

International Family Law

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I. Status of the Hague Convention on Intercountry Adoption and the Intercountry Adoption Act of 2000 (IAA)

The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague Convention) was prepared under the auspices of the Hague Conference on Private International Law (HCPIIL).¹ The Hague Convention is a multi-lateral treaty governing intercountry adoptions between countries of origin and receiving countries. Countries that become parties to the Hague Convention are required to adopt procedures, typically by implementing legislation, to comply with the Hague Convention's obligations and requirements.

The United States signed the Hague Convention on March 31, 1994, indicating its intent to ratify it. More than six years later, on September 20, 2000, the U.S. Senate gave its advice and consent to U.S. ratification subject to the completion of preparations for U.S. implementation.² Although the mechanics of "how" to implement the treaty posed some controversial issues for Congress, both the Senate and the House of Representatives passed the

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1. See Final Act of the Seventeenth Session of the Hague Conference on Private International Law, pt. A (May 29, 1993), reprinted in 32 I.L.M. 1134 (1993). The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption is the 33rd Hague Convention on Private International Law. The full text of the Hague Convention and related background information is available on the Hague Conference Web site. Hague Conference on Private International Law, at www.hcch.net/e/index.html (last visited May 12, 2004).

2. See 146 CONG. REC. § S8866 (daily ed. Sept. 20, 2000). See also Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, May 29, 1993, S. Treaty Doc. 105-51 (1998); Implementation of the Hague Convention on Intercountry Adoption-Report of the House Committee on International Relations, H.R. Rep. No. 106-691 (2000); Report of the Senate Committee on Foreign Relations on the Intercountry Adoption Act of 2000, S. Rep. No. 106-276 (2000).

Intercountry Adoption Act of 2000 (IAA), which implemented the Convention, and President Clinton signed the IAA on October 6, 2000.³

The purpose of the IAA, reflecting a commitment to assist all parties to an intercountry adoption, is as follows:

- (1) to provide for implementation of the Hague Convention by the United States;
- (2) to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children's best interests; and
- (3) to improve the ability of the federal government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States.⁴

Regulations to implement both the Hague Convention and the IAA are currently being drafted. A proposed rule was published in the *Federal Register* on September 15, 2003.⁵ The regulations address the accreditation of agencies and the approval of persons to provide adoption services in Convention cases. The regulations define agencies as non-profit adoption service providers and persons as for profit and individual adoption service providers. Also, the regulations set forth the process for designating accrediting entities to perform the accreditation and approval functions, procedures for conferring and renewing accreditation and approval, procedures for monitoring compliance with accreditation and approval standards, rules for taking adverse action against accredited agencies and approved persons, standards for accreditation and approval, and procedures and requirements for temporary accreditation.⁶ Finally, the regulations address which agencies and persons are required to adhere to the accreditation and approval requirements and which adoption-related activities are exempt.⁷

The deadline to comment on the proposed rule was December 15, 2003, and the Department of State is in the process of sorting and responding to the voluminous public comments. Once a final rule is published and accrediting entities are selected, the Department of State will begin the process of accrediting and approving adoption service providers. When the first list of accredited and approved U.S. providers is complete, the United States will be in a position to ratify the Hague Convention and fully implement it on the day it enters into force for the United States. The goal is for the accreditation and approval process for the first set of adoption service providers to be complete before the Hague Convention is ratified and implemented. The Hague Convention will then enter into force between the United States and other party countries approximately three months after the U.S. instrument of ratification is deposited with the Netherlands Ministry of Foreign Affairs.⁸

3. Intercountry Adoption Act of 2000 (IAA), 42 U.S.C. §§ 14901-44 (2000).

4. *Id.* § 14902 (b)(1)-(3).

5. Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons; Preservation of Convention Records, 68 Fed. Reg. 54064 (proposed on Sept. 15, 2003) (to be codified at 22 C.F.R. pt 96).

6. *Id.*

7. Background information about the development of these regulations is provided on the Hague Adoption Standards Project Website, at <http://www.hagueregs.org> (last visited May 23, 2004). Additional information on Hague implementation and adoption issues can be found on the U.S. Dep't of State, Office of Children Issues, International Adoption, at <http://travel.state.gov/adopt.html> (last visited May 23, 2004).

8. *Supra* note 5.

II. International Child Support Enforcement

In 2003, the first international meeting to develop a new worldwide child support convention resulted in major developments in the international enforcement of child support obligations for the United States. Negotiations and conclusions of federal-level bilateral child support arrangements with several foreign jurisdiction also increased the focus on international child support cooperation between the United States and Latin American and Caribbean countries.

A. DEVELOPMENT OF A NEW WORLDWIDE CHILD SUPPORT CONVENTION

The first meeting of the HCPIL Special Commission on the International Recovery of Child Support and Other Forms of Family Maintenance took place in May 2003.⁹ The meeting followed recommendations of previous HCPIL Special Commissions that recognized the need to modernize and improve the existing conventions on this subject and urged the Hague Conference to commence work on the elaboration of a new worldwide international instrument. These recommendations emphasized that the new instrument should include rules of judicial and administrative cooperation, take into account future needs and opportunities, including developments in technology, and be structured for maximum efficiency and flexibility.¹⁰ The United States is not a party to any of the existing multilateral child support conventions and is of the view that none of them adequately address current needs; however, the United States is an active participant in the new HCPIL negotiation.¹¹ The recommendations listed above are consistent with U. S. concerns that the text of the new convention must not only provide a legal framework for enforcement of obligations, but must also provide a strong, practical framework for implementation.

Several documents available on the HCPIL Web site¹² provide a useful discussion of existing international maintenance conventions, the U. S. approach to international child support, and key issues to be addressed in the new convention. These documents include the Responses to the HCPIL Questionnaire Concerning a New Global Instrument on the International Recovery of Child Support and Other Forms of Family Maintenance, Towards a New Global Instrument on the International Recovery of Child Support and Other Forms of Family Maintenance by William Duncan, and Report on the First Meeting of the Special Commission on the International Recovery of Child Support and Other Forms of Family Maintenance (5–16 May 2003).

The topics discussed during the May 2003 Special Commission concerned administrative cooperation, recognition and enforcement, jurisdiction, applicable law, building cooperation and securing compliance, and questions of scope. A Working Group was created and

9. Hague Conference on Private International Law, at <http://www.hcch.net/e/> (last modified May 23, 2004).

10. See Report on and Conclusions of the Special Commission on Maintenance Obligations of April 1999 (Dec. 1999), para 46, available at <http://www.hcch.net/workprog/maint.html>.

11. See Response of the United States of America to the 2002 Information Note and Questionnaire concerning a new global instrument on the international recovery of child support and other forms of family maintenance, contained in Preliminary Document No. 2 of January 2003 [hereinafter Response], available at http://www.hcch.net/doc/maint_u.s.pdf (last visited May 12, 2004).

12. Hague Conference on Private International Law, Maintenance Obligations, available at <http://www.hcch.net/e/workprog/maint.html> (last visited May 23, 2004).

asked to prepare a preliminary draft on these topics. The Special Commission will hold its second meeting in June 2004, where it will consider the Working Group's document and discuss other subjects such as the cost of services, parentage establishment, and the use of technology. The target date for completion is 2005.

B. U.S. BILATERAL CHILD SUPPORT ARRANGEMENTS

International child support cases in the United States are currently handled under bilateral federal-level arrangements or informal arrangements between individual U. S. states and foreign countries. Section 459A of the Social Security Act¹³ outlines the conditions which must be met before the United States will enter into an agreement to enforce child support obligations for a resident of another country. Generally, the other country must have procedures in place and available to U.S. residents (or commit to establishing such procedures) that would enable the foreign country to establish and enforce child support obligations, including the establishment of paternity, collect and distribute child support payments, and provide any necessary legal or other services at no cost. Also, the foreign country must designate a central authority to facilitate international cases. The Office of Child Support Enforcement (OCSE) of the Department of Health and Human Services is the central U.S. authority for international child support.¹⁴ The United States currently has federal reciprocity arrangements with fifteen foreign jurisdictions¹⁵ and negotiations are underway with approximately ten more countries. Many countries do not provide free legal services in all child support cases and do not establish paternity as part of a child support case.¹⁶ Consequently, the United States has no federal-level child support agreement with those countries.

C. MEETING OF THE AMERICAS ON INTERNATIONAL CHILD SUPPORT

On August 7–8, 2003, in Orlando, Florida, the U.S. Department of State and the OCSE, in partnership with the National Child Support Enforcement Association and the National Law Center for Inter-American Free Trade, sponsored a Meeting of the Americas to discuss international child support cooperation.¹⁷ Representatives from over twenty countries in the Western Hemisphere as well as international and non-governmental organizations attended the meeting. The goals of the meeting were to exchange information about each country's domestic and international child support law and practice, make progress in the development of bilateral child support agreements between the United States and some of the countries, and encourage regional participation in the ongoing negotiation of a new multilateral child support convention at the HCPIL.¹⁸

13. 42 U.S.C. § 659A (2000).

14. Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations, 67 Fed. Reg. 71605 (Dec. 2, 2002).

15. *Id.*

16. See Response, *supra* note 11.

17. Stephen Grant, *Meeting of the Americas in Child Support Enforcement* (Sept. 2003), available at <http://www.acf.dhhs.gov/programs/cse/pubs/2003/csr/csr0309.html>.

18. *Id.*

III. International Child Abduction

In 2003, litigation in both state and federal courts continued under the Hague Convention of October 25, 1980 on the Civil Aspects of International Child Abduction (Hague Child Abduction Convention).¹⁹ There were no notable new principles developed in the cases.

For the first time, the National Judicial College in Reno, Nevada offered a course for judges on "International Kidnapping." Twenty-seven judges representing about twenty states took part in this course, which was held April 22–25, 2003. The faculty was international and included a judge of the Family Court of Australia, the Honorable Joseph Kay, as well as representatives of the U.S. Department of State's Office of Children's Issues (OCI) and the National Center for Missing and Exploited Children. The course will be repeated in Reno during December 2004.²⁰

OCI organized a special meeting of experts to discuss whether any changes should be sought in the International Child Abduction Remedies Act (ICARA) adopted in 1988 and codified at 42 U.S.C. §§ 11601–11610.²¹ Entitled "ICARA at 15," the meeting took place in the OCI's offices in Washington, D.C., on December 8, 2003. No recommendations for amendment of this statute were issued.

19. Hague Conference on Private International Law, *The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, at <http://www.hcch.net/e/conventions/menu28e.html> (last visited May 12, 2004).

20. U.S. Dep't of Justice, *Nevada Grants Received*, available at <http://www.statejustice.org/maps/nevada.htm> (last visited May 23, 2004).

21. 42 U.S.C. § 11601–10 (2004).

