



**DEPARTMENT OF STATE**

**STATEMENT**

**OF**

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**BEFORE THE**

**U.S. SENATE**

**COMMITTEE ON FOREIGN RELATIONS**

**HEARING**

**ON**

**INTERNATIONAL PARENTAL CHILD ABDUCTION**

**FEBRUARY 27, 2014**

**Chairman Menendez, Ranking Member Corker, and distinguished Members of the Committee** – Thank you for the opportunity to address you today regarding international parental child abduction (IPCA), a matter of critical concern affecting the well-being of many children and families.

The Department of State (the Department) appreciates the ongoing interest and support on this issue from Members of Congress, and we look forward to working with the Committee to identify new ways to strengthen relationships with other countries to expeditiously resolve these difficult cases. We appreciate the efforts and interest of Chairman Menendez, Ranking Member Corker, and the many Members who advocate in support of their constituents.

The shared goals of the Congress and the Department are to prevent IPCA, return children expeditiously to their countries of habitual residence, and strengthen and expand membership in the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Convention) worldwide. We appreciate the Committee's willingness to collaborate with the Department to achieve these objectives. However, we know the status quo is not enough. We would welcome additional tools to help us resolve abduction cases, and look forward to continue to working with you on legislation.

The Department continues to make great strides in engaging foreign governments both bilaterally and multilaterally to foster diplomatic relationships.

These efforts and these relationships have proven critical to achieving the successful return of internationally abducted children. In the past two years, the Department has reviewed and the U.S. government has accepted four new Convention treaty partners: Singapore, Morocco, the Republic of Korea, and Trinidad and Tobago. In addition, on January 24, 2014, Japan deposited its instrument of ratification of the Convention; the treaty will automatically enter into force between the United States and Japan on April 1, 2014. The Department welcomes Japan as a treaty partner, and we look forward to continued progress with the Japanese government on resolving existing cases in the spirit of the Convention.

We have found that the Convention is the best tool for resolving IPCA cases. It is a multilateral treaty that provides protection for children from the harmful effects of abduction and wrongful retention across international borders. However, I want to be clear – the Convention is not a tool for custody determinations. It provides a legal framework for securing the prompt return of wrongfully removed or retained children to the countries of their habitual residence where a competent court can make decisions on issues of custody.

With more countries joining the Convention, the Department is committed to ensuring all current and future treaty partners meet their responsibilities under the

Convention. We look forward to working with Congress to identify the means to do so.

### **Efficacy of the 1980 Hague Abduction Convention**

The United States played an active role in drafting the Convention with the objective of facilitating the return of internationally abducted children. The Convention entered into force for the United States in 1988. Since then, the Department has aggressively promoted ratification of and accession to the treaty and the effective implementation of the Convention. We now have 72 partner countries.

In 2013, more than 1,000 children were reported abducted from or retained outside the United States. In the Department's experience, the ability of a parent or legal guardian to secure a court-ordered return is much greater in a country that is a Convention partner. For example, in 2013, 113 children returned from Convention partner countries as a result of a court order in a Hague proceeding. From non-Hague countries during the same period, the Department is aware of only two children, in the same family, who were ordered returned to the United States as a result of court proceedings under the domestic law of that country. An additional 402 children returned from both Convention and non-Convention countries as the result of a voluntary agreement between the parents.

In a recent case, a mother abducted her child to the United Kingdom in October 2013, and the Department's Bureau of Consular Affairs' Office of Children's Issues worked with the left-behind father to forward his Convention application to the UK Central Authority (UKCA). The UKCA assigned a solicitor to the case within 48 hours of receiving the application, and a Hague hearing was held in November 2013. After the hearing, the court ordered the return of the child to the United States, and the Office of Children's Issues coordinated the logistics of the child's return with the UKCA. This child returned to the United States within weeks of filing the Hague application with the UKCA.

The Convention entered into force between Singapore and the United States in May 2012. In a case last fall, a concerned father contacted the Office of Children's Issues in September 2013 to report that the taking parent no longer planned to return to the United States with their child as originally agreed. The father's attorney in Singapore filed a Hague petition in the Singapore Family Court, requesting the prompt return of the child to the United States. The Office of Children's Issues was in close contact with the father and provided him with timely information and resources during this difficult time. Simultaneously, we worked closely with the Singapore Central Authority during each step of the process. The U.S. Embassy in Singapore also remained engaged. Utilizing the Convention framework, the court ordered the child's immediate return to the United States

within weeks, and the father and child were reunited in November 2013. Prior to the establishment of a treaty relationship, cases with Singapore took years to resolve, if they resolved at all. This is the result we hope we can bring to more and more cases as we continue to grow our relationships with other countries.

### **Mexico: An Example of Evolving Compliance**

Decades of experience demonstrate that the Convention is the most reliable and expeditious tool to return abducted children because it provides a uniform, civil legal framework for parents to seek the return of their children. While some countries initially struggle to implement the Convention effectively, we find that persistent diplomatic engagement, combined with technical assistance, improves implementation. The country where we have the highest number of cases is Mexico, which has transformed over the past few years from a problematic to a productive Hague partner and a model for other countries in the Western Hemisphere. The Department did not cite Mexico as “not compliant” in the April 2012 or 2013 Convention Compliance Reports to Congress for the first time in 13 years. The problems in Mexico during this period included lengthy delays in court proceedings, a lack of ability or commitment by law enforcement to locate missing children, and significant delays in processing Hague applications by the Mexican Central Authority. In order to spur improvement in Mexico’s compliance, the

Bureau of Consular Affairs led a Department-wide effort to cultivate relationships with key Mexican government officials and encourage them to put in place measures to ensure better compliance. The U.S. Embassy, including the Ambassador, was actively engaged in these diplomatic efforts. Mexican authorities committed additional resources to their chronically understaffed Central Authority, giving them the capacity to improve case management. At the working level, we have transformed our relationship from one involving irregular formal correspondence to a cooperative relationship with country officers communicating daily with their Mexican counterparts to move cases forward.

Mexican authorities now locate more children and courts have shown marked improvement, processing Convention cases more quickly. More children are being returned to the United States by court order or voluntary arrangements than ever before. In each of the past four years, more than 150 abducted children have returned from Mexico (including 250 in 2010). This is significantly more than any previous year. More than 200 of these children returned by court orders in Hague Convention cases. By contrast, during the previous four years, only 85 children returned from Mexico pursuant to a Hague Convention court order.

We are working with our Mexican counterparts to make progress on resolving long-standing cases. While in years past Mexican law enforcement agencies were uncommitted to locating missing children, Interpol Mexico has now

begun focusing on these cases, with positive results. In each of the last three years, there has been a reduction in long-standing unresolved return applications cited in the Compliance Report to Congress. We anticipate that this will be true for the 2014 report as well.

The focus on resolving older cases has resulted in at least 30 cases of court-ordered returns in the last three years in cases where the children had been retained in Mexico for more than three years. Mexico has also made progress in handling new cases more efficiently. The Mexican Central Authority now processes cases internally in days or weeks instead of taking several months to move cases on to the courts. Courts are also improving; during the past three years, we have seen 12 cases where the time from sending the Hague application to Mexico and the return of the children by court order was less than 10 weeks.

Overall, in the Office of Children's Issues, the number of open international child abduction cases to Mexico has dropped by more than 50 percent in the last four years. In June 2010, we had 566 open cases in Mexico. Today, we have less than 260. The number of abductions to Mexico reported to the Office of Children's Issues is down by about 35 percent since 2008. This is due not only to enhanced prevention efforts but also to our improved bilateral relationship with Mexico that has made addressing compliance concerns a top priority.



Despite these improvements, we have not lost focus on the fact that children continue to be abducted to Mexico every week and many parents still must wait far too long to be reunited with their children. We will continue committing significant resources to Mexico, and will keep working to build on the gains of the past four years.

### **The Challenge of Non-Convention Remedies**

In cases where the return remedy of the Convention is unavailable, the Department believes that diplomacy is the best strategy for pursuing the return of the child and for encouraging ratification of or accession to the treaty.

Many foreign courts do not recognize and enforce U.S. court custody orders. We are prohibited by federal law from providing legal advice in individual abduction cases and therefore we always encourage parents to consult with an attorney before taking any action. However, our country officers work closely with parents to provide them information about options they have to pursue custody in a foreign court or to otherwise encourage a parent to return a child, including use of visa ineligibility and law enforcement channels. Although the Department routinely requests assistance from foreign governments to facilitate the return of abducted children or to assist consular officers in verifying the well-being of children, most governments, including the U.S. government, are limited legally

in what they are permitted or obligated to do. The Convention helps define those permissions and obligations. We find that developing strong diplomatic relationships with governments is the best way to obtain assistance to our requests to the furthest extent allowed by the country's laws.

### **The Role of Diplomacy**

We saw the diplomatic process work with Germany in the late 1990s in response to the Department's determination that Germany was non-compliant with the Convention. The Bureau of Consular Affairs headed a major effort to engage bilaterally with Germany, with Presidents Clinton and Bush raising the issue with the German Chancellor. As a result, Germany revised its domestic laws, ensuring its courts could better comply with the Convention and law enforcement could better enforce Hague return orders. Today, Germany is one of our strongest bilateral partners and a model for other countries.

We meet regularly with our Convention partners to exchange information and to advocate for effective treaty implementation. Across the board, we have achieved positive results that impacted existing and future cases, mutual understanding, and strong partnerships for seeking resolution to the international problem of child abduction.

Diplomacy is the most effective strategy for generating the cultural and legal reform needed to institute changes in countries' domestic laws that will successfully address IPCA. In countries that are not yet treaty partners under the Convention, diplomacy remains the most effective means of generating greater bilateral cooperation that can lead to a country's accession to or ratification of the Convention or to resolution of an abduction case. The contacts that the Bureau of Consular Affairs develops through consistent diplomatic interactions and greater awareness about the Convention have also resulted in increased attention, including from the Congress, to the existing cases that fall outside the Convention framework.

Without the Convention providing a legal framework for parents to seek the return of a child, there is very little foreign governments can do to return a child abducted across an international border absent an order from a court in that country. In nations with independent judiciaries, including our own, the executive branch generally has no power to compel the courts to take specific action in individual cases. We look forward to working with the Committee on better tools to help resolve more cases and generate better compliance.

Thanks to Congress and the good work by this Committee we have increased our staffing - the Office of Children's Issues is now able to focus on bilateral, multilateral, and policy work aimed at encouraging cultural, political, and

legal changes in non-partner and partner countries to facilitate progress towards joining and improving compliance with the Convention. These include the very bilateral relationships that proved so crucial to our success in addressing compliance concerns with Mexico and Germany.

When the Convention is unavailable, the Department exhausts all appropriate steps to seek the return of these children. In these instances, the Office of Children's Issues works closely with left-behind parents to provide information about domestic and foreign resources that may help parents to resolve their children's cases. We raise individual cases with foreign governments, requesting through diplomatic channels that they help to facilitate the return of abducted children to the United States and assist parents to obtain access, confirm their children's welfare, and understand their options. We monitor legal proceedings as a case unfolds in court, attend hearings when appropriate, engage child welfare authorities, advocate for consular and parental access, coordinate with law enforcement authorities when competent officials choose to pursue criminal remedies, and work day-to-day to explore all available and appropriate options for seeking abducted children's return to their countries of habitual residence. We know this is extremely difficult for the families so we do everything we can to keep them informed of our efforts and the different tools we use to return their child.

## **IPCA Country Strategies: Our Vision for the Future of IPCA**

The Office of Children's Issues realizes that concentrating only on individual cases will not generate the necessary systemic changes in foreign legal systems that promote the return of abducted children. To ensure that actions and outcomes in individual cases inform how we interact bilaterally with the foreign government on future cases and on policy matters, we have initiated a country-by-country review of political, social, and legal structures to identify the barriers that currently obstruct our efforts to return abducted children – or, in some cases, to identify those policies that are working and worth emulating in other countries. Crafting long-term strategies to influence the behavior of foreign government officials allows us to address common trends of non-compliance and non-cooperation that often run throughout multiple cases in a particular country. By strategically planning how we will pursue the removal of these obstacles, we have also rendered our individual case management efforts more productive and moved forward with our policy objectives.

Our country-specific strategies will be our roadmap for addressing future abductions. For example, Japan has been one of the most intransigent countries regarding IPCA cases for many years. Japan's decision to ratify the Convention opens a new chapter in its approach to IPCA. Historically resistant to the idea that

access to both parents is usually in a child's best interest, Japan had a wide cultural and legal gulf to cross as it ratified the Convention. While Japan has demonstrated its intent to implement the treaty effectively, like most new Convention countries it will likely encounter cultural and legal challenges during the early stages of implementation. By fostering a close working relationship with Japan's Central Authority and encouraging Japanese judges to seek training and technical assistance for applying the Convention, the Department looks to ensure that Japan will effectively implement the Convention.

India is second only to Mexico in the number of outgoing IPCA cases open with the Office of Children's Issues, and we believe it will continue to be a significant IPCA destination. Although India's accession to the Convention remains a long-term goal, the Office of Children's Issues is not idle in our relations with India. We have developed a long-term strategy of raising accession to the Convention with senior Indian government officials to ensure that they continue to explore the Convention and make progress towards accession and implementation. Enlisting support from the Hague Permanent Bureau and working multilaterally with other Hague partners, the Department seeks to convince India of the benefits of Hague accession and implementation, as we were able to do in Japan.

## **Prevention Tools and the Hague Conference on Private International Law**

The most effective means of stemming the growth of IPCA is to stop it before it occurs. We are dedicated to helping prevent abduction and look forward to working with the Committee to explore additional steps that could be taken to help prevent these tragic events. Since 2011, the Office of Children's Issues has broadened the efforts of its Prevention Branch, which is staffed by a team of experts who both manage the Children's Passport Issuance Alert Program (CPIAP), and conduct outreach and training for passport agencies and other domestic stakeholders to prevent IPCA. Furthermore, the Prevention Branch actively engages with domestic law enforcement agencies to stop abductions-in-progress.

Our Prevention Branch exclusively administers CPIAP, which allows parents and legal guardians to enroll their children in a Department database to help protect against U.S. passport issuance without parental consent or notification. If a passport application is submitted for a child who is registered in CPIAP, the Department contacts and alerts the parent. The Prevention Branch is responsible for reviewing and resolving, in conjunction with Overseas Citizens Services' Office of Legal Affairs, all child custody passport alert entries that produce "hits" during the passport application process. On average, the Prevention Branch reviews more than 300 hits per month. In 2013, the Prevention Branch entered

more than 5,500 children into our CPIAP database and has managed more than 10,000 CPIAP cases since November 2011.

Congressional interest remains crucial to our success. Accordingly, the Department can identify concrete ways in which Congress can provide additional tools that will assist the Bureau of Consular Affairs in returning internationally abducted children. One of the Department's highest priorities is to persuade other countries that have not ratified or acceded to the Convention to become party to the treaty. Once they have decided to ratify or accede to the treaty, the Department continues to work with that foreign country to help it pass laws to implement the Convention effectively under that country's domestic law and create an effective Central Authority that promotes compliance with the Convention. The Hague Conference on Private International Law, often viewed by foreign governments as a neutral party, is an invaluable partner in this effort and is very effective at providing technical assistance.

## **Conclusion**

Mr. Chairman, Ranking Member Corker, distinguished Members of the Committee, your support remains a key element to our success in pressing for a tangible resolution to these cases and to furthering our bilateral relationships in support of preventing and resolving international abduction. We remain



committed to achieving our shared goals to increase the number of children returned to their parents, to advocate for membership in this important international treaty, and to create safeguards that will minimize the risk of IPCA. We look forward to working with you on identifying other tools to achieve these shared goals.

Thank you. I am pleased to take your questions.

