

TESTIMONY
OF
PATRICIA E APY

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON GLOBAL HEALTH ,
GLOBAL HUMAN RIGHTS AND INTERNATIONAL ORGANIZATIONS

BRINGING ABDUCTED CHILDREN HOME

May 23, 2023

Chairman Smith, Ranking Member Wild and distinguished Members,

My name is Patricia Apy.¹ I continue to be honored to have been invited to return to offer testimony before this Sub- committee , to respectfully address my observations and recommendations formed as an international legal practitioner. I am testifying in support of enhancing the protections provided against the scourge of international child abduction, and in providing assistance in the prompt repatriation of children and the restoration of families devastated by parental abduction.

I intend to offer my observations, to the proposed amendments of the Sean and David Goldman International Parental Kidnapping Prevention and Return Act, 22 USC 9111 ET. seq. (the “Goldman” Act), found in H.R. 9669 “Bringing Abducted Children Home Amendment Act” from a practical perspective to assist in the consideration of the proposed amendment and the enhancement of Congressional oversight of this critical issue of parental abduction.

At the close of 2022 and early in 2023 two events transpired which have had a significant impact upon the way “child abduction” is viewed and addressed under international law as a

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global human rights issue. I would propose that both of these examples , demonstrate the necessity and importance of the proposed amendments being enacted.

On March 17th, 2023, the International Criminal Court issued arrest warrants against the President of the Russian Federation , Vladimir Putin and the Presidential Commissioner for Children’s Rights, Maria Lvova-Belova for the war crime of the wrongful deportation of children from occupied areas of Ukraine to the Russian Federation.

Certainly, the world could not have been surprised by the call to accountability of the Russian Federation in the events taking place in Ukraine. However, the selection of the abduction of Ukrainian Children as the identified criminal action, both elevated and solidified a recognition of child abduction as the traumatizing , abusive action that it genuinely is. Further, a careful review of the diplomatic declarations filed with the Hague Conference on Private International law, pursuant to the reciprocal Treaty obligations both Russia and the Ukraine had deposited , pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, demonstrated that the Russian Federation, which acceded to this Convention in 2011, was already signaling its intention as early as July 19, 2016 , to ignore protestations by the Ukraine regarding the applicability of the Treaty within area it had occupied and to treat any allegations of international child abduction from the occupied territories as purely “domestic” issues .

On the other side of the world, on the 12th of December 2022, the Australian government indicated that federal legislation would be enacted to clarify procedural protections for the purpose of insuring that allegations of family and domestic violence by parents accused of having wrongfully removed or retained their children, could be considered as a priority *before* return orders would be made for children under the Hague Convention. The *Family Law (Child*

Abduction Convention) Amendment (Family Violence) Regulations 2022 . The Australian government described their efforts as providing “safeguards” to parents and children who assert that they are fleeing family and domestic violence when defending applications brought under the *Hague Convention on the Civil Aspects of International Child Abduction* for return. Notably, the statute is seen to confirm that a court which is offered a defense to the obligation to return a child, does not need to determine that the family violence which has been alleged by the taking parent, has actually occurred , as a predicate before it is taken into account.

While the Australian government provided renewed assurances that the legislative enactments did not impact upon its intention to continue to comply with its obligations under the Hague Abduction Convention, among practitioners there are serious concerns that the Australian legislation may be only the most recent of assaults against the application and effectiveness of the Hague Abduction Convention. There is a growing belief that the prevention of the wrongful removal of children has been rendered more difficult because of the disintegration of the underlying belief that child abduction operates to harm children.

The proposed Amendments to 22 USC 9111, et. seq. have, in my estimation overwhelming benefits to supporting efforts to minimize child abduction and provide tools to enhance the ability to return children who have been abducted. Among the legislative initiatives, I would, as a practitioner in this field for 35 years, identify the following as particularly important.

- Proposed amendments to the definitions and reporting functions of the Department of State will provide a more concise and understandable basis to evaluate the legitimate state of reciprocity which exists among and between Treaty partners. For example, an

accurate identification of “resolved” cases, will permit a better description and understanding of the actual statistics of the abduction of children in “real time”, crucial not only to Congressional oversight, but to lawyers and judges fashioning international parenting plans and orders which rely on the ability to predict and assess the obstacles to recovery of children if they are wrongfully removed or retained abroad.

- The necessity of the imposition of a “Tier” system has been amply demonstrated in the fact that in nearly a decade having passed since ICAPRA’s enactment, there has been almost no use of any of the enumerated sanctions available to the Secretary of State, (other than a *demarche*) even in the face of the most persistent lack of compliance with treaty obligations, and the most egregious and systemic violations of human rights. It is clear that the institutional structure of decision and policymaking within the Department of State makes it exceedingly difficult to synthesize and formulate a broad diplomatic strategy which unapologetically addresses the impact of child abduction. By constructing a deliberate and objective tiered system, a mechanism to sanction recalcitrant states is created, while still preserving diplomatic flexibility and nuance.
- The amendments proposed addressing issues of family violence, actually began as discussions before the Tom Lantos commission on Human Rights, over a decade ago, in which hearings conducted by that body heard compelling and scholarly testimony addressing the tension between the International Child Abduction Remedies Act

(ICARA) 22 USC 9001 et seq. and the complexities of addressing global domestic violence. Unlike Australia's Federal legislation, these proposed amendments do not alter the language of ICARA or alter the responsibilities the Central Authority must meet under the Treaty. This legislation focuses on providing objective information and practical assistance, with which Judges can quickly and effectively evaluate the protections genuinely available for victims of domestic violence, in their considerations and deliberations. The amendment will better facilitate the ability of a court to refer to objective information and evidence in quickly deliberating in addressing a request for return, or in fashioning orders for the organization for the rights of access. It also calls for the provision of referral to competent legal services for victims of domestic violence, as a means of insuring that all the information crucial to the court in protecting a child, is competently provided.

- This legislation calls for a study which will further amplify the life altering impact which child abduction has upon its victims beyond any period of wrongful removal or retention. It addresses the difficulties in the coordination of the deliberative actions of the Department of Justice and the Department of State, in navigating criminal and civil remedies, ensuring that the use of law enforcement resources and criminal prosecution to assist in the return of children who have been abducted is swiftly and professionally provided where appropriate. This will have the additional advantage of encouraging United States Attorneys in the use of Federal criminal law, such as the International Parental Kidnapping Crime Act to punish those who endanger and harm children. Finally, by enhancing the attention of the Department of Justice to work in collaboration

with the Department of State, in pressing for the extradition of child abductors, and unflinchingly prosecuting those who have acted in disregard of orders preventing the removal of children from the United States, this will serve as a deterrent to consideration of parental child abduction by parents, and the harboring of child abductors by governments.

- The importance of a dedicated Ambassador at Large has been demonstrated by the enormity of the issue. While extraordinarily skilled and experienced career diplomatic officers have served in the role of “Special Advisor” on issues involving children, there must be a renewed focus on child abduction as a human rights issue, inspired and executed by someone who will be recognized on the global stage with the authority commensurate with the complex issues of international law implicated. This will, I propose, permit better integration and utilization of diplomatic resources across the Department of State on a cohesive formation of policy and the application of international law. Without such an appointment, efforts are received, not as diplomatic overtures, but as merely services rendered in individual cases of persons embroiled in marital disputes. This is particularly true in parts of the world where International parental abduction is not considered a crime, but a matter of personal distress and status, to be relegated away from governmental accountability.

Conclusion:

A reading of the 2023 ICAPRA report of the Department of State, demonstrates that in several countries, including some which we would otherwise undoubtedly describe as

diplomatic allies, if not “friends”, international child abduction persists unchecked, and the existing protocols and remedies have not been effective to curb it. The actions which are now necessary , in addressing systemic difficulties, must be new ones.

The world has been reminded by the International Criminal Court that child abduction constitutes a war crime, and is, in and of itself, an inherent violation of human rights capable of causing pain and suffering with life-long consequences. Ironically, those who are facile with the Hague Convention on the Civil Aspects of International Child Abduction, had the opportunity to see this coming, in declarations which were lodged within the last eight years, which predicted the weaponizing of Ukraine’s children.

I was deeply proud when the United States Ambassador to the United Nations, Ambassador Thomas-Greenfield , her colleagues, along with the delegations of the United Kingdom, Albania and Malta walked out of the Security Council briefing being given by Commissioner Lvova Belova.

There is danger to be found in distinguishing different forms of child abduction , or excusing abduction of child by a parent or relative as less damaging.

This legislation empowers those within our government , our judicial officers, our law enforcement officers , our officers of Homeland Security, as well as all those addressing child abduction throughout our country, on the state and local levels , to have the tools necessary to prevent child abduction and restore those children wrongfully removed and retained, to their homes.

Very Respectfully,

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