

respected and thereby prevent the abduction, sale of, or traffic in children; and third, to secure the recognition in contracting states of adoptions made in accordance with the Convention. The Convention also requires all parties to act expeditiously in the process of adoption. The Convention's norms and principles apply whether the party country is acting as a sending country or as a receiving country.

To accomplish its goals, the Convention makes a number of significant modifications to current intercountry adoption practice, including three particularly important changes. First, the Convention mandates close coordination between the governments of contracting countries through a Central Authority in each Convention country. In its role as a coordinating body, the Central Authority is responsible for sharing information about the laws of its own and other Convention countries and monitoring individual cases. Second, the Convention requires that each country involved make certain determinations before an adoption may proceed. The sending country must determine in advance that the child is eligible to be adopted, that it is in the child's best interests to be adopted internationally, that the consent of birth parents, institutions, or authorities that are necessary under the law of the country of origin have been obtained freely and in writing, and that the consent of the child, if required, has been obtained. The sending country must also prepare a child background study that includes the medical history of the child as well as other background information.

Concurrently, the receiving country must determine in advance that the prospective adoptive parent(s) are eligible and suited to adopt, that they have received counseling, and that the child will be eligible to enter and reside permanently in the receiving country. The receiving country must also prepare a home study on the prospective adoptive parent(s). These advance determinations and studies are designed to ensure that the child is protected and that there are no obstacles to completing the adoption.

B. U.S. Ratification of the Convention

The United States signed the Convention on March 31, 1994, with the intent to ratify it in due course. On September 20, 2000, the Senate gave its advice and consent to ratification. The Senate's advice and consent to the Convention were subject to the following declaration: "The President shall not 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." (146 Cong. Rec. S8866 (daily ed. Sept. 20, 2000)). Thus, the Convention will not actually come into force and govern intercountry adoptions between the United States and other party countries until the United States is able to carry out its obligations. These regulations are essential in enabling the United States to meet its Convention obligations.

The United States strongly supports the Convention's purposes and principles and believes that U.S. ratification will further the critical goal of protecting children and families involved in intercountry adoptions. The United States is a major participant in intercountry adoption, primarily as a receiving country but also as a sending country. Many U.S. citizens adopt children eligible for adoption from another country, and in those cases the United States is acting as a receiving country. From October 1999 to September 2002, a total of 59,079 children were issued orphan visas to immigrate to the United States in connection with their adoption. As a sending country, the United States also places children abroad for adoption. There are no reliable statistics at the Federal level on the number of U.S. children adopted annually by persons resident in a foreign country.

Advocates for ratification of the Convention argued that many Convention countries would eventually refuse to permit intercountry adoptions by U.S. citizens unless the United States ratified the Convention (Hearing on the Convention and IAA Before the Senate Comm. on Foreign Relations, 106th Cong. (October 5, 1999)). The Department in fact has seen such developments. The Department wishes to complete preparations for implementation as rapidly as possible to ensure that U.S. families and the children they adopt have the advantage of the Convention's protections and that U.S. prospective adoptive parent(s) will be able to adopt children from Convention countries, particularly if those countries prohibit adoptions vis-à-vis countries that are not party to the Convention. The Department also wants to ensure that U.S. children who are adopted by parents from other countries are protected under the Convention and the IAA as well.

C. Use of Private, Accredited Adoption Service Providers

One particularly controversial issue that arose during Convention negotiations was whether private adoption service providers would be permitted to perform Central Authority functions. Some countries wanted all parties to rely exclusively on public or governmental authorities to perform Central Authority functions. Other countries, including the United States, advocated for parties to have the option of using private adoption service providers to complete Convention tasks. In the United States, private, non-profit adoption service providers currently handle the majority of U.S. intercountry adoption cases. In its final form, the Convention permits party countries to choose to use private, Convention-accredited adoption service providers to perform Central Authority tasks. Specifically, Article 22 permits private, non-profit adoption service providers instead of Central Authorities to complete certain Central Authority functions required by the Convention. As discussed below, however, private, for-profit providers may perform such functions only as authorized under Article 22(2), which imposes limitations that do not apply to private, non-profit providers.

By including a provision allowing non-governmental bodies to provide adoption services, the Convention recognized the critical role private bodies play—and historically have played—in the intercountry adoption process. In the United States, for example, the number of intercountry adoptions from 1989 to 2001 totaled 147,021, and private, non-profit adoption service providers handled most of those adoptions. Recognizing, also, the role of private, for-profit adoption service providers in the United States, the Senate gave its advice and consent to the ratification of the Convention subject to a declaration, pursuant to Article 22(2) of the Convention, that U.S. Central Authority functions under Articles 15 to 21 of the Convention may be performed by approved private, for-profit adoption service providers. (146 Cong. Rec. S8866 (daily ed. Sept. 20, 2000)).

Consistent with Article 22 of the Convention and the declaration just discussed, the IAA establishes a system to accredit private non-profit, and to approve for-profit, adoption service providers and outlines specific standards the private providers must meet in order to become accredited agencies (in the case of non-profits) or approved persons (in the case of for-