

# CRS Report for Congress

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## Hague Convention on Intercountry Adoption: Status and Recent Developments

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### Summary

For some time, the United States has been in the process of completing the procedures necessary for the formal ratification, and entry into force, of the Hague Convention on Intercountry Adoption (“Convention”). The United States has signed the Convention, the Senate has given its advice and consent to the ratification of the Convention, and Congress has enacted legislation for the implementation of the Convention. However, the U.S. Department of State (“DOS”) has a number of duties and responsibilities, discussed below, which must be completed prior to the formal ratification and the entry into force of the Convention. On September 15, 2003, the DOS published proposed regulations in the Federal Register concerning Convention implementation and requested public comments. The comment period ended on December 15, 2003. At the present time, the DOS has not given a definite date for the completion of its duties, but has stated that it hopes that the ongoing preparations “will permit the United States to ratify the Convention and bring it into force between the United States and other party countries by early 2006.”<sup>1</sup>

### Background

On May 29, 1993, at The Hague, sixty-six nations approved the final text of a multilateral Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, popularly known as the “Hague Adoption Convention” (cited to as “Convention”).<sup>2</sup> The purpose of the Convention is to establish uniform standards and

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<sup>1</sup> See *Hague Convention on Intercountry Adoption* at [[http://travel.state.gov/family/adoption/convention/convention\\_459.html](http://travel.state.gov/family/adoption/convention/convention_459.html)] at the United States Department of State website (“DOS website”).

<sup>2</sup> A full text of the Convention is available at the official Hague Conference website at [[http://www.hcch.net/index\\_en.php?act=conventions.text&cids=69](http://www.hcch.net/index_en.php?act=conventions.text&cids=69)]. There are various conventions which are administered by the Hague Conference, and the Hague Adoption (continued...)

procedures that will protect the rights and interests of adopted children, birth parents, and adoptive parents involved in intercountry adoptions. The Convention mandates that each signatory country establish a national Central Authority on adoptions. The Central Authority is to oversee the Convention's implementation in the signatory country<sup>3</sup> and will have an ongoing role in the country's international adoption process. The Convention has three primary features. First, it reinforces the protection of children's rights concerning international adoption. Second, it establishes a mechanism for the cooperation of signatory countries in international adoption. Third, it ensures the recognition of adoptions undertaken and certified through the Convention provisions.

The Convention entered into force among participating countries on May 1, 1995.<sup>4</sup> At the present time, the Convention has entered into force in sixty-four countries, and six countries, including the United States, have signed, but have not yet ratified the Convention.<sup>5</sup> The full ratification/implementation process is discussed below.

## The United States and the Convention

For the Convention to be fully operative in a participating country, there are three steps which must be fulfilled in sequential order. First, the country must sign the Convention. Second, the country must have a domestic ratification, acceptance, approval, or accession procedure.<sup>6</sup> Third, a formal filing/deposit is required. The instruments of approval (the domestic form of approval) from each country are required to be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which serves as the depository of the Convention.<sup>7</sup>

The United States became a signatory to the Convention on March 31, 1994, which fulfilled the first step. The Convention was transmitted to the Senate for its advice and consent on June 11, 1998.<sup>8</sup> The United States Senate gave its advice and consent to the United States' ratification of the Convention on September 20, 2000.<sup>9</sup> The Senate provided two specific qualifications in its advice and consent to the Convention. One qualification, discussed below, concerned the approval of adoption service providers by federal and state authorities. The second qualification required that the President was not to "deposit the instrument of ratification for the Convention until such time as the federal

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<sup>2</sup> (...continued)

Convention is Convention # 33.

<sup>3</sup> See S. Treaty Doc. 105-51 at v-xv for a summary of the provisions of the Convention.

<sup>4</sup> See note 1

<sup>5</sup> The Hague Conference maintains a updated list of participatory countries at [[http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69)]. Other information regarding the Convention and the various participating countries is available on this website.

<sup>6</sup> *Id.* The domestic approval varies substantially among the Convention countries.

<sup>7</sup> See article 43 of the Convention.

<sup>8</sup> On June 11, 1998, the Convention was read for the first time in the Senate, and together with the accompanying papers, was transferred to the Senate Committee on Foreign Relations. See S. Treaty Doc. 105-51, 105<sup>th</sup> Cong., 2d Sess. (1998).

<sup>9</sup> 146 Cong. Rec. S8866-8867 (daily ed. Sept. 20, 2000).

law implementing the Convention is enacted and the United States is able to carry out all the obligations of the Convention, as required by its implementing legislation.”<sup>10</sup> Applying this second qualification to the current situation, the federal law implementing the Convention has been enacted, as discussed below. However, the United States is apparently not yet “able to carry out all of the obligations of the Convention, as required by its implementing legislation,” as considered below.

On September 20, 2000 the Senate passed the domestic implementation legislation — the International Adoption Act of 2000 (“IAA”).<sup>11</sup> The legislation had previously cleared the House on September 18, 2000, and was signed into law by the President on October 6, 2000. The legislation established the domestic administrative framework for the implementation of the provisions of the Convention.<sup>12</sup> Under this framework, the United States opted to permit private agencies to perform adoptive services that are given to the “Central Authorities” under the Convention. The United States has not yet accredited the agencies that can perform these services, and this absence is a factor in the President’s inability to deposit the instrument of ratification.

While the Congressional legislative action on Convention implementation is completed, various administrative implementation actions still must be undertaken by the U.S. Department of State (“DOS”), as the Central Authority for the United States (“USCA”).<sup>13</sup> The administrative, oversight and other remaining functions of a Central Authority under the Convention are to be performed by DOS. Various actions are still required to put these functions in place.

## The Proposed DOS Federal Regulations

On September 15, 2003, the DOS published for comment two proposed regulations concerning intercountry adoptions in the Federal Register.<sup>14</sup> The first proposed regulation involved the approval and accreditation of adoption service providers who wish to provide services in adoption cases subject to the Convention (Part 96). The proposed regulation sets out the procedures and the standards that will be used in the approval and

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<sup>10</sup> *Id.* at S8866.

<sup>11</sup> Pub. L. 106-279, Oct. 6, 2000, 114 Stat. 825. Codified at 42 U.S.C. §§ 14901-14954.

<sup>12</sup> For a discussion of the IAA legislative background, see CRS Report RS20679, *H.R. 2909: Hague Convention Implementation Legislation*; CRS Report RL30342, *Hague Convention Implementation Legislation: Comparison of H.R. 2909, S. 682, and Administration Draft*; and CRS Report RL30309 *Intercountry Adoption Convention Implementation Act of 1999: Summary and Analysis of S. 682*.

<sup>13</sup> See CRS Report RL30979, *Intercountry Adoption Act of 2000 and International Adoptions*. For a comprehensive examination of international child adoption procedures, see CRS Report RL31769 *Immigration: International Child Adoption*.

<sup>14</sup> Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons; Preservation of Convention Records; Proposed Rules, 68 Fed. Reg. 54,064 (Sept. 15, 2003)(to be codified at 22 C.F.R. pts. 96, 98 98) [<http://www.regulations.gov>].

the accreditation process.<sup>15</sup> The second proposed regulation concerns the federal government's preservation of Convention records (Part 98).<sup>16</sup> The comment period closed on December 15, 2003. The DOS is "now reviewing and analyzing the public comments and will modify the proposed rules and republish the rules as proposed or final regulations as appropriate."<sup>17</sup> It is unclear when such action will occur. All of the comments which were received pursuant to the proposed regulations are available on the DOS website.<sup>18</sup>

## Preparing for the Implementation of the Convention

The DOS has not projected a definite completion date for its tasks related to Convention implementation. Rather, the DOS has stated that the preparations for United States implementation of the Convention and the IAA are "expected to take until some time in late 2005 or early 2006."<sup>19</sup>

On its website, the DOS has summarized the preparations needed to be completed, which include the following: 1) establish and staff the Central Authority within the Office of Children's Issues, Bureau of Consular Affairs; 2) promulgate regulations to (a) establish requirements/procedures for the designation and monitoring of accrediting entities, (b) set the standards that must be met for non-profit adoption agencies to qualify for Convention accreditation and for other agencies and individuals to qualify for Convention approval, (c) govern the registration of smaller community-based agencies for temporary accreditation, and (d) provide the procedures and requirements for incoming and outgoing Convention adoptions involving the United States; 3) establish a case-tracking computer system for intercountry adoptions; 4) designate entities to accredit non-profit U.S. adoption services to provide adoption services for Convention adoptions and the related approval of adoption providers; 5) prepare designated accrediting entities to (a) process applications for Convention accreditation and approvals and registration for temporary accreditation, (b) deal with complaints, and (c) continuously monitor the compliance by accredited agencies and approved persons with the requirements of the Convention, the IAA, and the regulations; 6) oversee preparations by accrediting entities and the USCA of the first list of providers authorized under the Convention to offer and provide adoption services for Convention adoptions; 7) establish education materials and programs about Convention adoptions; and 8) deposit the U.S. instrument of ratification and entry into force of the Convention between the United States and other party countries.<sup>20</sup>

The DOS has outlined the probable administrative means by which the United States will implement the Convention. The USCA will be established at the DOS, and the Office of Children's Issues within the Bureau of Consular Affairs will have chief

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<sup>15</sup> *Id.* at 68 Fed. Reg. 54064.

<sup>16</sup> *Id.* at 68 Fed. Reg. 54119.

<sup>17</sup> *See* note 1.

<sup>18</sup> *See* [[http://travel.state.gov/family/adoption/implementation/implementation\\_1519.html](http://travel.state.gov/family/adoption/implementation/implementation_1519.html)].

<sup>19</sup> *See* note 1, DOS website at "Preparations for Implementation of the Hague Convention."

<sup>20</sup> *Id.* At this time, the precise status of these preparations is uncertain. The DOS periodically updates its website to reflect activities related to Convention implementation.

responsibility for implementing the Convention. The USCA will have program and oversight responsibility for the U.S. implementation of the Convention and will serve as the contact point for domestic and international issues concerning the Convention and for adoptions to and from the United States. The USCA will not be an adoption service provider; that function will be left to adoption agencies and individual adoption providers. Such service providers must qualify to provide these services through the USCA. The USCA will manage a computer-based case-tracking system in order to maintain an ongoing record and all incoming and outgoing Hague Convention and non-Hague intercountry adoptions.<sup>21</sup>

Certain case-specific adoption services and functions are to be performed in the United States by accredited agencies. The State Department will eventually designate one or more entities to accredit agencies, approve persons, and register smaller agencies for temporary accreditation. Accreditation and approval will be set for a number of years and may be subject to suspension or non-renewal for noncompliance. Monitoring is to be undertaken by the State Department as the USCA.

The DOS will designate one or more entities to accredit agencies, approve persons, and register small agencies for temporary accreditation.<sup>22</sup> Convention accreditation or approval will be established at a set number of years and will be subject to renewal. Such accreditation and approval will be subject to suspension, loss or non-renewal if an agency or person fails to maintain the requisite standards. Non-compliance could result in the loss of accreditation or approval and the loss of the right to provide adoption services for Convention adoptions. Non-compliance could also result in possible civil or criminal prosecution. The DOS will monitor the activities of the accrediting entities to guarantee that they are screening agencies and persons and maintaining the accreditation or approval of only those agencies and persons that are complying with the requirements of the Convention, the IAA, and the relevant federal regulations.<sup>23</sup>

Annual reports to Congress are required by the IAA concerning certain aspects of the Convention and the IAA implementation. These reports are to be available to the general public and to the Central Authorities of other countries, beginning about one year after the Convention enters into force in the United States.<sup>24</sup>

The IAA amends the Immigration and Nationality ACT (“INA”). In order to protect the interests of all persons involved in Convention adoptions, children whose adoption or placement for adoption abroad is covered under the Convention will qualify for immigrant visas even if they have two surviving parents, provided they have consented to termination of their legal relationship with the child, and provided that they meet other requirements.

<sup>21</sup> *Id.* See “How Will the United States Implement the Hague Convention?” at DOS website.

<sup>22</sup> For the most recent status on the designation of accrediting entities, see *Opportunity to Apply for Designation as an Accrediting Entity Now Closed* at [[http://travel.state.gov/family/adoption/implementation/implementation\\_469.html](http://travel.state.gov/family/adoption/implementation/implementation_469.html)] and *Update: Designation of Accrediting Entities* at [[http://travel.state.gov/family/adoption/implementation/implementation\\_2104.html](http://travel.state.gov/family/adoption/implementation/implementation_2104.html)].

<sup>23</sup> See note 21.

<sup>24</sup> *Id.*

At the present time, adoptions and placements for adoption made in the United States are subject only to state law and procedures and are not subject to any federal law. IAA and Convention compliance will be a new responsibility for state authorities and will necessitate close cooperation and coordination between the DOS and state authorities in order to guarantee that the United States meets its treaty obligations.

## Conclusion

Presently, the United States is continuing to work toward completion of various procedures necessary for the formal ratification and the entry into force of the Convention for the United States. Previously, the United States signed the Convention, the Senate gave its advice and consent to the ratification, and Congress has enacted the Convention implementation legislation.

The DOS has numerous duties and responsibilities connected with the implementation of the Convention. The DOS maintains a comprehensive website which describes its progress with various these activities.<sup>25</sup> The DOS has not given a specific projected completion date for these activities; rather it has indicated that they are expected to be completed sometime in late 2005 or early 2006.

On September 15, 2003, the DOS published for comment the proposed regulations in the Federal Register concerning the implementation of the Convention. The regulations would provide the administrative structure for the operation of the Convention in the United States. The comment period closed on December 15, 2003, and the DOS is now reviewing the written public comments submitted on the proposed regulations and it may modify the proposed rules as it determines to be appropriate, and publish responses to the written public comment along with the final rules in the Federal Register.

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<sup>25</sup> See note 1.