



# Hague Convention on Intercountry Adoption: Status and Recent Developments

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April 30, 2008

Congressional Research Service

7-....

[www.crs.gov](http://www.crs.gov)

RS21671

## Summary

On April 1, 2008, the United States became a full member of the Hague Convention on Intercountry Adoption (hereinafter “Convention”), and the Convention entered into force in the United States. As a result, the Convention now governs intercountry adoptions between the United States and other Convention member countries in accordance with the provisions of the Intercountry Adoption Act (IAA). In order to comply with the Convention membership requirements, the United States had signed the Convention, the Senate had given its advice and consent to the ratification of the Convention, and Congress had approved legislation (the IAA) for the implementation of the Convention. In addition, the U.S. Department of State (DOS) had a number of duties and responsibilities, summarized below, which were required to be completed prior to the formal ratification and the entry into force of the Convention.

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## Background<sup>1</sup>

On May 29, 1993, at The Hague, 66 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” (hereinafter “Convention”).<sup>2</sup> The purpose of the Convention is to establish uniform standards and 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 75 countries.<sup>5</sup> The United States completed the formal ratification procedures on December 12, 2007, and the Convention entered into force on April 1, 2008, in the United States.<sup>6</sup>

## 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>7</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>8</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,

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<sup>1</sup> For a discussion of the Convention, the implementing legislation, and the process of ratification, see CRS Report RL30979, *Intercountry Adoption Act of 2000 and International Adoptions*, by (name redacted) .

<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.listing](http://www.hcch.net/index_en.php?act=conventions.listing). Then go to Convention # 33. Various conventions are administered by the Hague Conference, and the Hague Convention on Intercountry Adoption 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 Hague Convention on Intercountry Adoption at [http://travel.state.gov/family/adoption/convention/convention\\_462.html](http://travel.state.gov/family/adoption/convention/convention_462.html) at the U.S. Department of State website.

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

<sup>6</sup> See the U.S. Department of State website: [http://travel.state.gov/family/adoption/convention/convention\\_3900.html](http://travel.state.gov/family/adoption/convention/convention_3900.html).

<sup>7</sup> See footnote 5. The domestic approval process varies substantially among the Convention countries.

<sup>8</sup> See article 43 of the Convention.

1998.<sup>9</sup> The United States Senate gave its advice and consent to the United States' ratification of the Convention on September 20, 2000.<sup>10</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 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>11</sup>

On September 20, 2000, the Senate passed the domestic implementation legislation—the International Adoption Act of 2000 (IAA).<sup>12</sup> The legislation had previously cleared the House on September 18, 2000, and was signed into law by President William J. Clinton on October 6, 2000. The legislation established the domestic administrative framework for the implementation of the provisions of the Convention.<sup>13</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 U.S. Department of State (DOS), as the Central Authority for the United States (USCA),<sup>14</sup> has many administrative, oversight, and other functions under the Convention. Various administrative actions were required by the DOS to put these functions in place before ratification could be completed. These administrative actions are summarized below.

## The Department of State Federal Regulations

On February 15, 2006, the DOS published the final rules on the accreditation and approval of agencies and persons concerned with the international adoption process in accordance with the Convention.<sup>15</sup> The first body of regulations concerns the approval and accreditation of adoption service providers who wish to provide services in adoption cases subject to the Convention (Part 96). The regulations set out the procedures and the standards that will be used in the approval and

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<sup>9</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>10</sup> 146 Cong. Rec. S8866-8867 (daily ed. September 20, 2000).

<sup>11</sup> *Id.* at S8866.

<sup>12</sup> P.L. 106-279, October 6, 2000, 114 Stat. 825. Codified at 42 U.S.C. §§ 14901-14954.

<sup>13</sup> For a discussion of the IAA legislative background, see CRS Report RS20679, *H.R. 2909: Hague Convention Implementation Legislation*, by (name redacted); CRS Report RL30342, *Hague Convention Implementation Legislation: Comparison of H.R. 2909, S. 682, and Administration Draft*, by (name redacted); and CRS Report RL30309, *Intercountry Adoption Convention Implementation Act of 1999: Summary and Analysis of S. 682*, by (name redacted).

<sup>14</sup> See CRS Report RL30979, *Intercountry Adoption Act of 2000 and International Adoptions*, by (name redacted). For a comprehensive examination of international child adoption procedures, see CRS Report RL31769, *Immigration: International Child Adoption*, by (name redacted).

<sup>15</sup> Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons, 71 Fed. Reg. 8064 to 8161 (February 15, 2006) (codified at 22 C.F.R. pt. 96).

the accreditation process.<sup>16</sup> The second body of regulations concerns the federal government's preservation of Convention records (Parts 97, 98).<sup>17</sup>

## Implementation of the Convention

On its website,<sup>18</sup> the DOS summarized the extensive preparations that were necessary to be completed prior to Convention implementation and formal ratification. These included 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 agencies 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>19</sup> The DOS completed these preparations in late 2007.

On December 12, 2007, Assistant Secretary of State for Consular Affairs Maura Harty deposited the United States' instrument of ratification of the Convention at a ceremony in The Hague. As a result of this action, the United States is now a full member of the Hague Adoption Convention, which entered into force for the United States on April 1, 2008.<sup>20</sup>

The DOS has various ongoing responsibilities with respect to the Convention and intercountry adoption. 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>21</sup>

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<sup>16</sup> *Id.* at 71 Fed. Reg. 8062 to 8161. Effective March 17, 2006. Although the rules became effective in 30 days, the Convention did not. See 71 Fed. Reg. 8064.

<sup>17</sup> Intercountry Adoption—Preservation of Convention Records, 71 Fed. Reg. 8161 to 8164. Effective March 17, 2006. See above.

<sup>18</sup> See DOS website at "Preparations for U.S. Implementation of the Hague Convention," [http://travel.state.gov/family/adoption/convention/convention\\_2332.html](http://travel.state.gov/family/adoption/convention/convention_2332.html).

<sup>19</sup> *Id.* At this time, the precise status of some of these preparations is uncertain. The DOS periodically updates its website to reflect its activities related to Convention implementation.

<sup>20</sup> See footnote 4.

<sup>21</sup> See footnote 18.

Prior to Convention implementation, adoptions and placements for adoption made in the United States were subject only to state law and procedures, and were not subject to any federal law. IAA and Convention compliance provide new responsibility for state authorities, and necessitate close cooperation and coordination between the DOS and state authorities in order to guarantee that the United States meets its treaty obligations with respect to intercountry adoptions.

## Conclusion

The United States became a full member of the Convention, and the Convention entered into force on April 1, 2008. The Convention now governs intercountry adoptions between the United States and other Convention member countries in accordance with the provisions of the Intercountry Adoption Act.

Prior to ratification, the DOS had numerous duties and responsibilities connected with the implementation of the Convention. The DOS has a continuing role in the operation of the Convention, and has various oversight, reporting, and record-keeping requirements. The DOS maintains a comprehensive website that describes its progress with these activities.<sup>22</sup>

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<sup>22</sup> See footnote 6.

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