adoptive parents could also prove costly, yet there is no discussion of costs in the US–Russian Agreement.²⁵⁵ In all likelihood, these costs would be passed along to the adoptive parents who are already paying incredibly high fees.²⁵⁶ Also, the details of what the training would consist of are not specified.

250. See *supra* note 197 and accompanying text (discussing the US–Russian Agreement and necessity of the two parties to exchange notes and work towards an implementation plan).

251. See *supra* notes 213–14 and accompanying text (discussing Article 5 of the US–Russian Agreement and the additional requirements on the adoption agencies).

252. See *supra* notes 203–06 and accompanying text (discussing the additional requirement of parent training as required by the Agreement).

253. See *supra* notes 48–57 and accompanying text and note 126 (discussing reasons children enter the orphanages, the condition of the children found in the orphanages, and the detrimental effects of prolonged periods in orphanages).

254. See *supra* notes 101–05 and accompanying text (discussing wrongful adoption lawsuits and the arguments adoptive parents presented in those suits).

255. See *supra* notes 203–06 and accompanying text (discussing the parent training and education provisions but noting the absence of a discussion on the anticipated costs of such a program).

256. See *supra* note 123 and accompanying text (describing the fees associated with international adoption).

Adoption agencies would likely have to find specialists who deal with and treat disorders commonly found in Russian orphanages and have these experts train parents. Adoption, then, could be contingent upon successful completion of a training program which would in effect add an additional step and increase the length of the adoption process. Should the conditions of the child improve or worsen, different training may be needed suggesting increased time spent with doctors and training experts.

Several questions need to be addressed and implemented before the US–Russian Agreement could be deemed successful, yet it is an important step in building confidence in the international adoption regime between the United States and Russia. With clear guidelines for implementation, the US–Russian Agreement could be successful.

B. *Russia Should Ratify the Hague Adoption Convention*

Russia has clearly asserted a preference for bilateral agreements regarding international adoption.²⁵⁷ This does not mean, however, that Russia will not ratify the Hague Adoption Convention. Russia is a signatory to the agreement and by international standards this means that Russia had the intention of ratifying the Convention.²⁵⁸ Improving international adoption procedures and protecting children is a priority for Russia as seen from the revisions to the Family Code and suggested provisions in the US–Russian Agreement.²⁵⁹

Ratifying the Hague Adoption Convention could be another step in the process to making international adoptions better for the children and prospective parents alike. The stated objectives of the Hague Adoption Convention could serve to reinforce Russia's objectives of improving international

257. See *supra* note 17 and accompanying text (discussing Russia's bilateral agreement with France and prospective agreements with other nations).

258. See *supra* note 151 and accompanying text (discussing the relevance of Article 18 of the Vienna Convention on the Law of Treaties and the implications for any country which signs an international agreement).

259. See *supra* notes 123–36 and accompanying text (discussing Russia's concerns about international adoption and subsequent actions taken to ensure the safety and care of Russian children).

adoptions.²⁶⁰ Therefore, Russia should take the steps necessary to ratify the Hague Adoption Convention thereby assuring compliance with accepted international standards to the international community.

C. Do Bilateral Adoption Agreements Make Multilateral Agreements Like the Hague Adoption Convention Meaningless?

While the US–Russian Agreement is reflective of both the Italian-Russian Agreement and the Hague Adoption Convention, it does go beyond the Hauge Adoption Convention in mandating additional procedures.²⁶¹ The fact that Russia entered into bilateral agreements with France and Italy, and is seeking agreements with Ireland, the United Kingdom, and other countries might seem to reduce the significance of the Hague Adoption Convention.²⁶² This is not necessarily the case. Agreements modeled off the Hague Adoption Convention point to the importance of the Convention. If the Convention offered no benefits, it would simply not be used as a model.

Italy suffered from a large scandal that highlighted the weaknesses in independent international adoptions.²⁶³ As a major receiving nation of Russian children, it was important to establish a framework that worked to reduce corruption and benefit the children.²⁶⁴ The Italian-Russian Agreement follows closely both the CRC and the Hague Adoption Convention but adds features allowing for increased monitoring of adopted children.²⁶⁵ The use of the Hague Adoption Convention as a foundation for a bilateral agreement emphasizes that the ideals presented in the Convention serve a valuable purpose. Still, the

260. See *supra* notes 159–60 and accompanying text (detailing the purpose and objectives of the Hague Adoption Convention).

261. See *supra* notes 232–43 (discussing the Agreement and various requirements upon prospective parents and adoption agencies); see also *supra* notes 234–35 (discussing the CRC's and the Hague Adoption Convention's influence on the Italian–Russian Agreement).

262. See *supra* note 17 and accompanying text (discussing Russia's intentions to seek bilateral agreements and its preference for bilateral agreements).

263. See *supra* notes 220–31 (discussing the Frati adoption scandal and the bilateral agreement that resulted).

264. See *supra* notes 217–18 and accompanying text (noting that Italy receives many children from Russia and the adoption reforms that followed from the Frati scandal).

265. See *supra* notes 232–43 (discussing the Italian–Russian agreement).

need for additional requirements suggest that the gaps in the Hague Adoption Convention can be problematic and a hindrance to the international adoption system. It is presently unclear whether the US–Russian Agreement is simply viewed as an intermediate step to Hague Adoption Convention ratification. Regardless, if this is the case, the simple fact that the US–Russian Agreement follows the Hague Adoption Convention speaks volumes about the importance and impact of the Hague Adoption Convention.

D. The Hague Adoption Convention Should be Amended to Mandate Bilateral Agreements

While bilateral agreements are being modeled on the Hague Adoption Convention, it is still important to note the issuance of such agreements. Both the US–Russian Agreement and the Italian-Russian Agreement add additional provisions not present in the Hague Adoption Convention.²⁶⁶ Such provisions allow the countries to address specific concerns rather than adhering to general guidelines. Moreover, this only adds to the benefits for the children and prospective adoptive parents. Thus, it is clear that bilateral agreements are beneficial to the international adoption system.

The Hague Adoption Convention does allow for additional provisions and agreements between parties.²⁶⁷ Instead of just being allowed, however, bilateral agreements should be encouraged, if not mandated. The Hague Adoption Convention should establish itself as a baseline for international adoptions rather than the gold standard. The criticisms of the Hague Adoption Convention are many: lack of enforcement, lack of ratification of major countries, etc.²⁶⁸ The US–Russian Agreement establishes stricter monitoring guidelines to enable assurance that the steps of the Agreement will be enforced.

266. See *supra* notes 193–216 (discussing the various provisions in the US–Russian agreement); see also *supra* notes 232–40 (discussing the various provisions of the Italy–Russia Agreement).

267. See *supra* notes 164–71 and accompanying text (noting Article 39 of the Hague Adoption Convention and the implications of this article on the inclusion on bilateral agreements).

268. See *supra* notes 171–77 and accompanying text (discussing weaknesses of the Hague Adoption Convention).

Again, the purpose of these steps is to create an adoption system that best addresses the needs of the child. These added protections and benefits to the child are exactly in line with the goals of the Hague Adoption Convention. As such, the Hague Adoption Convention should add an article mandating the establishment of bilateral agreements between parties.

CONCLUSION

International adoptions have declined in recent years but remain prevalent. Thousands of lives are changed every year and regulations are important to ensure that these changes benefit all parties involved. The incidents described of failed US-Russian adoptions highlight the various weaknesses of the regulatory schemes currently employed. In general, the lack of oversight and enforcement, the potential for corruption, and nondisclosure of pertinent information, all risk ruining the international adoption system.

The US–Russian Agreement seeks to address the concerns of the international adoption system by establishing guidelines and procedures that reflect the specific concerns of the two countries. While the US–Russian Agreement follows the Hague Adoption Convention, it goes further in addressing concerns and adding protections. Considering the Hague Adoption Convention allows for such agreements, bilateral adoption agreements between countries should be encouraged. The Hague Adoption Convention’s guidelines are not detailed or effective enough to account for the many nuances involved in international adoptions. Bilateral agreements can focus on the nuances to achieve the best results for the child and the other parties involved. Russia’s inclination towards implementing bilateral agreements coupled with the United States’ emphasis on the ratification of the Hague Adoption Convention should signal to the rest of the world, the importance of stricter regulations for international adoptions. Bilateral agreements for intercountry adoption should be the way of the future, so that the abuses and scandals which plagued the past remain a thing of the past.