A COMPARISON OF INTERNATIONAL ADOPTIONS OF CHILDREN FROM THE
REPUBLIC OF MARSHALL ISLANDS IN THE UNITED STATES WITH
ADOPTIONS OF CHILDREN FROM CHINA AND THE RUSSIAN FEDERATION

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CHAPTER 1

INTRODUCTION

All societies regulate child adoptions. Traditionally, societies have regulated adoptions informally. However, advanced societies do it formally. There are several reasons for that. One of the most important ones is that child welfare became increasingly important and regulated in advanced societies and consequently, assuring welfare of adopted children became one such area regulation. However, there is a question whether such regulation adequately provides for welfare of all adopted children. Here, delivery of such welfare in the international adoption context specifically will be examined.

This thesis will describe and compare international adoption situation of a newly emerging Pacific island state, the Republic of the Marshall Islands (RMI), with older states of Russia and China, both active in the international child adoptions. Specifically, the thesis will be concerned with the fact that materialization of large scale international adoptions in these countries emerged as a consequence of entirely different social conditions in Russia and China on one side and the RMI on the other. However, it appears that such adoptions received similar treatment in the United States courts and therefore, the reasons for that will be explored.

Emergence of large scale international adoptions in Russia and China is a consequence of the countries' failed domestic policies ranging from attempts to regulate population size to attempts to exclude particular social groups from the mainstream.
society. On the other hand, the RMI did not itself create conditions that warranted international adoptions. Rather, it was brought into the area of international adoptions by the United States, the very country which induced such drastic changes within the RMI's society that traditional Marshallese mechanisms, specifically intrafamily adoptions, ceased to exist as a viable option for an increasing number of Marshallese people.

Therefore, a comparison of China, Russia and the RMI will be examined in relation to international adoptions of their children in the United States in order to examine whether such adoptions in fact should be treated similarly in the United States' courts.

The United States has experienced an increasing trend in international child adoptions, particularly in the past decade and a half (U.S. Department of State 2007). The number and identity of sending countries has constantly changed during this period due to various factors, ranging from political ones to self-imposed moratoria on international adoptions due to a widespread abuse of the adoption process for financial gain. Russia and China were important sending countries for children adopted in the United States since the beginning of the 1990s, while the increasing trend of Marshallese children adopted in the United States began in the late 1990s. These international adoptions of children from the RMI were highly problematic because of nonexistent regulation and the inability of the RMI to prevent such adoptions from taking place without its consent. The area of international adoption is a complex one because it deals with the lives of children.

There are various international legal instruments which provide specific minimum standards for international adoptions. At the same time, particularly recently,
an increasing number of sending countries possess internal regulations for controlling international adoptions. Parents who adopt internationally must therefore adhere to the laws of the sending country (Kleiman 1997). Further, domestic regulations in the United States must be adhered to by the prospective adoptive parents (Kleiman 1997). In the United States, international adoptions are currently regulated by individual states, however, immigration which is an integral part of the international adoption process, is regulated by the federal government (Kleiman 1997). The ultimate authority for finalizing international adoptions lies with state court judges. Besides the matter of regulation, cross-cultural considerations and social mobility constitute important issues in the context of international adoption. This paper will analyze the interaction of social mobility, international and domestic law and policy relating to international adoptions and in this context will attempt to answer three main questions.

First, have the United States judges when finalizing international adoptions of children from certain countries given too much weight to upward social mobility when applying "the best interest of the child" standard, which is the ultimate consideration when finalizing adoptions? In other words, has the determinative concern often been the children's upward social movement even when that meant that the children would be deprived of living with its natural family in its country of origin?

Second, what kind of regulation is necessary in order to guarantee that international adoptions are in practice conducted to serve the intended goal of providing a permanent family environment to children who cannot be given one in their country of origin rather than serve as a vehicle for upward social mobility? This question has to be
considered in light of the fact that the United States and the RMI attempted to regulate adoptions of Marshallese children during the late 1990s and early 2000s with only limited success.

Finally, the United States has signed and intends to implement the Convention On Protection Of Children And Co-Operation In Respect Of International Adoption (Hague Adoption Convention) and therefore, it intends to require that international adoptions in the United States are conducted according to the Hague Adoption Convention’s provisions as soon as the United States’ regulations and overseeing bodies are in place. Therefore, would it be proper for the United States to suspend international adoptions involving countries where serious irregularities and concerns have been identified in the past and resume them once the Central Adoption Authority is established in the United States which will enable sufficient oversight for such adoptions to be properly performed?

This paper will examine these questions by considering the interaction of various factors that affect the outcome of the international adoption process. The United States and international law and policy, specifically that relating to children’s rights, international adoption and immigration will be examined. Such law and policy serve as the fundamental structure which enables international adoptions to occur and therefore, their implementation and potential misuse or abuse needs to be evaluated. Then, international adoptions involving Marshallese children will be compared to those involving children from the Russian Federation (Russia) and China. This comparison is relevant because Russia and China have consistently ranked as two of the top sending
countries in international adoptions in the United States in the past decade and a half and therefore, conditions on the adoption process involving the two countries with large numbers will be informative. Finally, social mobility will be considered as an important driving force behind international adoption. This consideration is important, because while the domestic and international legal instruments relevant to international adoption strictly prescribe in what cases international adoption is appropriate social mobility alone appears to be playing an important role in justification of international adoption in the United States. Specifically, the judges in the Untied States have considerable latitude to consider social mobility of the children coming from poor countries when finalizing international adoptions in the United States because of the application of the "best interest of the child" standard. That is problematic for a variety of reasons; however, it is primarily important in the context of this thesis because it is in discord with domestic and international law and policy on international adoption.

Background

The RMI, a small atoll nation, experienced an unusual surge in international adoptions in the late 1990s (Walsh 1999). Such adoptions, involving adoptive parents from the United States, continued even after the moratorium on international adoptions was imposed by the Marshallese government in 1999 (Viotti 2004). These adoptions were mainly conducted in two ways. First, children were brought from the RMI to the United States and adopted there. Second, pregnant Marshallese women were brought to the United States, mainly Hawai‘i, and children were adopted in the United States upon being born (Viotti 2004). While the absolute numbers of these adoptions were relatively
small compared to the top sending countries in international adoptions, such as Russia and China, the ratio of internationally adopted Marshallese children and the total population in the RMI put the RMI at the top of the list of all sending countries (Walsh 1999:6).

One question is strikingly obvious when considering this ratio that makes the RMI such a significant sending country considering its total population. How does the RMI compare itself to Russia and China when it comes to international adoption? There are a number of fundamental differences between RMI and these countries. Russia and China are extremely large in population as well as geographical area (Central Intelligence Agency 2007) and it is not surprising that large numbers of children are adopted from there. The RMI has a very small population size compared to Russia and China and its geographical area places the RMI among the smallest countries in the World (Central Intelligence Agency 2007). Further, Russia and China possess numerous orphanages where institutionalized children live deprived of a long term family environment and are often neglected and abused (Selman 2000). Such conditions are generally conducive for a formation of a large scale international adoption environment. The RMI does not have any orphanages; therefore no need exists there to reintegrate children into a family environment as there are no children lacking family environment in the first place. In Russia and China it is either hard to find sufficient numbers of adoptive parents domestically or there are other legal and practical obstacles that keep children in long term institutionalized care. Therefore, international adoption is a reasonable method of integration into a long term family environment for institutionalized children from these
two countries. The RMI, however, has had a long tradition of adoption of within the extended family (Hezel 2001). International adoptions from Russia and China to a great extent appear to be in line with international policy and laws, their domestic laws and the United States laws. However, Russia and China have a lot to do in terms of domestic policy related to orphans and domestic adoption (HRW 1996, HRW 1998). Conversely, international adoptions of Marshallese children are largely contrary to the international policy and laws. Numerous children in the RMI were solicited directly from mothers, pregnant women, or their families (Walsh 1999). Such adoptions are “a means for couples and individuals (nationals and foreigners) to satisfy their desire for a child, but without giving paramount attention to the child’s best interest” (Selman 2000:62). Therefore, international adoption of children from Russia and China essentially differ from those of children from the RMI.

One thing that Russian, Chinese and Marshallese children adopted internationally in the United States do have in common appears to be upward vertical social mobility that the children benefit from when they are adopted internationally. Social mobility is “any transition of an individual . . . from one social position to another” (Sorokin 1964:133). There are two kinds of social mobility, vertical and horizontal (Sorokin 1964). Particularly relevant in examination of international adoption is vertical social mobility. Vertical mobility is “the relations involved in a transition of an individual . . . from one social stratum to another” (Sorokin 1964:133). Two types of vertical transition are ascending and descending (Sorokin 1964). Ascending transition can occur, “as an infiltration of the individual of a lower stratum into an existing higher one . . .” (Sorokin
1964:133). One of the channels of vertical circulation proposed by Sorokin includes family, where a person can achieve a vertical movement into a higher social stratum by marrying a person of another social stratum (1964). Analogously, adoption of a child into a family of a higher social stratum can function as a channel of social mobility. Arguably, international adoption of children from developing countries in the United States have largely functioned as such channels of vertical social mobility.

Social mobility in international adoption exists in a form of intergenerational as well as intragenerational mobility. In this paper, the circumstances of upward social mobility as they relate to Russian, Chinese and Marshallese children adopted in the U.S will be considered as it appears that this consideration possibly impacts the United States judges to such a degree that they deem “the best interest of the child” standard to be met on that basis alone when they finalize international adoptions.

Understandably, social mobility is an expected element of child adoption because it is an integral one, whether such adoption occurs domestically or internationally. The reason for that is quite clear. Specifically, regarding intragenerational mobility, children who are in need of adoption are generally located in low social strata. Such children are in need of adoption because they are institutionalized or because the parents give them up for adoption when they cannot take care of them by themselves. Therefore, such children lack economic and social capital and generally have stigma attached which prevents their success in society. Consequently, their upward intragenerational social mobility is extremely limited. The examples from Russia, China and the RMI in this thesis will illustrate this point.
Adoptive parents in the United States generally belong at least to the middle class because the minimum standards which provide for eligibility for adoption require certain financial ability by adoptive parents to properly provide for adopted children. Also, people whose financial abilities are limited generally do not seek to adopt children, particularly not internationally. Consequently, adopted children will generally immediately advance to higher social strata and will likely have a potential to improve their social position even more during their lifetime which is something that they would probably not be able to achieve had they not been adopted. That is especially true in international adoptions because generally, sending countries in international adoptions usually do not offer significant upward social mobility for orphans.

Specifically, as the thesis will show, in the cases of Russia and China orphans are socially marginalized, possess virtually no economic or social capital and consequently, even though in both countries there is a potential for social advancement these children are not likely to achieve it. On the other hand, the RMI’s social structure and poor economic state does not allow significant social mobility for the majority of its population. As a result, international adoption enables the degree of upward vertical social mobility which is for different reasons unavailable to these children in their countries of origin.

Overview of International Legal Instruments Relevant to International Adoption

A number of international legal instruments contain relevant provisions intended to safeguard prospective children for international adoption from being adopted for the wrong reasons. Examination of these instruments clearly shows that upward social
mobility is not considered a sufficient basis for international adoption. The Convention on Protection of Children and Co-operation in Respect of International Adoption (Hague Adoption Convention) as well as the Convention on the Rights of the Child (CRC) and the United Nation General Assembly’s Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Adoption Declaration) promote the policy that children should live in a family environment. Further, these documents provide that the country of the children’s origin should make certain that children remain with their family of origin and if that is not possible that an adoptive family is preferred for the children in the country of origin (Hague Adoption Convention, Preamble 1993). Only after these possibilities are exhausted, should international adoption be considered (Hague Adoption Convention, Article 4 1993). However, recently, international adoption has been viewed as a more favorable option than institutionalization or foster care in the country of origin (Hague Adoption Convention, Preamble 1993). Clearly, international adoption is intended to function as a mechanism which enables children a placement in a long term family environment in a situation when domestic family placement within the country of the children’s origin is virtually impossible. The states members to the Hague Adoption Convention are charged with actively working on enabling such domestic placements to be possible (Hague Adoption Convention, Preamble 1993).

It is important to note that the Hague Adoption Convention only applies to the countries that are members to the Convention. Currently, 71 countries are members
(Hague Conference on Private International Law 2007). At the same time, almost all countries in the world are members to the CRC (United Nations 2007). The main point here is that, while the recent policy embodied in the Hague Adoption Convention promotes family environment even over the cross-cultural considerations, it is the minority of the countries in the world that are bound by the standard. At the same time, the majority of countries with significant involvement in the international adoption area in the recent times have signed the convention and therefore, indicated intention to become members or have ratified the convention (Hague Conference on the Private Law 2007).

The majority of the countries are only bound by the CRC, which puts more emphasis on cross-cultural considerations, even when that means that the children would potentially be institutionalized or in foster care in the countries of origin. This policy specifically contradicts upward vertical social mobility as the main rationale for international adoption. However, the General Assembly Adoption Declaration represents the policy tendency to promote family environment through international adoption when domestic long term family options are not available (General Assembly Adoption Declaration 1986).

Nonetheless, upward social mobility is not an intended primary result of international adoption by these international legal instruments and should function merely as a secondary outcome in the context of international adoption. The envisioned primary goal is clearly a long term family environment for the orphaned children. Adoption considerations in state courts in the United States are based on “the best interest of the
child" standard and have been guided by this principle long before international adoptions began occurring on a large scale (Cahn 2003, 1112). The law in the United States emphasizes the importance of children living in a family environment, specifically in the family of origin whenever possible (Schlam 2005). Particularly, “the parental interest in a relationship with their children is a protected fundamental right under the United States Constitution (Schlam 2005:726). Further, “[m]any state constitutions, . . ., also protect the right of a parent to raise his or her own child (Schlam 2005:726). This right, however, is not absolute and the courts can deem a parent improper for a variety of reasons and thus, the application of the “best interest of the child” standard can override this constitutionally protected fundamental right (Schlam 2005).

On the other hand, it appears that in the context of international adoptions in the United States, the single fact that foreign children will benefit from vertical social movement appears to constitute an principal consideration when applying “the best interest of the child” standard, yielding living with the family of origin and adoptive family environment in the country of the children’s origin. Such an approach appears evident from the numbers of completed intercountry adoptions involving Marshallese children in the late 1990s. Over 500 Marshallese children were adopted in the United States between 1996 and 1999 (Walsh 1999). By implication, the judges finalizing these adoptions in the United States apparently failed to consider the entirety of the circumstances when applying the “best interest of the child” standard, particularly disregarding the provisions of international law requiring unavailability of adequate
placement of these children in the country of origin as well as cultural, religious, ethnic and linguistic considerations.

In this respect, an important question is whether the United States judges simply lack enough information to make informed decisions when applying the "best interest of the child" standard or do they ignore cross-cultural and other factors concerning the children's countries of origin?

The thesis will show that the combination of both is probably generally true. Arguably, insufficiency of relevant information often occurs in the context of international adoption. However, ethnocentric application of the "best interest of the child" standard which considers living in the United States better than in other countries and therefore justifies upward social mobility as a sufficient basis for international adoption at the same time effectively disregards cross-cultural considerations as well as other relevant considerations concerning the countries of origin.

Therefore, in order to determine whether international adoptions function in accordance with international and United States law and policy, the objective outcomes concerning the children's social mobility present in the adoption context as well as the circumstances of their adoptions in the countries of the children's origin need to be examined. When the outcome of international adoption is a child gaining a family environment which was unavailable by either the child's family of origin or by an adoptive family in the child's country of origin, such an outcome is in line with the law and policy. Such a result appears to be generally the case in Russia and China. However, when objectively considered, the primary result of international adoption is upward social
advancement when there in fact was a viable option for a child to remain with its family of origin or to be placed with an adoptive family in the country of origin, such international adoption is contrary to the international and the United States domestic law and policy regarding child adoptions. This appears to be the case of international adoptions of Marshallese children in the United States.

As previously indicated, numerically, Russian and Chinese children adopted in the United States significantly outnumber the Marshallese children so adopted. Arguably, that can to an extent provide a reason why the judges in the United States have not been applying the "best interest of the child" standard properly when considering adoptions of Marshallese children. Generalization, based on the ever-problematic circumstances of orphans in Russia and China might have created an impression that a child brought to the United States for adoption must, by default, come from a place where the conditions submit that it is in the child's best interest to be adopted in the United States. Such generalization, which is entirely likely, would confirm the suggestion that insufficient information misguides the United States judges in making their decisions to finalize international adoptions. On the other hand, it is also possible that the judges in the United States consider that the standard of living in the RMI is a reason enough to adopt Marshallese children in the United States. Whatever is the case, securing that the rights of the children are properly respected in international adoptions includes, "... improving laws and practices; training staff and judges involved in the procedures; ..." (Selman 2000:65). Further, it is important that, "adoptability of the child should be confirmed only if it appears that the family of origin does not meet the conditions that
ensure the psychosocial development as well as the physical and emotional integrity of the child” (Selman 2000:63). Finally, “poverty alone should not be a criterion for severing a child’s bonds with his or her family of origin” (Selman 2000:63).
CHAPTER 2

DEVELOPMENT OF INTERNATIONAL ADOPTIONS IN THE UNITED STATES

In order to properly evaluate the state of international adoptions of children in the United States in the recent years it is important to examine the history of this process. International adoptions in the United States, particularly in an organized form, are a relatively recent practice, beginning at the end of World War II (The Adoption History Project 2007). The process developed significantly during the next sixty years to become an extensive practice which exists today. At first, American military families returning from Germany and Japan when WWII ended began bringing back with them children for adoption in the United States (The Adoption History Project 2007). These initial international adoptions were actions undertaken by individuals who had personally encountered children in foreign countries (The Adoption History Project 2007). No organizations were involved in facilitating such adoptions at the beginning (The Adoption History Project 2007). The children that were brought to the United States from war torn countries included abandoned children fathered by soldiers stationed there and war orphans. Military personnel and their families who were stationed in the countries devastated after years of war had personally encountered orphaned children facing uncertain future and decided to adopt them and bring them to the United States when they were returning home (The Adoption History Project 2007). The reasons for the birth mothers to give up the children varied, but among them were the stigma regarding single motherhood, and in the case of children of local women and United
States soldiers stationed in Japan, local attitudes toward biracialism (The Adoption History Project 2007). In the period from 1948 to 1962, approximately 2000 children from Germany and 3000 children from Japan were adopted in the United States (Selman 2000).

These initial individual international adoption efforts were rather short-lived. International adoption developed into a process performed by organizations and it mainly exists as such today. While there are still adoptive parents that find children for international adoption on their own, the vast majority of international adoptions are managed by adoption agencies. During the beginnings of international adoptions in the United States, various domestic adoption agencies that have functioned in the United States from the 1910s quickly expanded their operations to include facilitation of international adoptions as an organized process. Such domestic adoption agencies that began processing international adoptions were all religiously affiliated and involved Lutherans, Catholics and Seventh Day Adventists (The Adoption History Project 2007). The Korean War was an important point in time for international adoptions in the United States (Lieberthal 2007). The war triggered a second large wave of international adoptions and familiarized American citizens with the option of international adoptions as an alternative to domestic adoptions, particularly because a large number of children were available for immediate adoption. The children that were initially adopted from South Korea were children of Korean women and foreign men who were soldiers, stationed there during the years of the Korean War (Lieberthal 2007).
There were several underlying factors that contributed to this second large wave of international adoptions in the United States. One of the reasons was the significant and long term involvement of the United States in the Korean conflict. This involvement meant extensive contact between a large number of American soldiers and the local population, similar to the case of the Second World War in other countries around the world, such as Germany and Japan, and later Vietnam. Next, there was a sense of responsibility among the American public for the conditions that Korea experienced in the years after American involvement. Finally, the children who were born out of wedlock and were biracial did not possess the same social status as Korean children and therefore, were not fully accepted into Korean society and because adoption was not promoted as being desired by the Korean authorities (Lieberthal 2007).

After the initial period of post-war international adoptions in South Korea, adoptions from that country have continued to the present even though various characteristics of international adoptions of Korean children have changed notably.

The United States domestic adoption agencies that expanded their services to include the facilitation of international adoptions and the development of adoption agencies in sending countries have undoubtedly changed the dynamics in the international adoptions process. Such organized processes of arranging international adoptions began in 1955 when private adoption agencies began offering their services in South Korea (Lieberthal 2007). The number of adoptions from South Korea to the United States has only increased during the following decades, largely due to continuing presence of American adoption agencies and their facilitation (Lieberthal 2007).
The sociodemographic characteristics of the children adopted from South Korea from the beginning of international adoptions to present show a significant change as well. In the period until 1970, 90 percent of adopted children were biracial and orphans (Freundlich and Lieberthal 2000). However, between 1970 and 1980, only half of adopted children were orphans and the other half represented children born out of wedlock (Freundlich and Lieberthal 2000). Biracialism, a factor that greatly contributed to stigmatization and was one of the decisive factors in the initial international adoptions in South Korea, was no longer a determining factor in international adoptions later on. Instead, just the fact that the children were orphans or born out of wedlock was enough to qualify them for such adoptions (Freundlich and Lieberthal 2000).

These indicators clearly show that upward social mobility has been an element of international adoptions since the beginning of this process in the United States. Biracial children in Korea possessed a very low social status. The Korean government was extremely unfavorable to Koreans adopting these orphans. Therefore, these children were facing institutionalized life without a decent chance of social advancement throughout their life because of the way they were perceived in Korean society. Certainly, the conditions were justifiable for large scale international adoptions.

Arguably, upward social mobility is present in domestic as well as international adoptions. Orphans generally belong to a low class, whether it is in the United States or in other countries. Institutionalized orphans' prospects are lower than those of children who live with their families in every society, including the United States. There are several reasons for that. Institutionalized orphans generally possess less social capital as
well as economic capital and therefore, their placement in society is constrained to a lower class. Also, because of their lack of capital, their potential for upward social movement is considerably limited. Adoption then functions as an instant capital infusion, and as a consequence, children move upward on the social scale. In the case of domestic adoption, social mobility is viewed within the society to which the child belongs.

However, in the case of international adoption, children are brought from one society to another and therefore the children’s mobility has to be viewed in a different way. The question therefore, is how did the children’s status change relatively to the status they possessed in their home society? Also, it is important to consider what their potential social mobility would have been in the country of origin. The answer to these questions will in the vast majority of cases be that upward social movement occurs in the process of such adoptions and that the potential for social mobility of orphans is extremely bad in their country of origin. So, are these considerations acting as guiding principles behind questionable international adoptions in the United States? One study pointed to a belief by some Americans “that ‘nothing could be more humane . . . than to remove seemingly unwanted, even discarded children from what appear to be lives of misery’” (Perry 2006). Considering the broad discretion that judges have when applying the “best interest of the child” standard and the problems with immigration law enforcement in the United States, vertical social transition of internationally adopted children appears to function as an important variable. That is particularly the case when the sending country does not have any regulations or does not have sufficient regulations on international adoptions or is unable to enforce them properly.
A parallel to international adoptions seems to exist in the context of adoptions of Native American children in the United States that shows similar characteristics of the application of the “best interest of the child” standard as can be noticed in the case of Marshallese children. Examining the adoption framework of Native American children, Lazarus noted that “[t]oday, the best interest of the child standard affords judges and child-welfare agencies broad discretion, such that each case is to be decided on its own merits” (1997:281). However, Lazarus claims that the historical application of the standard which minimized the importance of the child’s identity and culture is still so ingrained and prevalent that “that removal and placement of First Nations children from their families and culture appears natural, necessary, and legitimate” (1997:281). Further, “[i]n evaluating the best interest of the child, courts generally view the child apart from the context of her family, community, and culture (Lazarus 1997:281). Therefore, the courts tend to “look into the future” and “forget the past” when applying the “best interest of the child” standard. Such approach by judges is obviously problematic. It is arguably not in the children’s best interest have their future considered outside of the context of their families of origin and all the possible benefits that come with that. Also importantly, it is specifically in contravention of international law and policy regarding international adoption.

In the case of South Korea, upward social movement of orphans adopted internationally was represented by escaping the underclass that biracial children represented in their home country, where this physical characteristic served as a factor significantly limiting their social advancement as did the fact that being an orphan was
already a negative determinative factor. However, at the same time Korean children
adopted in the United States also received a long term family environment which they
were extremely unlikely to receive in Korea due to stigma and unwillingness of Koreans
to adopt such orphans as well as the policy in Korea which discouraged domestic
adoptions of such children. South Korea remains one of the most important sending
countries in the current international adoptions field (United States Department of State
2007c). Over 70% of 120,000 internationally adopted children from South Korea were
adopted in the United States since 1955 (Selman 2000). This indicates another important
classic characteristic of international adoption. Once the process of adoption from a certain
country becomes an organized activity it is unlikely that the numbers of adopted children
will significantly decline or that the adoptions will stop given the same demand in the
receiving country, absent some critical interventions, such as a change in laws or policy
in sending countries.

During the course of the six decades of international adoption in the United
States, many attributes of international adaption have significantly changed. Sending
countries have changed in terms of the numbers of children that they send (United States
Department of State 2007c). Further, some countries have become sending countries
while some have ceased to be such (United States Department of State 2007c). Also,
prospective adoptive parents today widely perceive international adoption as a viable
alternative to domestic adoption. To a great extent, United States adoption laws
regulating domestic adoptions are responsible for the fact that prospective adoptive
parents look abroad in the present (Kleiman 1997). While some people perceive that
there are not enough adoptable children in the United States due to various factors such as destigmatization of single parenthood and the increase in abortion and consequently, because fewer children are given up for adoption and prospective parents therefore have to look to international adoption as an alternative; the situation is not exactly that straightforward (Kleiman 1997). Kleiman largely dismisses these speculations and claims “that there is no shortage of American children who need permanent homes” (1997:334). Rather, Kleiman asserts that it is “a shortage of healthy white infants” which is really the issue (1997:334). That is not to imply that white adoptive parents are not willing to adopt transracially but rather that domestic adoption policies in the United States heavily disfavor transracial adoption (Kleiman 1997). Therefore, inability of prospective parents to adopt children transracially functions as one of the important deterrents of domestic adoptions. The data arguably confirms this assertion as most international adoptions are in fact transracial (Selman 2000). Further, domestic adoptions in the United States are “lengthy and costly, and the criteria for adoption are stringent. Many prospective parents are disqualified because of their age, financial status, or marital status” (Hora 2002:1020).

The available data on orphans in the United States and children in foster care also show support of Kleiman’s claims. In 1995, the number of children in foster care in the United States exceeded 494,000 and was double the number of children in foster care in 1982 (Kleiman 1997). The number further increased during the following decade and there were approximately 514,000 children in foster care in the United States on September 30, 2005 (United States Department of Health and Human Services 2007b).
The trend of the number of children in foster care for the period between 1998 and 2002 shows a fluctuation and a slow decrease (United States Department of Health and Human Services 2007a). Nonetheless, the number of children in foster care in 2005 is still significant. Specifically, it is hard to make an argument that there are not enough parentless children in the United States. There are, however, other factors which divert a number of prospective parents from considering to adopt within the United States and to look to international adoptions as an attractive alternative.

One significant problem is that “[b]ecause of the increased recognition of birth parents' rights, some prospective parents fear adopting an American child on the grounds that it might subsequently be taken away from them” (Hora 2002:1020-21). The “best interest of the child” standard that courts employ when considering domestic adoptions heavily favors the relationship of children with their biological parents (Kleiman 1997). As a consequence, domestic adoptions are often problematic because the children can be taken away from the adoptive parents and placed back with their biological parents even after a significant bond has been formed between the adoptive parents and children (Kleiman 1997). Many prospective parents are reluctant to adopt children domestically as a consequence. International adoption is a very attractive alternative because such problems are generally not present. Once the child is brought to the United States, the adoption is generally quickly finalized in a United States court because the biological parents are not in the United States. Therefore, closure is instant and the new family can then function without fear that it will be disintegrated.
Access to international adoption has also significantly changed. The development of modern technology is one of the determining factors behind the modern day process of international adoption. Such changes have caused the functional parts of international adoption environment to become significantly more interconnected and consequently, international adoption became much more viable to prospective adoptive parents as an alternative to domestic adoption. Among such technological changes that probably have the strongest impact on international adoption are air travel and internet. Today, there is an abundant amount of information available to prospective parents because the internet functions as a “virtual marketplace” (Burk 1998:948). Adoption agencies use the internet to advertise themselves and available children. Further, such websites provide detailed information on how to adopt a child internationally. Therefore, prospective adoptive parents are able to choose children from a number of available sending countries, age and sex of children, as well as ethnicity.

Further, air travel, which has become relatively cheap and enables quick access to practically any part of the world, results in easy physical access to children for adoption. These advances have created an environment which is ideal for international adoption for a variety of reasons. Prospective adoptive parents can find children they would like to adopt from the comfort of their homes. When they are ready to bring the child home they can quickly fly to any destination in the world and bring the child home relatively quickly and inexpensively. Therefore, the technological advances can explain, at least partially, the numerical increase in international adoption in the United States because the effort involved in adopting internationally does not substantially exceed the effort to adopt.
domestically in terms of locating an adoptable child and bringing the child home. However, these technological advances probably cannot answer why particular countries are more desirable than others. The reason for that is simple. Any information can be easily distributed via the internet. Also, flying to practically any country in the world is relatively cheap and quick. Globalization and the technological advances have also contributed to a creation of social networks which are much stronger because of the technological advances and the information is relayed within them much faster than that used to be the case in the past. Such social networks can contribute to a particular country becoming a popular sending country very quickly.

Finally, political, social and legal conditions have strongly impacted the process of international adoption. Such conditions have changed numerous times and to varying degrees on countries’ national levels as well as on an international level. Political changes are clearly apparent when examining the changing identity of top sending countries in the process of international adoption in the past fifteen years. The change in political climate enabled adoptions from countries which were off limits during the cold war, including the Russian Federation, China and Romania (Selman 2000). These three countries quickly became top sending countries (Selman 2000). Clearly, the period following 1990 has become a new era in the process of international adoptions as indicated in a surge in numbers and expansion of adoption to the large number of sending states. An overview of these numbers offers instant clues as to how the above enumerated factors affected international adoptions in the United States in the past 15 years.
CHAPTER 3

OVERVIEW OF THE CURRENT TRENDS IN THE INTERNATIONAL ADOPTION PROCESS

Changes in the Numbers of Adopted Children

It is important to understand the general international adoption trends before examining the specific property of international adoption in RMI, Russia and China. The first obvious change when looking at international adoption is that the number of adopted children per year has increased significantly over the past 15 years for which the data is available by the United States Department of State. Precise data on international adoption is extremely scarce and has not improved significantly in the recent years despite the Hague Adoption Convention providing that data collection should be systematic (Selman 2000). The most reliable source for determination of how many children are adopted internationally in the United States is the State Department information on the number of orphan visas issued to prospective adoptive parents. An orphan visa is a document that the United States Citizenship and Immigration Services (USCIS) requires prospective adoptive parents to obtain before going and bringing the children to the United States (United States Department of State 2007a). Therefore, the fact that the visa was issued does not necessarily mean that it was used. It is rather unlikely, however, that any significant number of people would go through the trouble and expense of obtaining a visa and not adopting a child. Consequently, the number of issued orphan visas likely represents the actual number of legally internationally adopted children quite well. Also, there are probably a certain number of children that are
smuggled to the United States and adopted, however, it is impossible to know how common such adoptions are. The examination of the trend of international adoption reveals that the numbers have been on the steady increase for the period for which the State Department made the information available. Specifically, the overall number of international adoptions has been on an increase. Numbers for specific countries vary widely and countries have entered and exited the top twenty list of sending countries during the period under review.

The data are available for the top twenty sending countries from 1990 until 2006. Also, the cumulative numbers for all international adoption every year from 1990 until 2006 are provided. Just a glance at the cumulative number shows that the trend has been an increase in international adoptions during the period from 1990 and 2006. While there were 7,093 orphan visas issued in 1990, there were 20,679 orphan visas issued in 2006, almost a threefold increase (United States Department of State 2007c).

A legitimate question is, to what this increase is attributable? Certainly, it would be helpful to examine the numbers for the period preceding 1990 and see what the trend was during those years. Arguably, it is expected that the numbers would increase somewhat due to the continuous rise in the world population, however, the level of increase in international adoption in the United States is such that other factors will likely be important. Such viable factors include technological advancements including mass air transportation and the internet which have contributed to a significant expansion of social networks and accessibility of any location of the world from any location in the world. The steadily increasing number of internationally adopted children in the United States is
important for the matter under discussion because it indicates that the demand for internationally adoptable children has only grown during the past decade and a half. Therefore, it is important that the availability of children for international adoption stays at the current levels in order to satisfy the market demand.

Identity of Sending Countries

The makeup of the top twenty countries has changed visibly during the period from 1990 and 2006. A look at the top sending countries in 2006 clearly shows this change. China has been a top sending country since 1999, with 6,493 children adopted from there in 2006 (United States Department of State 2007c). However, in 1990, China was not even in the top twenty sending countries and in 1991, only 61 orphan visas were issued for children from China (United States Department of State 2007c). Russia has ranked as one of the top three sending countries during the period between 1993 and 2006 (United States Department of State 2007c). On the other hand, Russia, just like China, was not in the top twenty either in 1990 and appeared in the top twenty sending countries in 1992 with 324 orphan visas issued for the children from Russia (United States Department of State 2007c). There are some other countries currently in the top twenty that have experienced similar trends. It is undisputable that the fact that some of the top sending countries like China and Russia have entered the list in the 1990s is attributable to political changes and attitudes. However, previously mentioned factors, like the internet and accessible air travel have arguably contributed significantly to this surge. Finally, favorable treatment of such adoptions by the United States judges who
finalize such adoptions ultimately shaped the international adoption process into a viable alternative to domestic adoptions as it exists today.

![Graph showing Immigrant Visas Issued to Orphans Coming to the U.S. During Fiscal Years 1990 - 2006]


Various changes in social and political attributes in sending countries can have significant effects on international adoption. Domestic laws in sending countries can legalize such child adoption and open the country to prospective adoptive parents from abroad. However, governments can also implement laws that ban international adoption altogether or impose certain restrictions on the process. Domestic law and policy changes regarding international adoption are unpredictable and can occur in any sending country at any time and as a consequence change the environment of international adoption which has to adjust to such changes.
An example of visible changes in a sending country can be found in Romania. Romania became a significant sending country after the fall of the Ceausescu regime when about 30,000 Romanian children were internationally adopted (Ryan 2006). Orphanages in Romania were overcrowded as a consequence of Ceausescu’s policy which prohibited contraception and required every woman to give birth to at least five children (Ryan 2006). Therefore, initially Romania became one of the top sending countries, however, the Romanian government eventually prohibited foreign adoption of Romanian children because of the media exposure of the awful state of Romanian orphanages (Ryan 2006). That occurred despite the fact that crowded orphanages remain a problem in Romania and foreign adoption could alleviate the situation, political reasons prevented such adoption to continue. This is an indicator that availability of children for international adoptions is not directly related to the number of institutionalized orphans in the countries of origin but depends heavily on other factors, such as politics and regulation.
CHAPTER 4

INTERNATIONAL LAW AND POLICY ON INTERNATIONAL ADOPTION

International law and policy that addresses children’s rights and specifically considerations regarding international adoption are essential for examination of international adoption. There are several reasons for that. First, international law and policy represent the consensus of states on the issue of international adoption. Second, it is necessary to examine whether international adoptions conform to the laws and standards provided in international forums, such as the United Nations and the Hague Conference on Private International Law. Finally, it is important to determine whether the existing law and policy adequately protects children in various contexts of international adoptions.

An important aspect of international adoption relates to the children’s human rights. There are only a few bodies of law that pertain directly to children’s human rights and even fewer that relate to children’s rights in the context of international adoptions. Actually, the children’s rights in general were not really the focus of the early international human rights bodies. One expert on international human rights noted that, “[c]hildren are human and have human rights, but the International Bill of Rights has treated them largely as ‘appendages’, and mentions them only occasionally and incidentally” (Henkin et al. 1999:1216). The International Bill of Rights consists of the International Covenant on Social and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

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The International Covenant on Social and Political Rights specifically addresses children’s rights in two Articles. Article 23(4) identifies children’s rights in the event of the dissolution of the parents’ marriage. Further, Article 24 provides that each child shall have “the right to such measures of protection as required by his status as a minor, on the part of his family, society and the State”, that every child shall have a name and the right to a nationality (International Covenant on Social and Political Rights Article 24).

The International Covenant on Economic, Social, and Cultural Rights addresses children’s rights in three Articles. Article 10(3) provides that children should be protected from economic and social exploitation, specifically focusing on child labor. Article 12(2)(a) provides that stillbirth rate and infant mortality should be reduced, as well as that healthy development of children should be sought. Finally, Article 13 provides that every child should be allowed access to education.

The rights of the children in the International Bill of Rights, which was adopted in 1966, therefore identify some important areas of concern regarding children, however, they are also vague in many respects and not specifically helpful when considering the problems of international adoptions. Consequently, potential enforcement of the rights was even more problematic. The specifics of legal aspects regarding international adoptions were left to domestic laws of the states, which are parties to the Covenants. This is also a cause for concern. Whereas the United States ratified the International Covenant on Civil and Political Rights in 1992, when the United States Senate gave its consent with numerous reservations, the Senate has yet to consent to the International Covenant on Economic, Social and Cultural Rights.
Convention on the Rights of the Child

The first international body of law that focuses specifically on the rights of the children and is binding on the state parties finally came in 1989 when the United Nations General Assembly promulgated the Convention on the Rights of the Child (CRC). The majority of the states agreed that protection of children's rights was of utmost importance and has ratified the Convention. Currently, 192 states are parties to the Convention. Sadly, the United States and Somalia are the only two countries members of the United Nations left to ratify the Convention.

There are several important provisions in the Convention on the Rights of the Child that are relevant to considerations of international adoptions. These provisions can be divided into two groups. The first group includes the provisions which relate directly to the process of international adoptions. The second group consists of the general provisions regarding children's rights, however, they are highly important when considering the big picture of international adoptions.

CRC outlines the criteria that the State Party must consider in order to assure that the adoption process benefits the children (CRC Article 21 1989). Adoption of any kind, whether domestic or international must, “[e]nsure 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.”
consent to the adoption on the basis of such counseling as may be necessary” (CRC Article 21(a) 1989).

Further, CRC provides that the parties to the Convention shall, “[r]ecognize that inter-country adoption may be considered as an alternative means of child’s care, if the child cannot be placed in foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin” (CRC Article 21(b) 1989). CRC considers of the utmost importance an effort to have the child remain in the country of birth. Whereas the above provision acknowledges a possibility of international adoption in case all other alternatives fail, it emphasizes that the other alternatives must be considered before international adoption becomes a viable option. These alternatives include domestic adoption as the best alternative to the birth family, foster care as the second best option and domestic institutional care as the least desired option, however, arguably still preferred to international adoption.

The hierarchy of alternatives to children’s birth family environment mentioned above is further emphasized in the description of the requirements which lay out the basis for protection of orphaned or abandoned children. CRC provides that, “[a] child temporarily or permanently deprived of his or her family environment, or in whose best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance by the State” (CRC Article 20(1) 1989). Further, CRC provides that, “[s]tate Parties shall in accordance with their national laws ensure alternative care for such a child” (CRC Article 20(2) 1989). The potential alternatives of such care are also stated in CRC which provides that, “[s]uch care could include, inter alia, foster
placement, *Kafala* of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child’s ethnic, religious, cultural and linguistic background” (CRC Article 20(3) 1989).

The inclusion of consideration for the child's ethnic, religious, cultural and linguistic background in the provision that concerns the alternatives to the child's family environment shows a great concern of nations around the world that children if at all possible receive exposure to their cultural background. Consequently, there is a strong preference for the child's placement within the framework of domestic alternatives. The fulfillment of ethnic, religious, cultural and linguistic background requirements is generally problematic in the context of international adoption. However, arguably in the majority of cases the benefits that internationally adopted children enjoy within the new family environment far outweigh such cultural considerations. Particularly, when institutionalized children receive barely enough nutrition and attention to keep them alive, it is hard to argue about the cultural, ethnic, religious and linguistic benefits that they will be deprived when adopted in a foreign country. Basic human rights clearly are more important than other considerations when the state is either not capable or not willing to provide the children with adequate living conditions.

Additionally, CRC provides that the states must, “[e]nsure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption” (CRC Article 21(c) 1989). Finally, CRC requires that the state parties, “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” (CRC Article 21(d) 1989).

Therefore, CRC became a significant legal body concerning children’s rights in general as well as in the context of international adoptions. Henkin stated that “[t]he Convention on the Rights of the Child recognizes children as human beings of young age with their own rights, including rights independent of those of parents and family, even rights against parents and family not to be abused and neglected. The new century has much to learn and do for, the child” (1999:1216). The next significant development regarding children’s rights in the ever growing area of international adoptions was the Hague Adoption Convention.

Convention on Protection of Children and Co-operation in Respect of International Adoption (Hague Adoption Convention)

The first international body of law dealing specifically with this sensitive issue and binding on the member parties was created only in 1993 despite tens of thousands of international adoptions taking place worldwide following World War II. This most important and specifically relevant international body of law regarding international adoption is the Hague Adoption Convention which was approved by 66 nations on May 29, 1993 in The Hague. The international community clearly acted to adopt the Hague Adoption Convention in response to the surge in international adoption in the early 1990s.

The Hague Adoption Convention embodies a number of positive elements regarding the way the countries should control international adoptions. The Convention aimed at significantly increasing the involvement of member states in the international
adoption as more active entities (Hague Adoption Convention 1993). The reason for that is that before the Convention was created international adoption generally largely escaped country oversight which in turn contributed to a significant presence of abuse, such as child trafficking. One of the major important provisions of the Hague Adoption Convention is the requirement that each member state creates a Central Authority within the state which would oversee that the Convention is properly implemented (Hague Adoption Convention 1993).

There are several clearly embodied international policy elements in the Hague Adoption Convention. First, the Convention recognizes the importance of children staying with their family of origin (Hague Adoption Convention 1993). Second, there is recognition of the importance of children growing up in a family environment and, there is an acknowledgement that international adoption can serve as an important vehicle for establishing a family for orphaned children in foreign countries when there is not an appropriate family that would take the children in the country of origin (Hague Adoption Convention 1993). This is a major policy shift from the previous preference for children staying in the country of origin even when institutionalization and foster care were the only options, which was embodied in CRC.

Third, there is an acknowledgement of a need for greatly increased oversight of international adoption by sending as well as receiving countries and also that only cooperation of countries on this issue can result in properly conducted international adoption. Therefore, the Convention provides that it is essential that the countries make
certain that the best interest of the child and basic children's rights are primary considerations when international adoptions are carried out.

This section will examine the implications of these important policy elements of the Hague Adoption Convention. The first public policy element is the preference for children growing up in a family environment. This concern had not previously been thought to be the paramount consideration when possible solutions for orphaned children within the country of origin were looked at. As mentioned previously, CRC provided a preference or foster care and even institutionalized care in the country of the child's origin over international adoption. The main reasons behind this preference were considerations of ethnic, linguistic, religious and cultural background. The main problem with putting the emphasis on these considerations was that children's basic rights suffered as a consequence. The political climate of the pre-1990s period also presented state attitudes largely against international adoption. Governments of countries with large orphan populations feared that they would be perceived as inferior if they were perceived as unable to take care of their orphans if international adoptions existed which remains an issue today (Chadwick 1999). Also, political differences between the prospective sending countries and the prospective receiving countries have kept the channels of international adoption closed. Specifically, the former communist countries in great part maintained such attitudes and large scale international adoptions from those countries were nonexistent. The Hague Adoption Convention therefore presented a major international public policy shift by acknowledging that the benefits of the family environment outweigh the non-family or non-permanent family alternatives such as
institutionalization of orphaned children and foster care even when the family environment is established through international adoption to the detriment of cultural background considerations.

The second policy element is the preference for children growing up with their family of origin (Hague Adoption Convention Article 4). The Hague Adoption Convention requires, for the first time, that the sending state's authorities determine whether the child who is considered for adoption is in fact adoptable (Hague Adoption Convention Article 4). This provision is very important because the state becomes responsible in assuring that only children who meet specific criteria are considered for adoption. This consideration is also relevant to state members' immigration issues. Such concerns are applicable in the context of international adoptions in the United States. Immigration restrictions in the United States forbid immigration of children as economic immigrants. Allowing children who do not meet international adoption criteria be adopted internationally could therefore, in fact serve as a vehicle for avoiding immigration restrictions imposed by countries, including the United States, through the adoption process, particularly in the context of extended families, where family members already in the receiving state could adopt family members still in the sending state.

The Hague Adoption Convention further provides that placement of children within the country of origin should be given strong consideration before international adoption is considered as an option (Hague Adoption Convention 1993). This provision puts pressure on the sending or prospective sending countries to actively seek to enable domestic adoptions whenever possible. Countries are therefore obligated to provide
proper domestic adoption infrastructures and certify that a child in fact is not adoptable domestically before the child is adopted internationally. As will be illustrated later, sending countries have generally disregarded this provision or have not been able to properly implement it. At the same time, there has been no indication that receiving countries have expressed any objections to approving such adoptions where there is evidence that domestic adoptions would be a viable option.

The United States signed the Hague Adoption Convention on March 31, 1994 (United States Department of State 2007b). Subsequently, President Bill Clinton in 1998 submitted the Convention to the United States Senate for comment and advice for ratification (United States Department of State 2007c). In September of 2000, Congress passed the legislation for the implementation of the Convention, the International Adoption Act of 2000 (United States Department of State 2007c). However, in 2007 the United States still has not passed all necessary regulations needed for accession of the United States to the Convention. Therefore, the United States still is not a party to the Convention. The United States is in the minority of 17 member states of the Hague Conference on the Private International Law that has not yet become a party to the Hague Adoption Convention (Hague Conference on the Private International Law 2007). This United States status is not surprising though, considering that the United States also has not yet ratified either CRC or the International Covenant on Economic, Social and Political Rights.

With the policy rationales and the requirements provided by the listed international bodies of law relevant to international adoption in mind, specific conditions
in RMI, Russia and China can be examined. While it is important to consider how the processes function within the sending countries, it is equally important to examine the situation in the receiving state, the United States in this case. While international adoption is essentially a private international law process, it ultimately functions as a process of interaction between two states because the countries can exert extremely powerful control on the process. Therefore, it is important to see how much the sending country contributes to the outcomes and compare that to the contribution of the receiving state. Specifically, when the sending country fails to properly enforce the restrictions on international adoption or is not capable to do so even when it so intends, the receiving country can step in and intervene when there is objective evidence that international adoptions do not comport to the internationally recognized standards. Therefore, the paper will further examine the situation regarding international adoption looking at the specific interactions of the United States with RMI, China and Russia and determine how these international adoptions measure up to the international standards. The emphasis of the examination will be on RMI and its problematic international adoption experience with the United States.
CHAPTER 5

RUSSIAN FEDERATION (RUSSIA)

As noted in the general overview of the adoption trends, the numbers for international adoption of children from Russia in the United States became significant in the early 1990s and have continued to grow until the present. It is not surprising that the numbers were relatively low before the 1990s. The sole most important reason for that is the political relationship between the United States and Russia (the Soviet Union). Russia was a country closed to the West and its citizens were not able to freely travel to the United States. Further, Russian government’s ideological views conflicted with those of the United States government and consequently, the Russian government had no interest in either acknowledging that its orphan situation was problematic or having Russian children live in the United States. The fall of communism and the subsequent warming of political relations between the United States and Russia enabled the beginning of international adoption of institutionalized Russian children who have been living in inhumane conditions and due to Russia’s inability to properly take care of its orphans in institutions such adoptions began to rise in numbers (Selman 2000).

Precise information on the numbers of Russian orphans and their situation is not available. Certainly, it is not in the interest of Russian government to project to the international community how incapable it is to create a solution for the children living in evidently inappropriate conditions and contrary to international agreements on children’s rights to which Russia is a member. The most comprehensive report on the state of
Russian orphans as well as their numbers is the Human Rights Watch (HRW), a non-profit, non-governmental organization’s 1998 report entitled “Abandoned to the State: Cruelty and Neglect in Russian Orphanages.” The reported numbers of orphaned children and trends in Russia are shocking. HRW reported in 1998 that over 100,000 children were abandoned and taken into state care every year in the two year period preceding 1998 which indicated a marked increase (HRW 1998). More than 600,000 children in 1998 lived without their parents of which over 330,000 lived in orphanages according to UNICEF and over 200,000 according to a Russian expert, while the rest lived in foster care (HRW 1998). Further, UNICEF has identified that approximately 95% of the children abandoned in the post-1991 period in Russia have at least one parent who is alive which makes these children de facto “social orphans” (HRW 1998:19).

The high number of social orphans in Russia is due to poverty which forced many parents to abandon their children to state institutions (Steltzner 2003). Some children end up in orphanages because their parents are unable to take care of them for reasons such as financial inability or alcohol and drug dependency (HRW 1998). What is more problematic, however, is that parents of children with physical or mental disabilities face routine encouragement by health professionals to give up their children to institutionalized care, often even before bringing the children home after birth (HRW 1998). The latter systemic practice is exceptionally questionable on many levels. First, taking children from families in order to institutionalize them when the parents would otherwise take care of them is contrary to international public policy. As mentioned, international instruments on children’s rights, including CRC and Hague Adoption
Convention recognize the importance of living in a long term family environment for children’s wellbeing. Therefore, such practice by Russian healthcare providers unnecessarily creates orphans out of children who could live with their biological parents. Adoption of such children in the United States is further problematic in view of the United States’ courts preference for awarding custody to biological parents when applying the “best interest of the child” standard.

Second, such institutionalization is extremely negative for disabled children because they are in fact pushed onto a path of neglect and abuse. HRW reported that children with physical and mental disabilities faced the most horrible prospects compared to healthy children (HRW 1998). While both healthy children and children with physical and mental disabilities faced various forms of neglect and abuse, healthy children were entered into a system of education and could expect a home and a job at the age of 18 (HRW 1998). Children with severe physical and mental disabilities on the other hand would regularly face extreme neglect such as being confined into “lying-down rooms”, where they were kept permanently and isolated from contact with adults HRW 1998:27). Such treatment of children with disabilities is a continuation of the Soviet policy to keep children with disability separated from the rest of society and therefore, make an impression that disability does not exist in Russian society (Mental Disability Rights International 1999).

As indicated by various international human rights organizations, such atrocious actions by the Russian government created a perilous situation for an immense number of children with disabilities. Further, such treatment of orphans created a system which
offers the orphans very little hope for an improvement of their status in the future. Child abuse is the best term to describe the outcome of Russian policies regarding children with disabilities as well as other orphans.

Of course, violation of internationally agreed standards on children’s wellbeing as well as international law and agreements that Russia signed occurred at the same time. HRW addressed a long list of rights that Russian orphans have had violated (HRW 1998). These include: the right to a family, arbitrary deprivation of liberty, the child’s right to development, the right to life, the right to health, the right to education (HRW 1998). Further, the children have suffered cruel, inhuman or degrading treatment and torture, physical abuse, psychological abuse, and have not been able to take advantage of efficient grievance procedures (HRW 1998). Additionally, Russian treatment of its orphans violates a number of Russian laws and provides monetary fines and imprisonment, however, enforcement of such laws has clearly not been efficient (HRW 1998).

HRW, which is an organization that is essentially interested in global respect for human rights, has recommended that international adoption be a component of a comprehensive solution for Russian orphans (HRW 1998). Commentators which have cautioned on the pitfalls of international adoptions have proposed a number of valid concerns which should necessarily be considered when evaluating international adoption as a possible solution for a large orphan population which faces ongoing neglect and abuse and bleak prospects (Blair 2005). One of the most discussed issues has been the problem of market principles guiding the area of international adoptions (Bhabha 2004).
Further cross-cultural considerations are among such concerns (Wallace 2003).

Undeniably, orphans adopted abroad will generally not be afforded the same degree of exposure to the culture of their country of birth. The same is, however, undoubtedly the fact with the children of most immigrant children even when they do live with their birth parents. It is practically impossible to replicate an environment of one country in another country.

However, with the advances in technology and globalization it is certainly not impossible to enable the child a significant exposure to the culture of their birth country. The internet enables the children and the adoptive parents’ access to the news, music, and video as well as religious and cultural materials from the children’s native country. Further, due to fairly cheap air travel, it is possible to travel to the children’s country of birth relatively easily. Also, the children can expect to gain significant knowledge of their native culture even when they are raised abroad with the adoptive parents who do not share their national background.

Additionally, it is hard to imagine that Russia could find a magical solution for such large number of orphans domestically in a very short time. Not only would the policy regarding treatment of children with disabilities as well as treatment of other orphans have to radically change, a significant number of willing prospective adoptive parents would have to step forward in order to deinstitutionalize all orphaned children. A significant change in a complex bureaucracy, such as the one in Russia, is usually an intricate process that takes a significant amount of time. That is generally the case even when the parties in the position capable of making such changes which would establish a
comprehensive reform of domestic adoptions in Russia. Therefore, the approach which favors international adoption as an important part of the short term solution appears reasonable. Russia has not shown to be capable presently to implement a working domestic solution for its orphan situation (Chadwick 1999). Consequently, the argument for international adoption is even stronger. At the same time Russia has been positive about the international adoption process and has not imposed arbitrary moratoria on such adoptions (Chadwick 1999).

There are several reasons why international adoptions of Russian children are a very sensible solution, even if only a short term one. First, international adoption is the most viable solution for offering at least a percentage of the overwhelming number of Russian orphans a long term family environment. That way children so adopted receive basic children’s rights that they deserve according to international law and policy and escape the environment of neglect and abuse. Between the beginning of fiscal year 1992 and the end of fiscal year 2006, the United States citizens have adopted 49,511 Russian orphans (United States Department of State 2007c). This is a significant number. While there are still numerous children in Russian orphanages, it is undeniable that almost 50,000 children that have gained a long term family with all of the benefits and that have escaped institutionalization and grim future is an important application of internationally recognized children’s rights.

Second, while it can be argued that social movement is one of the defining characteristics of international adoptions involving Russian orphans, it cannot be reasonably disputed that children’s rights in question do not override the social
movement considerations. Vertical social movement is undeniably a strong component
of international adoptions of Russian children in the United States, particularly when
considering that 95% of children in Russian orphanages are social orphans. The facts
that so many of these orphans are social orphans poses questions regarding their
immigration to the United States as economic immigrants as well as their possible
reunification with their living biological parents. The problem, however, is that in the
absence of a comprehensive overhaul of Russian welfare system which would enable the
parents to take care of the children that they had given up in the first place because of
their inability to do so, it is absurd to expect that these children will likely be reunified
with their biological parents. At the same time, it is more than obviously implied by the
Russian authorities’ response to criticism of their treatment of orphans that the Russian
government is not interested in implementing any significant changes.

Therefore, because it is in the “best interest of the child” to live in a long term
family environment and free of neglect and abuse, it follows that international adoptions
serve as an important temporary solution for Russia’s orphan problem. The relief from
violations of children’s rights that Russian orphans benefit when they are adopted in the
United States arguably then functions as a stronger consideration than vertical social
movement experienced by these children. Consequently, it makes sense for the judges in
the United States when applying the “best interest of the child” standard to Russian
orphans to attribute a considerable amount of weight to relief from violations of
children’s rights and the benefit of long term family environment over the social
movement consideration coupled with the fact that the majority of these children are
Only when Russia begins acting like it wants to offer a comprehensive domestic solution for the problems that orphans face can the judges in the United States consider that Russian orphans should not be adopted by American parents because it would not be in their “best interest” under the international law and policy.

Fortunately, as mentioned previously, Russia has so far been very open to United States adoption of its orphans. While it is important for a government to know when to limit or even stop international adoptions when systemic abuses in the process of such adoptions are present, it is just as important for a government to realize when to allow them. The situation in Russia is very clearly such that favors such adoptions. Certainly, there are caveats even when international adoptions appear to be entirely positive. Specifically, when there is a significant orphan problem in any country that is an indication that the government is probably not doing something right. The history of Russian treatment of orphans, particularly those with mental and physical disabilities testifies that the misguided policies and approach to orphans has developed into a crisis over a significant period of time after WWII. Therefore, concerns embodied in CRC and Hague Adoption Convention that relate to the states’ obligations to properly address domestic issues, particularly access to domestic adoptions, must certainly be considered even when international adoptions appear not to be problematic.

One could further make an argument that widespread international adoptions can induce the parents in the sending country to abandon their children at a greater rate counting on the fact that the children will be adopted in a wealthier country such as the United States and have a better future there (Wallace 2003). Also, while almost fifty
thousand adoptions of Russian orphans in the United States saved these children from orphanages, the majority of those children who have been exposed to the most neglect and abuse, the orphans with physical and mental disabilities, have remained in Russian orphanages because “most adoptive parents are unable or unwilling to care for a physically- or mentally-challenged child and will not adopt a child if they have prior knowledge of any deficit.” (Steltzner 2003:133).

Even more, some adoptive parents have even filed lawsuits against adoption agencies for misrepresentation when they discovered in the United States that a child they adopted has a physical or mental disability while others have sought to dissolve adoption decrees (Steltzner 2003). Therefore, while the importance of international adoption of Russian orphans should not be minimized, it should be noted that all such adoptions are not guided primarily by humanitarian motives or adoptive parents would accept the children the way they are and not resort to abhorrent lawsuits because the children did not meet their expectations.

Despite these concerns, it is encouraging that Russia has maintained a positive attitude toward international adoptions and that they have not imposed a moratorium like Romania did (Wallace 2003). In Romania there has not been a visible or successful effort to find a solution, neither is a comprehensive solution likely to work; and therefore, international adoption could serve and in fact did serve as a viable way to save at least some children from the orphanages. When international adoptions began in Romania in 1990s, Romania quickly became the top sending country in the United States with 2,954 children being adopted from Romania in 1991 (United States Department of State 51
Arguably, the Romanian situation is comparatively worse than Russian because it has neither implemented a comprehensive overhaul of its orphanages or its domestic adoption system nor does it allow international adoptions. As a consequence, Romanian orphans neither have a good domestic or international alternative. Therefore, it is positive that Russia has not resorted to such actions and has allowed that orphans have an option of reintegration into a long term family through the process of international adoption.

It is important that the Russian government has closely followed the international adoption process and has regulated it during the past fifteen years. Russia has even shown preference for adoption of its children in the Hague Adoption Convention member states (Selman 2000). At the same time, it is interesting to notice that although that Russian government is concerned with the wellbeing of orphans in the process of international adoption, and at the same time it has tolerated indescribable neglect and abuse of the same orphans within its country for decades. This can be at least partially attributed to the increasing trends of international adoptions in Russia. This proposition can be supported by a consideration of one commentator which stated that “[i]nternational adoption as a solution, however, only addresses the immediate problems of orphaned and abandoned children. The practice of international adoption itself overlooks, and in some cases may even exacerbate, the underlying causes that have produced such high numbers of orphaned and abandoned children” (Wallace 2003). Therefore, while Russia is favorable to international adoptions it may be less motivated to overhaul its system of orphan care, domestic adoptions and policies regarding orphan
treatment. Consequently, orphan population in Russia may further increase and not experience an improvement in conditions also due to international adoptions. Nonetheless, it would be unreasonable to conclude that international adoptions should be discontinued because of such adverse effects. As indicated, international adoptions involving Russian orphans have relieved tens of thousands of children from systematic abuse and neglect and have offered them a long term family environment which is something that Russia was unable to provide for these children. Rather, international pressure on Russia to follow the recommendations of HRW which provide detailed suggestions relating to necessary changes that Russia must undertake in order to achieve treatment of orphans that will be in line with international law and policies.
CHAPTER 6

CHINA

Like Russia, China quickly became one of the most important sending countries in the 1990s (United States Department of State 2007c). Also, China’s orphanage crisis was revealed to the world when the country opened up more during that time, showing more than one million orphans institutionalized in Chinese orphanages (Dillon 2003). Like Russia, China has had a large orphan population for a long period of time. Also like Russia, obtaining official information regarding China’s orphan population is extremely hard and HRW’s report entitled “Death by Default; A Policy of Fatal neglect in China’s Orphanages” functions as a valuable source of information.

China has possessed an organized institution structure for the care of orphans for over a hundred years (HRW 1996). Following World War II, the Ministry of Civil Affairs took over the care for orphans in China that were privately run prior to that (HRW 1996). However, during the decades of care under the Ministry of Civil Affairs, Chinese orphans did not receive proper attention and care, starting right after the Communists took control of China (HRW 1996). The Ministry of Civil Affairs focused predominantly on securing work for retired military personnel and subsequently, “the care of indigent civilians [was] given the lowest priority among the aims of civil work” (HRW 1996:22).

Human Rights Watch further indicated that “[t]he historical record clearly shows that the Chinese authorities have consistently made only token efforts at sheltering those in need of institutional care” (HRW 1996:23). The Communist government made an
effort to systematically dismantle the orphanage system as it existed in pre-revolution China (HRW 1996). Orphanages in Communist China right from the takeover functioned as institutions which housed orphaned children together with adults, many of them criminals (HRW 1996). Therefore, it is evident that it was China’s conscious ideologically driven effort to change everything that resembled pre-Communist organizations and its lack of effort to properly address the situation as it deteriorated over time led to probably the most disastrous orphan crisis in human history.

The dramatic increase in China’s orphan population in the last decades of the 20th Century is largely attributable to China’s “one child” policy which was implemented in 1979 (Kimball 2005). The “one child” policy has had several grave consequences for Chinese society. Cultural preferences for male children specifically influenced a high number of parents to secure that the one allowed child they have is male (Kimball 2005). First, the number of sex selective abortions and infanticides has exploded in China because of this policy. Second, China’s male to female ratio has increased visibly and is now 1.15 to 1.00 (Kaiser Network 2006). The male to female ratio in China was 1.11 to 1.00 in 1980 (Kaiser Network 2006). Such demographic changes over time can cause significant problems to Chinese society. China’s orphanages have become overcrowded with girls because males were preferred to females when couples were only allowed one child (Kimball 2005).

China’s family policies also created a situation in which domestic adoption ceased to be a feasible solution for the numbers of children in orphanages. Also, the Chinese government’s policy on domestic adoption was not very positive. Only couples without
children were allowed to adopt, while couples who had children already were prohibited from doing so. Further, while the “one child” policy has worsened the situation of Chinese orphans, HRW reported that Chinese orphans have suffered “the pattern of cruelty, abuse, and malign neglect which has dominated child welfare work in China since the early 1950s, and which now constitutes one of the country’s gravest human rights problems” (HRW 1996:1). Therefore, the political climate change in the early 1990s opened the door for an important humanitarian intervention for the institutionalized orphaned children in China, a large new source of adoptable children for prospective adoptive parents in the United States. However, at the same time the increasing trend of international adoptions in China functioned as a way for Chinese authorities to ostensibly alleviate the problematic situation in its orphanages. Consequently, China did not feel urged to scratch the surface and properly restructure its approach to orphans and its domestic adoptions. While the solution offered by international adoption is neither ideal not comprehensive, as is the case in Russia, it is also a good start for a significant number of children institutionalized in orphanages that offer very little hope to them, as well as fail to guarantee their children’s rights.

International adoptions of children from Chinese orphanages have, to a large extent, functioned as a life saving process and in every way a process that has been in line with international conventions relating to wellbeing of children as well as with generally accepted standards of child wellbeing.

First, international adoption has served as a life saving process because of the phenomenally high mortality rate in Chinese orphanages. Human Rights Watch reported
that in 1989, an overall national mortality rate in Chinese orphanages was over 24.9% and the death to admission ratio in Chinese orphanages was over 57.9% (HRW 1996). These numbers indicate that orphans institutionalized in China faced imminent death as a serious possibility.

Second, international adoption has served as a process which enabled children from Chinese orphanages to live a life according to the internationally provided and accepted children’s rights, including proper nutrition, love, and education because children in Chinese orphanages have suffered a systemic exposure to malnutrition, neglect, and abuse (HRW 1996). Interestingly, orphanages in China received adequate funding and should have been able to provide proper nutrition and care for the children, however, the situation has not been such (HRW 1996). Likely, at least to some extent, Chinese government’s non-action regarding punishing the perpetrators of these children’s rights abusers, despite its knowledge of the situation in orphanages, is responsible for the fact that the situation has not improved and just kept getting worse.

Considering all the above stated issues regarding orphanages in China in the context of social mobility and international law and policy on children’s rights and international adoption, similar results as in the case of Russia are evident. Because of the mortality rates in Chinese orphanages, upward social mobility could be considered a rather trivial aspect of international adoptions because survival of children dying at such unbelievable rates is really what is important. There has been criticism of international adoption on the grounds that the “flow [of children into the process of international adoption] is sustained by trafficking, coercive or fraudulent practices, or the displacement
of domestic adopters” (Blair, 2005). These concerns deserve to be addressed in more detail. First, displacement of domestic adopter may certainly be the issue in some countries, however, it is not by any means the major problem concerning international adoption. China is an example where international adoptions in fact have yielded domestic adoption to some extent. Nonetheless, it is primarily the Chinese government’s policy and laws that restrict domestic adoptions and not the process of international adoption itself. Chinese government passed legislation restricting domestic adoptions and favoring international adoptions. Specifically, international adoption legislation in China has been criticized because the national adoption law which China passed in 1991 provided that Chinese couples can only adopt orphans if they do not have any children and are older than 35 (Blair, 2005).

Therefore, in the context the balancing that American judges must make when applying the “best interest of the child” standard when considering the mortality rate and conditions in China’s orphanages and China’s disrespect of international laws and policy in its management of orphanages and administration of domestic adoptions, the conclusion has to be similar as in the case of Russia. First, China’s treatment of orphans has violated numerous provisions of CRC and other international legal documents and therefore the fact that tens of thousand Chinese orphans have been accepted into a long term family environment, freed from violation of children’s rights and offered a decent future provides a significant justification for international adoptions.

Second, while it can be argued that the United States perpetuates the Chinese treatment of domestic adoptions as the requirements are less stringent for foreign
adopters than are for domestic ones by finalizing adoptions of Chinese children, such argument is rather weak considering the circumstances. The fact is, that if China wanted to restructure its domestic adoption system in order to deinstitutionalize a larger number of its orphans it could have done so even in the absence of the recent international adoptions of Chinese children in the United States. It is evident that China does not want to do so. Chinese authorities evidently prefer that as many of these orphans as possible leave China. It is also a stronger argument that if American judges chose not to finalize adoptions of Chinese orphans it would follow that the United States is more actively participating in children's rights violations. While it can technically be said that the United States is doing so by finalizing such adoptions currently since China consequently maintains the status quo which the United States cannot directly control because it is a domestic issue of China, it is obvious that by denying such adoptions the United States would arguably participate in neglect, abuse and even death of these children because it could have saved them considering the rates of neglect, abuse and death.

While the same restrictions applied to foreign adoptions of Chinese children, the argument is that in the international context the application of the rules was not as strict (Blair 2005). Certainly, this argument could be valid if there was in fact such a demand for domestic adoptions of Chinese orphans that the international adoption process was interfering with the domestic process because that would effectively contradict the Hague Adoption Convention's requirement for preference given to domestic adoptions.

However, the trends of adoptions of Chinese orphans in the United States do not clearly indicate such a situation. Even assuming that age restrictions were not enforced
in the international adoption context and were strictly enforced in the domestic adoption context, this does not per se mean that the international adoption process is displacing the domestic adoptions in China. First of all, it may mean that there are enough orphans in China to satisfy the demand of domestic as well as international adoption. If that was in fact the case, there would be no violation of the Hague Adoption Convention. The numbers reported by HRW certainly indicate that such is the case. Next, it would be surprising that the same restrictive policy that prevented the Chinese to have more than one or two children would at the same time create an explosion in orphans and an insatiable demand for orphans by prospective domestic adoptive parents. It is an important consideration that the Hague Adoption Convention as well as CRC provide that while it is preferred that the orphan is adopted domestically whenever possible it is also crucial that the basic children's rights are satisfied. When the children in orphanages face a one in four chance of dying in a year after being placed in an orphanage as infants, clearly, international adoption arguably presents to be a valid channel to prevent such basic violations of children's rights from happening. The argument that the policy needs to be changed to guarantee that domestic adoptions are properly conducted and that prospective adoptive parents are given a proper opportunity to adopt is definitely a valid one. However, policy and law implementation usually takes time and it is unreasonable to consider a preference to expose orphans to high mortality rates in orphanages as well as neglect and abuse when there are existing opportunities for placing these children with long term families. It would make more sense to keep the international adoption process
going until such policy and law can in fact be implemented effectively and change the international adoption process subsequently.

The problem of trafficking, coercive or fraudulent practice in international adoption has not been indicated in China as a systemic issue (Blair 2005). However, it has been indicated that the income generated by international adoptions in China has in fact restrained the development of domestic adoptions (Blair 2005). Such an argument is a valid concern. One of the great issues that the process of international adoption potentially creates is the restriction in domestic adoption. Further, international adoption can affect not only the process of domestic adoptions, but also general governmental policy regarding orphans and approaches to solving the problems related to orphans. It is a valid policy concern to prevent the children from becoming orphans in the first place. China’s “one child” policy is one that contributes to the constant flow of abandoned children. Therefore, a successful international adoption process can function to alleviate the problems related to orphans and therefore discourage the Chinese government to seek solutions to prevent that children are abandoned in the first place. Also, the government can avoid properly addressing and correcting the situation in its orphanages if the process of international adoptions takes attention away from the orphanages and creates an impression that orphans can expect to be adopted.

Finally, successful international adoptions can encourage people to abandon their children because they can, rightfully or not, hope that their children will be adopted by United States citizens. Such abandonment would create a conscious effort for upward social mobility of orphans in China or elsewhere. While it is hard to know to what extent
such abandonment currently occurs, it would not be surprising if it was a significant number. People generally possess a limited amount of information and just knowing that some Chinese children are adopted by Americans every year could cause people to abandon theirs hoping for the same result. Of course, the problem is that the institutionalization of orphans and the neglect and abuse that they potentially face while institutionalized before they are potentially adopted by Americans may not be included in the equation of social mobility that people abandoning such children would consider.
CHAPTER 7

REPUBLIC OF THE MARSHALL ISLANDS

Arguably, the most problematic and questionable international adoption situation in the United States developed in a sending country with specifically strong ties with the United States, the Republic of the Marshall Islands. While it is virtually impossible to know the overall number of Marshallese international adoptions in the United States due to the special circumstances regarding travel between the countries, even small numbers of inappropriate child adoptions involving the RMI is important because of the RMI’s small population size. The evaluation of international adoptions of Marshallese children in the United States warrants a deeper examination of the Marshallese culture and its now sixty year old relationship with the United States. Russia and China have been independent countries with their governments implementing their choices of economies and social policies. However, the RMI has been deeply influenced by the United States at almost every level of society and therefore, these outcomes will be addressed before the adoptions themselves are examined.

The RMI is comprised of 29 coral atolls, made up of five larger islands and numerous small islets (Embassy of the Republic of the Marshall Islands 2007). It is located in the Northern Pacific Ocean about half-way between Hawai‘i and Australia with Majuro as the capital (Embassy of the Republic of the Marshall Islands 2007). The entire land area for all of the RMI is about equivalent to that of Washington D.C. and the highest point is only 10 meters above sea level (Embassy of the Republic of the Marshall Islands 2007).
Islands 2007). Of the 60,422 residents of the RMI by 2006 estimates, 38.1% are under the age of 14 and the median age overall is 20.3 (Central Intelligence Agency 2007). Since the RMI has very few natural resources, it is not surprising that there are far more imports than exports. The few items exported include copra (dried coconut meat), fish, and crafts (Central Intelligence Agency 2007). The majority of agriculture is subsistence production (Central Intelligence Agency 2007). Tourism also plays a small part in the economy although less than 10% of the work force is in the tourism industry. Overall, there is about a 30.9% unemployment rate according to 2000 estimates, which is extremely high compared to developed countries (Central Intelligence Agency 2007).

Interestingly, for a country which by all standards can only be described as a developing nation, 93.7% of Marshallese are literate (Central Intelligence Agency 2007).

The relationship between the RMI and the United States goes back to WWII and has been problematic on many levels from the very beginning. The United States acquired its control over the Marshall Islands when Japan was defeated at the end of WWII (Embassy of the Republic of the Marshall Islands 2007). Only one year later, the US military had evacuated Bikini Atoll to begin the notorious nuclear testing there (Embassy of the Republic of the Marshall Islands 2007). The United States was granted trusteeship over the RMI in 1947 (Embassy of the Republic of the Marshall Islands 2007). In 1948, during the Trust Territory phase, the testing was expanded to Enewetak as well and four years later the first hydrogen bomb was tested (Embassy of the Republic of the Marshall Islands 2007).
These tests had a devastating effect on the Marshallese environment and people. Some of the hydrogen bombs were estimated to be 750 times more powerful than the bomb dropped on Hiroshima (Embassy of the Republic of the Marshall Islands 2007). In fact, on Bikini atoll, the United States detonated its strongest hydrogen bomb it had ever tested (Embassy of the Republic of the Marshall Islands 2007). Testing continued and the area of contamination widened so more atolls were evacuated. However, some atolls were not evacuated because the United States maintained that they were not particularly unsafe due to marginal contamination. Despite that assertion, materialization of radiation-related illnesses and defects that appeared in the Marshallese population in the years following the experiments testified to a different reality than the one portrayed by the United States (Embassy of the Republic of the Marshall Islands 2007).

During the mid-1960s, cancer cases began to appear among Marshallese from atolls and islands near former testing sites at a high rate (Embassy of the Republic of the Marshall Islands 2007). During the 1960s and 1970s, several cases were brought to the US government and the Marshallese people demanded testing to ensure that contaminated islands were safe to return to (Embassy of the Republic of the Marshall Islands 2007). Bikini particularly was called into question when the US government claims it was safe to return and then some years later found that water supplies and other natural resources were actually unsafe (Embassy of the Republic of Marshall Islands 2007). After several lawsuits, the US pledged to clean the contaminated areas. Several millions of dollars were also granted to individuals that suffered as a direct cause of the testing (Embassy of the Republic of Marshall Islands 2007). Obviously; this catastrophic
and irreversible period in the Marshall Island's history remains a reality for the people of the RMI today.

In 1983 the Marshallese voted for the Compact of Free Association (COFA) and the United States Congress approved it in 1986 (Embassy of the Republic of the Marshall Islands 2007). The COFA granted the RMI sovereignty and guaranteed the RMI aid and defense by the United States (Embassy of the Republic of the Marshall Islands 2007). However, the COFA also provided for a continued United States military presence in the RMI (Embassy of the Republic of the Marshall Islands 2007). The part of the COFA that proved extremely important in the case of American adoptions of Marshallese children is that the Marshallese were granted the unrestricted right to enter the United States as non-immigrants and seek employment (The Compact of Free Association Section 141). The Trusteeship status was terminated by the United Nations in 1990 and in 1991 the RMI joined the United Nations (Embassy of the Republic of the Marshall Islands 2007). Although independent, the RMI still spent many more years discovering new thyroid cancer cases among their population as a result of the nuclear testing and battled the US for retribution (Embassy of the Republic of the Marshall Islands 2007).

The tumultuous history of the RMI has heavily influenced the Marshallese people within every aspect of their lives. Their social structure, culture, and health were all negatively impacted because of the continued occupation of their land by foreigners for hundreds of years (McMurray 2001). Specifically, the American presence has proven to be overwhelmingly detrimental because it changed Marshallese society the most radically (McMurray 2001). McMurray also notes that Marshallese society experienced more
significant contacts and consequently a more drastic change induced by the United States than the Federated States of Micronesia and Palau (2001). This may explain at least to some extent why the RMI experienced such high rates of international adoptions in the United States while that did not occur in the Federated States of Micronesia and Palau even though all three countries are the COFA members.

The traditional Marshallese culture dating back for hundreds of years is still very significant in the modern RMI. In fact, traditional roles still define the status in Marshallese society. Specifically, traditional social organization is important in terms of social mobility or lack thereof because, “[l]and is a focal point for social organization in this island nation” (Embassy of the Republic of the Marshall Islands 2007). Marshallese possess rights to land according to their status in a clan (Marshall Islands Embassy 2007). The structure of a clan is divided in iroij, a clan chief, alap, a clan head and rijerbal, workers (Embassy of the Republic of the Marshall Islands 2007). The iroij control the land and its use. In fact, the RMI has remained the most connected to the chief system of all of Micronesia and is the only place where the chiefs retained their land (Hezel 2001). However, market economy which severely affected the traditional Marshallese subsistence economy also affected the way the Marshallese relate to the land today (Hezel 2001). This economic shift is well described in one Marshallese official’s statement who said that, “[o]nce people said that they belonged to the land; now they say that the land belongs to them” (Hezel 2001).

Marshallese are matrilineal which means they derive their clans or lineage from their mothers (Hezel 2001). Extended family traditionally lived on a sort of compound
together with dwellings surrounding a strip called *upaj* which was a central food preparation area (Hezel 2001). The entire clan functioned as a single productive unit and shared all food together as well as other resources (Hezel 2001). Nuclear families generally shared a single room together within the clan compound (Hezel 2001). The culture had strong beliefs (and mostly still do) about spirits and ghosts and therefore sleeping in one room ensured that nobody was ever alone to fall prey to an evil spirit (Hezel 2001). In general, the Marshallese shunned being alone at any point because of these factors as well as the strong ties they had within their clans and lineages (Hezel 2001).

In a nation with relatively few natural resources, children were seen as the most valuable resource a person could have and that they should be shared among the clan (Walsh 1999). Such adoptions functioned to “address issues of sterility, inheritance, labor, and family size” while also performed a function of “economic mobility, the formation of socio-political alliances, community solidarity, and the redistribution of property” (Walsh 1999:8). Therefore such adoptions functioned to “expand a resource based, or strengthen preexisting bonds” (Walsh 1999:9). Such traditional adoptions were so common that many sources report that most children had at least one set of adoptive parents, if not more (Walsh 1999). Also, adoptions entailed that the children could return to their biological parents if there was abuse or neglect or when they opted to do so when they were older (Hezel 2001).

Traditional concepts of child care away from biological parents distinguished between adoption and foster care. Children who were given into the care of relatives in
their maternal lineage were considered to have been fostered because they remained in the lineage (Hezel 2001). However, those children that were cared for outside of their lineage were considered to be adopted out (Hezel 2001). In Marshallese adoptions, children were cared for by their adoptive parents but biological parents were still involved and maintain parental rights (Hezel 2001). In some cases, the child had even two or three sets of adoptive parents and lived part-time with each set as well as with the biological parents (Hezel 2001). Essentially, the adoption never gave exclusive rights to make decisions about the child’s well-being (Hezel 2001). Rather, the rights to making parental decisions were extended from the biological parents to also include the adoptive parents (Hezel 2001). Adoptions were beneficial to adoptive parents as well as children. Adoptive parents were granted the benefit of future care, while the children were given care and would eventually inherit the property of their adoptive parents (Hezel 2001). Therefore, it was a symbiotic relationship.

The concept of sharing children was so ingrained in Marshallese culture that most parents expected that they would not raise their own biologic children entirely on their own if the need emerged to give their children up for adoption (Hezel 2001). Adoptions were very rarely done because of neglect or abandonment but rather because of generosity to adults without children as a valuable resource (Hezel 2001). The entire system assured that nobody, young or old, was left uncared for or alone at any time in their life. Collectivism was a guiding principle in Marshallese society.

During the 1960s, two major things happened to influence a drastic change in the lives of Marshallese people. The first is that, despite a long period of outside influence
placed upon their people, it was only during this time that the islands felt the impact of a
global economy. Cash economy severely affected Marshallese subsistence economy
(Hezel 2001). Hezel argues that "[t]hese changes created fissures in the traditional
extended family that widened in time until the single household, with the nuclear family
at its core, overshadowed the extended family and became the basic social unit"
(2001:14). There was a huge shift from family members jointly supporting their clans
with small farms and fishing to an individual worker’s earning in order to provide for his
immediate family (Hezel 2001). The reason for this was "a dramatic increase in
urbanization and the abandonment of traditional lifestyles by almost 70 per cent of the
population" (McMurray 2001:104): People moved to the cities to experience in an effort
to change their lifestyle as well as access to prepared food (McMurray 2001). However,
there were scarce employment opportunities and American aid money was essentially
controlled by the iroij (McMurray 2001). As a consequence, the majority of people
became marginalized in the process and "they were removed from the means to practise
subsistence agriculture, living in crowded and unsanitary conditions, frequently poor,
having access to an inadequate diet and little or no opportunity to exercise, and drinking
alcohol and smoking tobacco to relieve stress and boredom" (McMurray 2001:104). This
shift primarily took the extended family and slowly started to pull it apart. There became
a decreased dependence on the strong unity within extended family and the nuclear
family became more responsible for take care of its members alone (Hezel 2001). This
has proven to be a heavy burden for many people because employment opportunities are
scarce in the RMI as is indicated by the RMI’s high unemployment rate.
In 1959, the sale of alcohol was introduced to the Marshall Islands by the United States (Hezel 2001). The combination of added stress and responsibility to provide for their families on their own and alcohol proved to influence the dramatic rise in alcoholism and domestic violence rates. In the old system, the oldest brother was responsible for his sisters until they married (Hezel 2001). If, after getting married, she came to him and said she was abused by her husband, the brother could take her back to his house and declare her no longer married to her husband (Hezel 2001). The decline of the extended family along with church marriages becoming the norm and less protection was available for the increasing number of abused women. The high rate of alcohol consumption is also thought to be a factor in the increase in suicide rates particularly among young men in the Marshall Islands.

As part of the rise of the nuclear family and the modern western culture adopted into Marshallese life, work roles changed. While most men began to feel the strain of being the sole earner in the new wage labor economy, their manual labor load was reduced (Hezel 2001). Whereas they used to gather and plant all the food, build canoes and houses, dig cooking pits, and fish, now they purchase boats, food and hire builders (Hezel 2001). However, the women maintain the same level of responsibility as always. They still generally do the cooking, cleaning, laundry and child-rearing (Hezel 2001). In fact, women's household tasks have also grown to include some jobs formerly assigned to men.

In the late 1990s, an unprecedented international adoption surge involving Marshallese children adopted in the United States occurred. The information involving
figures and background involving these adoptions is extremely scarce. Traditionally, the iroij have controlled every resource in Marshallese society (McMurray 2001).

Information is generally imperfect in the RMI, as it transforms from a chiefly-dominated society to a mass democracy. Consequently, in order to evaluate the propositions, this examination will rely mainly on two papers that contain the relevant data. One is written by anthropologist Julie Walsh and is entitled “Adoption and Agency: American Adoptions of Marshallese Children.” It evaluates the historical relationship between the United States and RMI and sees it as a basis for the development of adoptions of Marshallese children in the United States. The other is written by professor, lawyer and social worker Jini Roby and is entitled “If I Give You My Child, Aren’t We Family? A Study of Birthmothers Participating in Marshall Islands – United States Adoptions.” This paper is based on interviews with 73 mothers who relinquished their children and looks at specific reasons behind their decisions. It is the most comprehensive insight into the reasons for giving up children for adoption involving the RMI. It is also the only paper on the RMI adoptions that provides any statistics regarding the natural mothers’ decisions to give up their children. Both papers present valuable information obtained by the writers who spent time in the RMI and have significantly interacted with the Marshallese.

In the period between 1990 and 1997, fewer than 20 Marshallese children were adopted by Americans but in 1998, over 60 had been adopted by year’s end (Walsh 1999). In fact, the international adoption process was revealed to the American public somewhat by coincidence. Julianne Walsh, who had been living in the RMI and working at the Marshallese Museum in the end of the 1990s began to notice that more American
couples were visiting the one room museum she helped to maintain (Walsh 1999). After learning from them that they came to the RMI to finalize adoptions and get children to bring back to the United States, she started collecting data on the numbers of adoptions that took place in the RMI (Walsh 1999). During that same period, the RMI government became aware of the alarming increase of external adoptions (Walsh 1999).

There are several factors which made it appealing for Americans to adopt Marshallese children. Because of the COFA and its visa-free entry rights for Marshallese, there was less hassle for adoptive parents than adopting from other foreign countries where bureaucratic red tape may cost thousands of dollars and take months to get through (Walsh 1999). Adoptions of Marshallese children were also less risky for adopting parents than the United States domestic adoptions. That is because in the United States domestic adoptions biological parents retain the right to ask for the child back for months after the child is placed with the adoptive parents (Wambaugh 1999). The other initial attraction to the RMI was its complete lack of regulation and adoption laws (Walsh 1999). Essentially, American adoption agencies and lawyers only needed to find children to be placed and then come and pick them up and bring them to the United States.

The other purported reason that RMI adoptions were so easy was because of the cultural factors (Walsh 1999). With local facilitators on the main islands of Majuro and Ebeye to recruit pregnant women and parents of young children, United States adoption agencies and lawyers basically started what can arguably be described as human trafficking of Marshallese children. Facilitators were usually Marshallese that were older
women and often affiliated with local churches (Walsh 1999). Therefore, they held a position of respect within the community. Eventually, however, the Secretary of Health and Education realized that Marshallese children were being taken from the hospital in the RMI to Hawai‘i for the purpose of adoption (Walsh 1999). The Secretary began corresponding with the RMI Attorney General, who acknowledged that there were no regulations in place regarding international adoptions of Marshallese children (Walsh 1999). The Office of the Attorney General eventually recommended criminalizing solicitation of mothers and children for international adoptions (Walsh 1999). Such practices eventually were criminalized in the Adoptions Act of 2002 which the Nitijela of the Marshall Islands passed on November 11, 2002 which will be discussed in more detail later in the paper (Adoptions Act 2002).

The main question here is why the United States administration and judges have not responded by scrutinizing adoptions of Marshallese children immediately when the information of serious improprieties became known. The relationship between the United States and the RMI certainly allowed the United States government to quickly respond and implement necessary regulations and procedures to prevent problematic adoptions from happening.

Nonetheless, the initial response of the RMI government was a moratorium on all foreign adoptions of Marshallese children in 1999 (Walsh 1999). However, a new trend quickly developed in reaction to the moratorium. It was during this time that ‘facilitators’ recruited pregnant women to come to Hawai‘i and deliver their babies in the United States in order to avoid the moratorium that the RMI put on international
adoptions until new regulations could be created (Perez 2003). Generally, women were between seven and eight months pregnant when they were brought to Hawai‘i and were instructed by the adoption agencies to obtain Medicaid coverage (Perez 2003). This resulted in the taxpayers paying for their health care instead of the adoption agencies which pocketed large fees for facilitation of these adoptions, charging adoptive parents up to $30,000 for a child (Perez 2003).

American adoption agencies employed local people to find children for adoption and to facilitate such adoptions (Walsh 1999). The use of the local facilitators shows enough of an understanding of Marshallese culture on the part of the United States agencies to imply the intent to manipulate young parents. Although the matrilineal nature of the culture has changed somewhat since the 1960s, the authority that the extended family has over younger people in the RMI makes it difficult for parents to decline giving up their children even when they really do not want to (Walsh 1999). Also, the highly held value of generosity has always been an important part of the Marshallese system.

Jini Roby, who was asked by the RMI government to come to RMI and evaluate the international adoptions in the RMI as well as provide recommendations for legislation, reported that during her study a Marshallese woman confided in her that she felt so ashamed and greedy for not wanting to give her 4-year-old son up for foreign adoption (Roby 2003). She said that a woman (facilitator) had approached her and told her she was selfish for keeping him when some couples had no children and she already had several of her own (Roby 2003). This tactic of coercion has proven to be very
common and particularly successful among young pregnant single women whom are convinced they can not offer as much to their children as an American couple could.

Another factor showing that agencies used facilitators by manipulating cultural factors to be used to their advantage is that most adoptions are advertised as open adoptions, meaning that it was implied that there would be ongoing contact between the natural parents and the adopted child, which misleads Marshallese into thinking they are similar in rights and responsibilities as a Marshallese traditional adoptions (Roby 2003). Roby’s survey of 73 birth mothers revealed that a startling 82.2% of women had believed that their children would return to the RMI at age 18, educated and healthy and able to provide for their family (Roby 2003). The majority of the women said they believed this because someone from the adoption agency had promised them that or because the adoptive parents themselves promised to do so (Roby 2003).

Many of American families that adopted RMI children can be regarded as ignorant to the situation of exploitation of Marshallese society in the area of international adoption. As mentioned previously, the majority arguably thought that they were only helping the children by saving them from a developing country and bringing them to the United States. Agencies told them how the living conditions are so terrible in the RMI that the children are being raised without proper healthcare or education. In reality, there has not been any significant organization of Americans willing to help the RMI resolve some of these problems by donating money or assisting humanitarian efforts. The families did not realize that the reason they were able to adopt easily, sometimes getting a child in as little as a week, or between one third and one half cheaper then in other
countries such as Russia, and China, could cause long-lasting negative impacts on the entire society of the RMI. In fact, when Marshallese began to look for adoptive families in the United States on their own, it became more validation for the agencies and families here that what they were doing was not wrong.

It is an interesting consideration why Marshallese themselves in the process turned to the United States adoptions. Walsh argued that perhaps when the COFA was due to expire in 2000, people scrambled to do what, in their view, made sense within the context of the traditional Marshallese culture (1999). They sought to extend their children’s birthrights to another family (Walsh 1999). This meant that, in their minds, while the child would maintain all of its Marshallese rights and land from his biological parents' families, they would have United States citizenship, education and ties in the RMI as well (Walsh 1999). Reality, however, is that the majority of these children are not likely to return. This misunderstanding of the different form that adoption takes in the United States, where parental rights are transferred to new parents rather than shared among families, remains bewildering to Marshallese of all social and educational levels to this day (Roby 2003). When Roby spoke with a class of professionals at the College of Marshall Islands about the concept of parental rights being severed by a judge and given to adoptive parents, she said the students appeared dumbfounded to the concept and even asked “how anyone could ‘undo’ something that was an unchangeable fact of life, by virtue of the blood tie between parent and child?” (Roby 2003:24). Further, she stated that “[i]t was simply a concept that was never considered as a possibility. Once they
finally understood, there was a sense of outrage and a deep sense of powerlessness over
how to convince others that this ‘legal fiction’ is true in America” (Roby 2003:24).

As the data will show, however, upward vertical social mobility likely played an
important role in decisions of Marshallese parents to give up their children for adoption
in the United States. In the eyes of the Marshallese, as in much of the developing world,
the United States is viewed as wealthy, educated, and the land of opportunity (Walsh
1999). Marshallese families felt comfortable knowing that most of the adopting couples
were Christians and they could meet them in person before surrendering the child and
ensure they went to good families. At the insistence of local churches, biological families
were encouraged that this was not only the moral thing to do but also so beneficial to the
child’s future that it would be unconscionable not to do it.

During this time, aside from the United States agencies’ realization of the
opportunity to provide the children with barely any overhead cost (a small fee to the
facilitator), economic factors began to influence the Marshallese families as well.
Whereas traditionally the extended family always represented a viable option for a new
home for a child the nuclear family as the sole supporter of the children strained heavily
on single mothers, widows, and families with many children. The United States families
were seen as a viable option since there was such a drastic decline in the number of
Marshallese willing or able to adopt children from couples in poor economic situations.
Additionally, agencies often rewarded biologic families with ‘gifts’ of either relatively
small amounts of cash or food items. Whereas Neji Johnny, a biological mother recruited
from a bus stop in the RMI, was given $300 to come to Hawai‘i and unknowingly
relinquish the rights to her newborn daughter, facilitators were earning about $2500 per child they recruit out of the $25,000 each adoptive couple gave to an agency in the United States (Roche 2003).

Roby’s findings from the interviews with the biological mothers of the Marshallese children adopted in the United States confirm that economic strain introduced by the societal transformation to nuclear family coupled with cultural factors induced a large percentage of women to give up their children (Roby 2003). Financial reasons were shown to be overwhelmingly strong. As mentioned, 73 women participated in the study which was based on a 64 question interview (Roby 2003). A total of 47 women responded that financial reasons and 42 responded that unemployment were the reasons that they gave their children up for adoption (Roby 2003). Almost 69% expected that they would benefit financially for giving up their children (Roby 2003). Roby reported that “virtually no government programs are available to provide a safety net or temporary substitute care for the children, with the possible exception of basic prenatal health care... Critical services for families, such as cash assistance, supplemental food insurance programs, housing, and utility assistance, are not available” (Roby 2003:16). These data together with the previously noted information on Marshallese perception of the United States as a wealthy place arguably supports the idea that upward vertical social transition was a significant consideration in conducting adoptions of Marshallese children in the United States. Specifically, it appears that the intent of numerous of natural Marshallese parents was to promote their children’s social status and that the child would
obtain the benefits that come with it and then return to the RMI where the extended family would benefit from the children's upward vertical social transition.

Considering the influence of the United States over the RMI and its aid provisions it is apparent that the United States failed to properly assist the families in the RMI and on the other hand approved of economically induced adoptions of Marshallese children in the United States. This situation ultimately occurred as a consequence of social changes in the RMI that were the consequence of American presence and its impact on the ultimate disintegration of the Marshallese extended family system of care. Further, the American judges supported the expectations of Marshallese natural parents by finalizing adoptions of Marshallese children in the United States and in fact guaranteeing their vertical social transition.

It is evident that Marshallese perceived that extended family no longer functioned as an ready option for a traditional adoption because only 39.7% women reported that they considered adoption within the extended family. Even fewer (31.5%) considered domestic non-family adoption as a possible option. Another strong indicator is that over half of the women (53.4%) reported moderate to strong pressure by their extended families to give their children up for adoption.

From 1996-1999, over 500 children were taken from the RMI and placed with American families (Walsh 1999). If broken down to a per capita rate of adoption, it would be the highest in the world. This has made RMI one of the top nations for international adoption along with countries like Russia and China where the populations are in the millions. In the RMI, where the population is about 60,000, that is a sad
commentary on what kind of future they are facing. With a significant portion of its children now essentially severed from its land, language, and culture forever, nobody knows what influence this will have on the future generations in the RMI, not to mention on the adopted children themselves. The economic, social, and psychological implications promise to be vast and inevitable at this point.

As previously mentioned, in 1999, a variety of factors influenced the RMI government to end all international adoptions temporarily. This essentially encouraged a new set of problems to evolve. The facilitators, as noted before, began approaching pregnant women on the streets on Majuro and Ebeye but actually convinced them to go to Hawai‘i before they delivered their babies and then give them up for adoption in the US. This avoided the moratorium, and since the United States at the time had no law against it and therefore the then INS (now USCIS) could not prevent the pregnant Marshallese women from coming to Hawai‘i to give birth there, agencies quickly adjusted to this new system. In a number of cases, women, who because of the Compact, could qualify for public assistance, signed up for healthcare and welfare to pay these costs. Some of the agencies pocketed the adoptive parents’ money anyway.

Women were housed with other pregnant Marshallese women here for the same reason. By some reports, as many as ten or more pregnant women lived in a small apartment together. They were never allowed to leave alone and a ‘translator’ went with them to prenatal visits to ensure no questions about adoption were answered. According to healthcare workers at Kalihi Palama Health Center, a clinic that often gave prenatal care to these women, these translators were presented as ‘aunties’ of the women and
often refused to allow the clinic's Marshallese translator in the room during visits (Kalihi Palama Health Center, Personal Communication).

Eventually, some of the women's stories leaked out and soon after the pregnant women began getting prenatal care elsewhere. There were reports that their passports were being held so they could not leave and that they were coached not to tell anyone at the clinic they were adopting out their baby (Kalihi Palama Health Center, Personal communication). According to a midwife at that clinic, one Marshallese woman said, "I went to find my cousin to tell her not to adopt her baby that she would never see the baby again. All the other pregnant [Marshallese] women at the apartment told me I was crazy and that I should leave. They didn't believe me but my cousin was scared so she came. They still have her passport and we don't know how to get it back. I saw Marshallese women who gave their babies to adopt them and now the women are living in Ala Moana Park because nobody gave them money to fly home. I didn't want that to happen to my cousin" (Kalihi Palama Health Center, Personal Communication). In fact, it had been reported elsewhere that adoption agencies have denied women return tickets to the RMI. The Baltimore Sun article titled "Island Adoption Market Delivers Pain and Profit" reported that, "[a]fter the women deliver, Adoption Choices [a prominent agency] tries to enroll some of the in the federally funded Job Corps program . . . to spare Adoption Choices the cost of flying the birth mother back to the Marshall Islands." (Roche 2003).

One of the most fascinating statistics on international adoption from RMI is the percentage of total population of the RMI adopted in the United States. In 1998 approximately 140 Marshallese children were adopted by American families, which
represented almost 0.28% of the total population of RMI (Walsh, 1999). At the same time, the percentage of total population of Russia adopted in the United States was less than 0.005% and the percentage of total population of China adopted in the United States was approximately 0.001% (Walsh 1999). The RMI percentage of total population adopted internationally is similarly disproportional when other top twenty sending countries are compared to it. It is simply stunning that Marshallese children were outadopted at such a high rate when the RMI did not have any orphanages like China and Russia, did not regulate international adoption in any way unlike China and Russia and had traditionally dealt with distribution of children within its society in a completely different way.

Despite the issues of increasing international adoption in the late 1990s and the beginning of 2000s the RMI still has not ratified the Hague Adoption Convention (Committee on the Rights of the Child 2007). The Committee on the Rights of the child has criticized the RMI regarding this issue has encouraged it to ratify the Hague Adoption Convention (Committee on the Rights of the Child 2007). It is unclear why the RMI has not yet ratified the Hague Adoption Convention, considering that a significant number of Marshallese children were adopted in the United States specifically because of lack of appropriate regulation of international adoption in the RMI in the recent history.

The RMI government did, however, take a number of specific steps to limit the number of children adopted from the RMI and to regulate those adoptions that do occur. As mentioned previously, in the beginning, the Nitijela passed a moratorium on foreign adoption in 1999. The reason that the RMI passed the moratorium was essentially the
sudden increase in international adoption which increased drastically beginning in 1996. While on average seven children per year were adopted from RMI prior to 1996, between 1996 and 1998 approximately 500 children were adopted from RMI in the U.S (Walsh 1999).

The RMI government passed laws regulating foreign adoptions. The RMI passed the Adoptions Act in 2002 and was commended for it by the Committee on the Rights of the Child (Committee on the Rights of the Child 2007). The act aimed to regulate a specific segment of the Marshallese foreign adoption population, specifically, the children located in the RMI (Adoptions Act 2002, Section 2(1)). At the same time, the Adoptions Act failed to address another significant segment, Marshallese children who are born in the United States and subsequently given up for adoption before their mothers return home. The territorial application of the Adoptions Act is therefore problematic because the exclusion of the extraterritorial Marshallese child adoptions represented a significant proportion and therefore, those Marshallese children were left without proper legal protection. Ultimately, Marshallese children born in the United States remained subject to only American laws when they were adopted in the United States.

The Marshallese Adoptions Act also does not provide for retroactive application (Adoptions Act 2002, Section 2(1)(c) and 2(1)(d)). Retroactive application is precluded in the cases where the adoptions had been finalized before the Act took effect as well as in those cases where the adoption proceedings were commenced before the Act came into effect. There is a valid question as to the retroactivity preclusion. While it is true that generally laws do not apply retroactively, there certainly is no legal standard that prevents
a legislative body from passing a law which provides for retroactive legislation. Specifically, laws that provide retroactive application usually address issues which shock the human conscience. The abuse of international as well as domestic laws and disregard of policy relating to the rights of the child and international adoption present in the case of RMI certainly qualify as conscience shocking events. Arguably, retroactive application in this case would be rational in order to provide for the best interest of the child considerations which should have been afforded to these children adopted in the international context in the first place.

There is, however, an explanation for a limitation on retroactive application. The Nitijela certainly understood the limitations in the powers of RMI to enforce its laws. The retroactive application would in reality have had to be extraterritorial application. While the Adoptions Act could have provided for extraterritorial application it is highly unlikely that the United States courts would pay any attention to it. The United States judges would still apply their usual "best interest of the child" analysis without specific considerations to the origins of the children as they have done throughout the years and hundreds of Marshallese adoptions. This would be especially the case with Marshallese children born in the United States because those children are automatically citizens of the United States.

This is where the United States government's involvement in the matter could have helped solving the problem that the judges were either unaware of or unwilling to address. Arguably, the retroactive application would be an unlikely occurrence even in the case the United States government became involved. On the other hand, potential
extraterritorial application of the Adoptions Act of 2002 in coordination with the United States government could have worked.

Because Hawai‘i was identified as a transitory destination for pregnant Marshallese women, a Senate Bill 2607 was introduced in 2002 which would prohibit adoption of Marshallese children in Hawaiʻi unless a “prior written approval from a Marshallese court consenting to the adoption” was presented in Hawaiʻi (Viotti 2004). However, the bill was never passed and the legal process for adoption of Marshallese children in Hawaiʻi is still the same now as it was during the years of the peak years of Marshallese adoptions during the late 1990s. Of course, the problem is also that even if the bill was in fact passed into law, the provisions would only apply to adoption of Marshallese children in Hawaiʻi. Therefore, prospective United States adoptive parents would still be able to adopt Marshallese children in states other than Hawaiʻi.

Congress could have passed legislation providing something along the lines of the provisions that Hawaiʻi’s legislators considered for adoptions of Marshallese children in Hawaiʻi. Such legislation could require consent of the RMI Court whenever a child who has at least one Marshallese parent is adopted in the United States. Such legislation would serve as a mandatory guideline for the American judges. While the judges would still apply the “best interest of the child” standard when considering adoptions of Marshallese children in the United States, they would be precluded to finalize such adoptions when the Marshallese Court would not approve them.

This would serve a multitude of purposes. First, Marshallese laws would be given consideration when processing adoptions of Marshallese children in the United States.
This is specifically important because of the special status that the RMI citizens have in the United States, particularly their visa-free travel to the United States and therefore, the ability to forego the United States immigration laws which apply when children from other countries are adopted internationally in the United States. Second, the RMI Central Adoption Authority would, therefore, in fact be able to consider whether traditional Marshallese adoption is a feasible option and a preferred option to international adoption. Third, this would be in line with international laws and policy on international adoption and the rights of the child. Also, by actively participating in the resolution of the RMI international adoption crisis, the United States would be able at least to partially remedy the situation it had created over the course of the decades of its “rule” in Marshall Islands. The United States presence and interaction with the RMI created a situation that destroyed the traditional subsistence economy in the Marshall Islands without developing a market economy which would be able to properly support the Marshallese society. Also, this economic shift resulted in a breakdown of the traditional Marshallese family structure which in turn diminished the ability of the Marshallese to continue the system of traditional adoptions. The United States, which created the dependence of the RMI on the United States therefore, in this situation miserably failed to act. There was required a fast and significant action and the United States government or courts took none.

The Adoptions Act of 2002 also ordered the creation of the Central Adoption Authority (CAA) within the Ministry of Internal Affairs (Adoptions Act 2002, Section 5). The broad function of CAA was to oversee all adoptions of Marshallese children residing in RMI (Adoptions Act 2002, Section 5 (2)). Specific duties of CAA include serving as a
processing center for all potentially adopted children, investigating why the children are being given up for adoption, serving as a resource center for families, supervising post-adoption conditions and serving as a post-adoptive resource for adoptive parents (Adoptions Act 2002, Section 6).

The CAA also functions as a licensing body for adoption agencies facilitating adoptions of Marshallese children. To date, the CAA has authorized only one adoption agency, named Journeys of the Heart, to perform international adoptions in RMI (The Central Adoption Authority 2007). Upon examining the web page for the CAA conflict of interest is an inevitable concern. The official CAA web page has been created and is maintained by the Journeys of the Heart (The Central Adoption Authority 2007). While this fact in itself does not indicate that any particular irregularities are occurring in the way international adoptions in the RMI are conducted, it is nonetheless an apprehensive picture and at the very least inappropriate. Given the recent history of international adoptions of Marshallese children and the large numbers of abuses that have occurred during the times of these adoptions it is incomprehensible that the Marshallese governmental agency which is in charge of ascertaining that international adoptions are conducted properly, does not give an appearance of an independently and objectively functioning organization. Rather, there is an impression of collusion and fear of ongoing abuse. The CAA, as a licensor, should abstain from mixing its business with its licensee. Especially when there is only one adoption agency that has been licensed by the CAA, the adoption agency and the CAA should function independently and represent themselves to the public as independent organizations.
The Adoptions Act of 2002 further clarifies the issue of controversy which existed during the pre Adoptions Act years of international adoptions involving Marshallese children. The Adoptions Act provides that when the adoption is completed the natural parents lose all responsibilities and rights over the children and at the same time the adoptive parents assume the responsibilities and the rights over the children (Adoptions Act 2002, Section 26). This language clearly indicates that any completed adoptions will technically result in a closed adoption as it is traditionally known in the United States. Consent is required by the Adoptions Act. While the Adoptions Act certainly does not prohibit a relationship between the natural parents and the adoptive parents, it also does not guarantee any such rights to natural parents. Therefore, how open an adoption will in fact be, is essentially up to the adoptive parents as has been the practice in the past. One provision requires that the adoptive parents provide at least one post-adoptive home visit and send the CAA a report within the six months of adoption (Adoptions Act 2002, Section 27). However, it is easy to predict that failure to provide such a report would not result in any consequences to the adoptive parents. At that time, the adoption process is out of the hands of the Marshallese authorities and therefore, it would take the United States judges to act. However, it is unlikely that any American judge would consider such failure in compliance to be sufficient to warrant a removal of the child from custody of the adoptive parents.

The Journeys of the Heart web page provides that when adoptions are procured through this agency the adoptive parents are required to consent to sending pictures and letters to the birth mother of the child at least twice a year (Journeys of the Heart 2007).
Legally, the consequences of noncompliance with such an agreement are crystal clear; there would not be any. As far as the United States courts are concerned, the adoptions are final and birth parents have no rights to their abandoned children. Therefore, it is entirely up to the adoptive parents to adhere to such agreements.

Consequently, Journey of the Hearts’ propaganda of this requirement is misleading to an extent. While the agency requires such an agreement, it is unenforceable and therefore, offers no predictive value. It is really the goodwill of the adoptive parents to comply with this “requirement.” Further, Journeys of the Heart as the only international adoption facilitator in RMI is portraying a misleading picture by stating that “[t]he Republic of Marshall Islands (RMI) Program is unique in the world of international adoption. It combines elements of an international adoption with travel to another country and aspects of a domestic adoption where a relationship with the birth mother and her extended family is developed and maintained” (Journeys of the Hearts, web page).

The Compact of Free Association was also extended in 2003 (Yokwe 2007). The amended the COFA contains provisions aimed at preventing future illegal adoptions of Marshallese children (Yokwe 2007). The new provisions require all Marshallese citizens traveling to the United States to possess a passport and forbids Marshallese citizens from entering the United States with the intention to conduct adoptions of Marshallese in the United States (Yokwe 2007).

While the above mentioned regulations exist, the Central Adoption Authority functions, and a United States adoption agency has been licensed to facilitate adoptions
of Marshallese children in the United States there still remain areas where regulation is necessary in order to secure that the entire adoption process is adequately structured. The picture is still not entirely clear.
CHAPTER 8

CONCLUSIONS

International adoption serves an important function in the global society. It offers an opportunity to children who have lost the benefit of living with their natural families to gain a long term family in a foreign country and escape institutionalization and foster care in their country of origin. International policy and law have adjusted over time to incorporate the preference for children living in a family environment in a foreign country over being institutionalized or in foster care in their home country, therefore acknowledging that growing up in a family environment is of the paramount importance for children’s wellbeing. Prior to the early 1990s, the opposite was the case because ethnic and cultural considerations were viewed as more important.

The old perspective was particularly problematic because children who were institutionalized in orphanages, such as those in China, Russia and Romania, largely lacked even the basic human necessaries such as proper food, clothing and health care. Similarly, their psychological needs were neglected as well because they lacked proper human contact. The institutionalized children were not exposed to the same education or guidance as children who lived with their families. As a result, these institutionalized children at the same time lacked family environment and their ethnic, cultural and religious background was neglected as well. Also, while it will not happen in all cases, some adoptive parents will include the children’s ethnic, cultural and linguistic
background in the child’s upbringing and therefore, satisfy the need for including the child’s background in their upbringing.

Given these considerations, there is clearly a need for adoption of children from China and Russia. Insufficient interest in domestic adoption in these countries, as well as a disinterest in the countries’ government to properly remedy the situation arguably validate international adoption as the most viable short term solution for children in need of a family environment. Certainly, a complex long term solution which would promote domestic deinstitutionalization is necessary to enable all orphans in those countries proper upbringing. On the other hand, it is hardly possible to make an argument that in the case of the RMI, international adoption is the best measure to alleviate the situation.

First, orphanages are nonexistent in the RMI and Marshallese children adopted in the United States are not gaining a family environment they lacked in the RMI because these children always lived with their families and the history in the RMI did not show that these children were in any danger of abandonment. Furthermore, customary adoptions within extended families that have existed in Marshallese society for centuries are better able to fulfill the global policy on children’s rights because the children adopted by the extended family within RMI get the benefits of a family environment as well as ethnic, cultural and religious upbringing. As noted, the international children’s rights instruments heavily favor that the children remain in their country of origin. Therefore, there is a stark contrast between the benefits and the disadvantages that Marshallese children adopted in the United States get compared to children coming from orphanages in China and Russia. Consequently, instead of international adoption,
welfare programs aimed at keeping the children with their nuclear or extended families would be appropriate in the RMI.

Second, while the Marshallese government passed legislation which regulates foreign adoptions of Marshallese children, and established a Central Adoption Authority which oversees and must approve any foreign adoption of Marshallese children these legal solutions have not proven to be completely successful. The problem lies in the special relationship of RMI and the United States. While the COFA enables Marshallese citizens to enjoy some benefits that nationals of other countries do not generally have, such as visa free non-immigrant travel to the United States, in this case this particular benefit has proven to be detrimental to regulation of adoption of Marshallese children in the United States because pregnant mothers and children could be brought to the United States for adoption, bypassing the immigration. Even though the amended COFA prohibits travel to the United States with the intent to give up children for adoption, it is in fact very hard to enforce such provisions. Even though the Marshallese Adoptions Act of 2002 provides criminal penalties in the form of monetary fines and imprisonment for violations of the Act, that has not entirely stopped United States adoptions from the RMI. Therefore, these circumstances warranted a moratorium on finalization of Marshallese adoptions in the United States courts until the United States government ratifies the Hague Adoption Convention.

Further, the adoption process in the United States is still regulated only by individual states. While immigration is regulated by Congress it is a non-factor when Marshallese children and mothers are involved because they can come to the United
States without a visa. Restricting entry of children for adoption from other countries where benefits like those for the Marshallese do not exist is incomparably easier. The Immigration and Nationality Act provides the requirements that adoptable children have to meet before they can be issued an orphan visa. Without the orphan visa they cannot enter the United States and therefore, the process of conducting proper adoptions is generally more scrutinized in the sending countries. This is going to change when the International Adoption Act of 2000 takes effect and the United States accedes to the Hague Adoption Convention. However, presently in the case of the RMI there is not a sufficient legal safeguard for Marshallese children in the United States because American judges apply the “best interest of the child” standard with either insufficient information to make informed decisions or with a bias toward developing countries in giving the upward vertical social mobility component in the adoption the amount of weight which cannot be easily outweighed by other considerations. Also, generalizations from experiences with numerous adoptions from countries such as Russia and China where well documented orphan horror stories obviously justified international adoption could have led the judges in the United States to finalize adoptions of Marshallese children.

Clearly, a comprehensive solution is necessary to create an environment in which international adoptions are conducted properly and in line with international policy and laws. The Hague Adoption Convention provides that an overseeing international adoption body, central adoption authority, is created in both the sending and the receiving state. That is certainly an ideal solution, however, it only applies when both countries, the sending and the receiving one, are parties to the Hague Adoption Convention.
Currently, less than one third of countries in the world are parties to the Convention. This excludes the United States and the RMI. However, due to the fact that the United States is working toward accession to the Hague Adoption Convention, it would be in the RMI’s best interest to ratify the Convention as well because it would apply to both countries in the near future. The RMI established its Central Adoption Authority, however, it can only properly supervise adoptions conducted in the RMI.

It appears, from examining the three countries in this paper that a comprehensive legislation and enforcement in either the sending country or the receiving country could for the large part sufficiently protect the children and their families in the international adoption environment. It is imperative, however, that the country which legislates and enforces the process is capable of doing so and does so consistently. Further, the government of the country which is policing international adoptions must understand that it is a dynamic process which requires constant oversight and adjustment.

It is obvious that the international adoption process of children from China and Russia in the United States is generally in line with international policy and laws. While it is undeniable that Chinese and Russian governments are to a large extent responsible that such large numbers of children are institutionalized and submitted to horrendous conditions in orphanages it is at the same time true that such children are most suitable for international adoption because they are in a need of a family environment which they are unable to obtain in their country of origin. While China finally ratified the Hague Adoption Convention in 2006, Russia still has not done so (Hague Conference on Private International Law 2007). Nonetheless, in the cases of China and Russia, the sending
countries undertook the role of the regulating and enforcing country as far as the adoption part of the process is concerned. Further, the countries are capable and willing to enforce the international adoption regulations that they have set up.

International adoptions of Marshallese children have arguably functioned primarily as a vehicle for upward vertical social mobility. Upward vertical social mobility is an implied and almost invariable element in domestic and international adoptions alike. It is apparent in the form of instant upward vertical social mobility when a child is adopted as well as in the form of increased future potential for social mobility because of the capital that the child gains through the adoption. However, in the context of international adoptions, upward social mobility is not intended to function as the primary factor. Rather, international policy and legal instruments provide that reintegration of institutionalized orphaned children into a long term family is the objective behind international adoptions. This consideration functions on an entirely different level than social mobility. While a reintegration of a child into a long term family generally presents upward social mobility per se, it is not this aspect of living in a family environment that represents international policy and law on children’s rights. Rather, physical and psychological wellbeing of children are the kind of elements that are of concern.

Therefore, international adoptions of children from the RMI in the United States clearly are not based on the same elements as those involving Russian and Chinese children. The data on motivation behind international adoption of Marshallese children showed various reasons, with approximately one third of respondents in one study stating
that better opportunities offered to children in the United States, which is in fact upward vertical social mobility, was the motivating factor behind such adoptions. Other important ones included poor financial situation of the parents in the RMI and unemployment, which really indicate inability to take care of the children rather than calculated attempts at upward social mobility.

Nonetheless, motive is not dispositive when examining the “best interest of the child” as provided by international law as well as United States domestic adoption law, which in case of domestic adoptions heavily favors biological parents. Motive aside, international adoptions of Marshallese children where the main benefiting factor is upward social mobility should be rejected on the basis of public policy considerations. Since the RMI, despite its efforts was not able to completely stop the trend, the United States should have acted and passed legislation as well as enforced the restrictions on foreign adoptions of Marshallese children imposed by the RMI government.

The examples of Russia and China show that international treaties are not always determinative for proper implementation of international adoption. Rather, it is the effort of the countries involved as either sending or receiving countries that matters. If the sending country is capable and willing to regulate and enforce the international adoption area properly it can be sufficient for the adoptions to be conducted. However, when the sending country is not capable of enforcing its intentions and regulations regarding international adoption, as was the case in the RMI, then the burden shifts to the receiving country. The RMI tried to curb international adoption of its children by regulation,
however, the special circumstances provided by the COFA prevented it to succeed and left all the power in the hands of the United States.

The United States government and judiciary, however, failed to implement the proper safeguards and the adoptions continued, despite the fact that they are contrary to the international policy and law. As the RMI emerges from a chiefly society and becomes a functioning democracy it will become better equipped to efficiently such aspects of society as international adoption. While adoption used to be handled informally in traditional Marshallese society, it has become semi-formal with the destruction of subsistence base and introduction of cash economy. One such example is the establishment of the Central Adoption Authority in the RMI. This agency represents a formal institution which is intended to function as the gatekeeper in the process of international adoption. However, the involvement of an American adoption agency in setting up the Central Adoption Authority's website is a clear example that official structures still function semi-formally. Once the transition into a democratic society is completed, such processes will be handled formally as well. At that time, the RMI will be in a better position to make decisions about international adoptions of its children and enforce them as well. Nonetheless, the RMI will probably have to establish family oriented welfare programs in order to succeed at dissuading Marshallese families from giving their children up for adoption in the United States.
REFERENCES


Change in Micronesia. Honolulu, HI: University of Hawai‘i Press.


March 11).


26:25-60.


