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Statement for the Record for Hearing before the House Committee on Foreign Affairs

Subcommittee on Africa, Global Health, Global Human Rights and International Organizations

Oversight Hearing to evaluate whether the annual report required by The International Child Abduction Prevention and Return Act (ICAPRA) (P.L. 113-150) has been implemented by the State Department as intended by Congress.

By Patricia E Apy[1]

Chairman Christopher Smith; Ranking Member Bass and Members of the Subcommittee :

It is a privilege to submit for the hearing record my comments reflecting my assessment of the State Department's initial report to Congress under ICAPRA.

Preliminarily I would indicate that this is fourth time I have had been able to provide testimony regarding measures to prevent international child abduction before the United States House of Representatives. As set forth more particularly in my biography, my practice has for nearly thirty years focused on complex international and interstate child custody litigation. I had the opportunity to provide consultation and technical assistance in the drafting of ICAPRA throughout the legislative process. My involvement in the enactment of this crucial legislation was initiated not only by my representation of David Goldman, in his efforts taking half of a decade to recover his abducted son Sean from Brazil, but in my years of international child abduction practice with particular expertise involving countries that are not signators to the Hague Convention on the Civil Aspects of International Child Abduction. (Non-Hague Countries).

[1] Patricia E Apy has been a Fellow of the International Academy of Matrimonial Lawyers since 1998. On April 15, 2015 she received the American Bar Association's National Grassroots Advocacy Award recognizing her body of legislative work and advocacy including having served as one of the principal authors of the ICAPRA. This statement includes information compiled in support of remarks made at the IAML Hague Symposium, Quebec Canada June 9, 2015.

My purpose in testifying is to articulate the importance of the report, the current deficiencies in the existing report, and the necessity to address those deficiencies in order to aggressively combat international child abduction by encouraging a report which will become the authoritative source of objective evidence to assess obstacles to recovery of children.

Brief Historical Perspective

In 1989, a mere three years after the United States Congress enacted the International Child Abduction Remedies Act, (ICARA) then, 42 USC 11601 et seq[2] a case was filed in United States Federal District Court in Wyoming, seeking the return of Sarah Isa Mohsen, a little girl from the United States of America to her habitual residence, conceded to have been the Kingdom of Bahrain. The application also conceded that Bahrain was not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. Hague Conference on Private International Law, Final Act of the Fourteenth Session, October 25, 1980. 51 Fed. Reg. 10498 (1980). However, the petition for return of the child was predicated upon the argument that with the ratification of the Treaty by the United States, the courts of the United States were now obligated to apply the substantive analysis of the Treaty in deliberating on the question of wrongfulness of the removal and retention as well as considering the unique Treaty remedy of a speedy return of the child. The argument advanced concepts of Treaty compliance as well as the adoption of the protections as a component of "customary international law". However, the Wyoming Federal Judge was not moved, and dismissed the application based upon the lack of treaty reciprocity existing between the United States and Bahrain. *Mohsen v. Mohsen*, 715 *F.Supp* 1063 (D. Wyo. 1989).

Five years later, Barbara Mezo sought the return of her abducted children from various countries in North Africa, filing a petition in United States Federal District Court in the Eastern district of New York charging that then Secretary of State, Warren Christopher, should, "perform his duties" by implementing the provisions of ICARA and securing the return of her two children, taken to Egypt and subsequently from Egypt to Libya. The Court observed the disconnect between the diplomatic functions of the Department of State and a private cause of action under the Treaty, and then repeated that because the Hague Convention applied to neither Egypt nor Libya, the remedy she requested was unavailable and the action summarily dismissed. *Mezo v. Elmergawi*, 855 *F. Supp*. 59 (E.D.N.Y. 1994).

[2] Now transferred to 22 USC 9001 et seq.

In 2004 Sean Goldman was taken by his mother in the company of his two maternal grandparents to Rio de Janiero, Brazil. The trip was explicitly intended to be a few weeks in length, however the mother, and later her family, would argue that upon arrival in Brazil the she chose never to return to the United States. What followed was protracted litigation waged in two countries which eventually made its way to the consciousness of the average American and Brazilian and became newsworthy throughout the globe. Sean's father, David Goldman enlisted the assistance of various Congressional leaders, career diplomats with specific experience in Latin America and the American media to articulate a case that Brazil, in failing to have ever returned an American child consistent with their explicit responsibilities in the Treaty could no longer be considered as compliant. As a result, he argued, a reciprocal relationship as contemplated by the Treaty, simply failed to exist, and he requested diplomatic intervention by the United States Department of State and legislative efforts by the United States Congress to pressure Brazil in recognizing and complying with their obligations under International law. Among other arguments, he urged that American Judges were continuing to permit American children to travel to Brazil, without restrictive preventative measures or language to insure their safe return, as a result of misplaced reliance in Brazil's tacit representation that they were Treaty partners in returning abducted children to their habitual residence.

Mr. Goldman's success at drawing Congressional attention to a host of systemic issues in the implementation and enforcement of the obligations found in the Hague Convention on the Civil Aspects of International Child Abduction, on a nation state basis made it patently obvious that replicating such action on behalf of each and any future individual litigant (however compelling) would require enormous individual financial and personal resources and offer little promise of institutional change. Similarly situated "left- behind" parents saw both increased hope, and overwhelming frustration in attempting to advance similar tactics in demanding individualized Congressional Action to assist in the return of their children from a host of countries, both within and without Treaty mechanisms.

These parents were able to garner Congressional attention in addressing the issues of international parental abduction, in an unprecedented way, in calling for a reasoned assessment of the process and effectiveness of the United States Department of State in managing its role as Central Authority under the Treaty and in exploring the long held formal position of the Department of State in refusing to consider alternate diplomatic and legal mechanisms to press for international compliance with existing Treaty obligations or to explore bi-lateral or multi-lateral agreements with countries who were not Treaty signators, and whose legal systems and historic approach to international parental abduction made them unlikely participants in a reciprocal treaty scheme.

Between December of 2009 and August of 2014 the United States House of Representatives and the United States Senate held no fewer than six different hearings , conducted in committees and subcommittees, before the Tom Lantos Human Rights Commission and requested by the Women's Caucus addressing the Hague Abduction Convention and ICARA's application both

outside and within the United States. Testimony was solicited not only from the United States Department of State office of Children's Issues, but from International family law practitioners, law professors and academics and subject matter advocates including representatives from various countries, NGO's and affected parents. Originally introduced by Congressman Christopher Smith of New Jersey in 2009, six different versions of what would eventually be entitled the Sean and David Goldman International Parental Kidnapping Prevention and Return Act of 2014 (ICAPRA) were authored, marked up and negotiated and on August 8, 2014 executed by the President of the United States as 22 USCS 9111-9114. The United States Department of State vociferously opposed them all.

The Act represents three areas of federal action now focused on the prevention of child abduction. First, it provides in the form of an annual report, documentation and accountability regarding the administration, prosecution and resolution of diplomatically reported abduction cases. Second it provides objective criteria for the use of diplomatic tools and remedies in addressing countries in which there are proven obstacles to the recovery of children. Third it begins the process of establishing border controls and protocols to insure the judicial restraints, once imposed, may be legally and practically implemented to prevent the removal of a child from the United States unlawfully. The Act is structured with attention to these three primary areas, Title I addresses the actions to be taken by the United States Department, primarily in its role as Central Authority, by enhancing its ability to comply with the duties already assigned to it by the existing requirements of the Hague Abduction Treaty.[3] Title II outlines mandatory and discretionary diplomatic steps to be taken where the objective evidence demonstrates either that a Treaty signator is not meeting its obligations under the Treaty, or where an alternate protocol for addressing child abduction must be negotiated apart from participation in the Hague Abduction Convention. [4] Title III begins the first step toward effective border control for the prevention of international child abductions from the United States, with the goal of insuring that all children travelling from the United States are authorized to do so.[5]

A. Focus on Prevention: The ICPRA Reporting Requirements serve as the basis for all the preventative measures contained in the Act, as well as the ability of Parents, Judicial Officers, Family Law Practitioners and Mental Health Professionals to accurately assess the of Risk of Child Abduction and fashion reasonable remedies to prevent it .

[3] 22 USC Sec 9111-9114

[4] 22 USC 9121-9125

[5] Section III amends 6 USC 231 et seq. The Secretary of Homeland Security, through the Commissioner of U.S. Customs and Border Protection , in coordination with the Secretary of State, the Attorney General and the Director of the Federal Bureau of Investigation is charged with establishing a program preventing the departure of any child from the United States prohibited by valid court order from being removed.

Testimony elicited before this body has repeatedly demonstrated that the earliest observations made by the Hague Conference on Private International Law and included in its compilation of recommendations for continued good practice in dealing with the civil aspects of international child abduction, remained salient. , "Preventing abduction is a key aim of the 1980 Convention, and it is widely acknowledged that it is better to prevent an abduction than to have to seek the child's return after Abduction." (Guide to Good Practices)

Among those recommended measures by the Hague Special Commissions included; documentation of the requirement to obtain or maintain separate travel documentation for the minor child; the established express consent of both parents before issuing travel documentation for minor children; ***assessing and taking into account the potential risk of wrongful removal or retention of a minor child.***" Summary: Proactive Measures- Creating a Legal Environment which reduces the risk of abduction." Part III Preventative Measures.

Among the difficulties discussed in years of Congressional briefings and hearings, particularly by family law practitioners and parents, was the inherent challenge in successfully securing reasonable preventative restraints on international travel of their children. The complexity and expense of providing accurate and admissible information to the judges who were charged with fashioning parenting and international access when parents could not agree, were daunting. Judges considering the imposition of preventative measures and restraints were universally and naturally reluctant to impose restraints where no objectionable behavior had as yet occurred. Further, locating and qualifying experts with specialized knowledge in foreign law and factors in the assessment of the risk of wrongful removal or retention of a child were often challenging or unavailable.

In their seminal work on child abduction, summarized in the "Judges Guide to Risk Factors of Child Abduction", Linda Girdner Ph.D. and Janet Johnston Ph.D. explained that assessing the risk of removal or retention of child required, in addition to the individual characteristics of the parents and their actions, an objective assessment of the institutional obstacles to recovering that child.

Obstacles to recovery refer to the degree to which there are legal, procedural, policy or practical barriers to locating, recovering or returning a child in the event of an abduction. If the obstacles appear to be extremely difficult to overcome then the likelihood of the child ever being returned may be remote. If the case appears to involve a few minor obstacles, then the recovery of the child being recovered promptly would be relatively good….the family court judge should consider that in cases in which the obstacles to a prompt recovery would be difficult to

overcome, the need for preventative measures is more acute, warranting the use of measures which are more restrictive. [6]

Of course, the Treaty itself is silent with regard to enforcement of its provisions or assessment of the current status of compliance among Treaty partners. Further, no formal record keeping component is contained within the structure of the Treaty nor has one been routinely or voluntarily taken on by Hague Conference.[7] The original requirement under United States Department of State to provide information to the Congress regarding the status of the abduction treaty was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999, and also as part of the Foreign Affairs Reform and Restructuring Act of 1998 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the original treaty implementing legislation, International Child Abduction Remedies Act then found at 42 11611. Under the prior reporting requirements the Office of Children's Issues, relying upon the Hague Conference "Guide to Good Practice" subjectively assessed three areas of performance in categorizing a country as "non-compliant" or "demonstrating patterns of non-compliance". Historically, many of the reports had been received lukewarm enthusiasm by family lawyers who remained hopeful of the eventual ability to rely upon the information in their international practices. Practitioners perceived that there was sometimes an almost myopic tendency on the part of the Department of State to avoid applying the moniker of "non-compliant" to offending countries even in circumstances where it was clear that the obstacles to recovery were virtually total. Unless a country had demonstrated deficiencies in all three of the areas of performance (central authority compliance, judicial performance and law enforcement performance) the report would indicate that the country displayed merely "patterns of non-compliance". Further, the reports did not highlight qualitative statistical data which would permit independent review or reliably document the current number of cases, how old they were or their disposition. There was no policy of identifying for members of Congress, whether or not a child abduction had taken place into or out of their constituency. This was particularly important in districts with strong religious or cultural communities, where systemic difficulties involving particular countries could have a deleterious impact upon the entire community and application of law. There was, for example, no formal recognition of the link between international military service and an over-representation of international child abduction cases. Of course, the report was limited to information regarding countries who were signators of the

[6] "Judges Guide to Risk factors of Child Abduction", Linda Girdner, Ph.D. And Janet Johnston Ph.D. March 20, 1995 22nd National Conference on Juvenile Justice National Council of Juvenile and Family Court Judges and the National District Attorneys Association , March 20, 1995

[7] In May of 2014 and again in June of 2015 Secretary General Christophe Bernasconi in addressing the International Academy of Matrimonial Lawyers at their Hague Symposia indicated that the Hague Conference does not have access to uniform or current statistics from signator countries providing a recent or relevant basis for the assessment of international reciprocity and Treaty compliance. See also, Caitlin M. Bannon, "The Hague Convention on Civil Aspects of International Child Abduction, The Need for Mechanisms to Address Non-Compliance 31 BC Third World L.J. 129, 153 (2011)

Hague Abduction Treaty, and provided no information regarding reported abductions or requested assistance involving non-treaty signators.

The Hague Conference itself, has in the past, studiously guarded its "neutrality" avoiding engagement in any public negative critique of signatory countries (particularly where it could be viewed as punitive) in favor of educational and technical support to "encourage" treaty implementation. There is absolutely nothing wrong with this perspective, from such a body. **However, when such a perspective results in an unintended loss of transparency and is unreservedly echoed in United States diplomacy without scrutiny. Reluctance to unflinchingly review the actions of state's parties encourages a false sense of comfort on the part of world's family Judges who could assume that a country that identifies itself as a signator, without more, acts with reciprocity regarding the implementation of the Treaty. To apply the Girdner-Johnston risk factor matrix, such misinformation could leave the impression of few existing obstacles to recovery of a child, in the absence of concrete disclosure of the number, circumstances and treatment of active abduction cases.**[8]

In her introductory correspondence accompanying the 2010 Compliance Report, Janice Jacobs, Assistant Secretary of State for Consular Affairs admitted, "Compliance is a challenge for many countries. Consequently, continued evaluation of Treaty implementation in partner countries and the United States is vital for its success." [9]

Comparison of the initial ICAPRA report to the TIP Report

The model for the diplomatic and reporting requirements now codified as part of ICAPRA was the United States' Trafficking Victims Protection Act of 2000 (TVPA) and its subsequent amendments . 22 USC 7107

The goal of the reporting requirements found in TVPA have been articulated as, "seeking to increase global awareness of the human trafficking phenomenon by shedding new light on various facets of the problem and highlighting shared and individual efforts of the international community and to encourage foreign governments to take effective action against all forms of trafficking in persons." [10]

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[8] In prior State Department testimony offered by Ambassador Susan Jacobs before the Senate Foreign Affairs committee summarizing the State Department's opposition to ICAPRA, she encouraged the inference that ICAPRA somehow undermines the work of the Hague Conference and indicated that its passage would be "threatening the efficacy of the Convention". However in the 35 years since the enactment of the Treaty, the Hague Conference has not been willing exert its leadership in providing neutral assessment and publication of timely and relevant statistics evaluating the status of reciprocity. The United States Department of State's deference to the Hague Conference as a body that the US should "continue to delegate its sovereign authority to" is not supported in the arena of identifying obstacles to recovery.

[9] See, "Hey Uncle Sam! Maybe it's time to stop condoning child abductions to Mexico", Antoinette A Newberry Wood, Ga. J. Int'l & Compels, Vol 42:217 at 240 (2013)

[10] Introductory remarks ,"Purpose, The 2009 Trafficking in Persons (TIP) Report" Report and subsequent updates available at www.state.gov/g/tip

While originally opposed by the Department of State, who raised similar objections in 1999 to the financial, manpower and diplomatic burdens inherent in the reporting function, a decade of TVPA has been demonstrated that the TIP report has had a remarkable impact upon the recognition and amelioration of trafficking in persons, both domestically and internationally.

*Widely acknowledged as the world's most comprehensive and influential assessment of global anti-trafficking efforts, the Tip report is a potentially powerful advocacy and campaigning tool for anti-slavery groups working both in country and internationally. Since 2001, the Tip report has been the US' principal diplomatic tool to engage foreign governments on the issue of trafficking and slavery within their own borders. Using a three-tier system, the US state department ranks how countries are complying with the Trafficking Victims Protection Act. It offers a detailed analysis of credible evidence of people trafficking and slavery within each country, any counter-trafficking efforts being undertaken and a series of suggestions for how the situation could and should improve. '**It is a blunt instrument to force through change and a strong platform in delivering credible information that looks at solid evidence in an objective light with the weight of what is still the most powerful nation on earth behind it. As an advocacy tool you don't get much better than that**.' Steve Trent Environmental Justice Foundation*

"How NGO's are using the Trafficking in Person's Report", Annie Kelly the Guardian, 21 June 2013

The motivation for the changes made to previous ICARA reporting requirements were designed with precisely the same purpose as the TIP report. ICAPRA was designed to enhance and strengthen the information to be submitted to Congress by requiring production of more than generalized and subjective summaries and by expanding reporting requirements to provide information about abductions to non-Treaty jurisdictions. In addition to reporting on any countries in which there are pending abductions, regardless of their Treaty status, the new requirements were designed to provide the tools for judges, in addition to law makers, to evaluate components of the practical obstacles facing those attempting to recover their abducted children from particular countries. **For the legislators and diplomats, this information is to be used to form and communicate a conclusion as to whether there has been a "governmental failure" and when the evidence so demonstrates, and to contemplate diplomatic or legislative action if appropriate. For the jurist, attorney, arbitrator or mediator this information can be used to objectively assess the systemic obstacles to recovery of a child, apart from any contested allegations regarding the individual family dynamics and to be informed by this objective, non-case specific information in considering the necessity or prudence in recommending the imposition of preventative measures or enhanced enforcement mechanisms. (Title I ICAPRA Department of State Actions, Reporting**

Requirements; Actions in Response to Unresolved Cases; Actions in Response to Determination of Pattern of Noncompliance 22 USCS 9111-9114)

1. **Reading the first ICAPRA Report 2014**

On May 13 2015 the Office of Children's Issues released its first ICAPRA report, admittedly for a truncated reporting period. [11]**It is clear, in reviewing the first compliance report issued pursuant to ICAPRA, that there are a number of weaknesses that at best may simply reflect the Department of State's inability to quickly comply within the robust statutory time frame in a way that reasonably articulates the information required by the law in a useable form. At worst, it could be read as evidence of persistent institutional resentment to the Congressional imposition of the modified reporting requirements and a profound determination to render the report of limited value.** In either case, a comparison between the quality, scope and comprehensiveness of the 300 plus page annual Trafficking in Person's Report and the recently released 41 page ICAPRA report demonstrate a failure to appreciate the need for and potential international impact of the report required by the legislation.

The report actually warns, "The *case numbers provided in Table 2 do not necessarily reflect the total amount of cases per country or area, reported to the USCA. Rather the statistics provided reflect the number of abduction or access cases that met the specific data requirements of the law, as outlined in the header of categories in Table 2 in CY 2014.*"Section 3.2 "Countries and Areas with Five or More Pending Abduction Cases during CY 2014".

Further, a cursory review indicates an almost arbitrary and entirely subjective inclusion and exclusion of cases, apparently loosely based upon the Department's own reading of the legislation, and not as a result of specific instructions in the law.

a. **Non-Hague Treaty Cases:** By way of example, if one looks at a non-Treaty country such as the United Arab Emirates, the report, in Table 2 indicates incorrectly that the number of unresolved cases is zero. A check of the Appendix II which in Table 6 purports to list all unresolved cases, offers no listing for the UAE. This would come as a shock to Christopher Dahm, whose daughter Gabrielle was abducted by her Mother with the assistance of her maternal grandparents 5 years ago, and to his Congresswoman Lois Frankel D-FL and Senator Bill Nelson R- FL who have been working with the Department of State and Department of Justice in insisting on her return . "Gabby's" abduction occurred in violation of express orders prohibiting the mother from removing the child from the United States, and placing restrictions on passport issuance. Neither parent is a citizen of the UAE. As a result, the United States Attorney for the Southern District of Florida sought and obtained criminal indictments against both the abducting Mother and her parents for International Child Abduction pursuant to the International

[11] The report indicates that the reporting period under the statute was from August 2014 to December 2014 with future reports reflecting a calendar year.

Parental Kidnapping Prevention and Crime Act.[12] Mr. Dahm has, throughout his ordeal, identified his daughter as having been abducted, and sought the assistance of the Office of Children's Issues in securing the repatriation of his daughter, as well as frequent requests for diplomatic help in securing information regarding her location and her health. Communication from the Department confirms that Mr. Dahm's case has been the subject of discussion with UAE authorities by Ambassador Susan Jacobs, Mr Dahm's Congressional Representative Ms. Frankel and her office have been aggressively involved with the matter, compelling regular diplomatic and law enforcement updates. Mr. Dahm's case can only be read as falling into the category of cases the Department of State has selectively removed from their reporting requirements.[13] Remarkably, understanding the purpose of the legislation in the prevention of abduction and the identification, location and recovery of abducted children, the report leaves the reader to guess at which cases the Department felt were outside of the "data requirements of the law" or which did not "necessarily" reflect the total number of cases.

With regard to the identification of Countries demonstrating a "Pattern of Non-Compliance", and necessarily implicating diplomatic remedies it is clear the selective choices made in reflecting the nature and number of pending abduction cases has a direct bearing on the assessment of whether a Country is acting in "persistent failure". In the absence of such an objective assessment, the Department of State is absolved of further compulsory diplomatic action.

b. Hague Treaty Cases: Japan is singled out in the report, but only as a diplomatic success story, with contradictory information within different sections of the report, regarding Japan's status. While seemingly acknowledging that Japan has continued their historic patterns of recalcitrance in the return of abducted children or organization of rights of access, Japan is not identified as exhibiting patterns of non-compliance. Within hours of the Hague Abduction Convention becoming effective between the government of the United States and Japan in April of 2014, the desperate parents of children who had been abducted from the United States (some who have been prevented from seeing their children for many years), filed their applications for the organization of Rights of Access pursuant to Article 21 of the Treaty. Left-behind parents had already been told that the

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[12] 18 USC 1204

[13] The Department has independently, and rather absurdly, determined that "most non-Convention cases do not meet ICAPRA's definition of an unresolved abduction case." Their purposeful application of the definitions to exclude all existing non-Treaty abduction cases from reporting , unless there is request made to a non-existent central authority is neither a fair nor accurate reading of the language and intent of the statute. The accompanying statement, "When parents use the legal system of a non-Convention country, they are likely participating in the proceeding for custody of the child, which may not involve the return of the child to the United States, rather than submitting an application for return of the child for determination to the judicial or administrative authority. ***Therefore the Department does not consider a custody proceeding to be an unresolved abduction case in a non-Convention country, unless there is also a formal request for return***", is particularly unhelpful. If a parent has identified their child as having been abducted, and as a result opened a case with the Office of Children's Issues, to remove their case from the data, because they are forced to file a custody complaint as a condition of the return of their child, is unsupportable.

Treaty would not be retroactively applicable to their abduction claims, and were strongly encouraged by the Japanese Central Authority to relinquish any pre-ratification abduction claims or requests for return of their children to the US.[14] The chart of pending cases in the ICAPRA report confirms that the forty cases were brought, and indicates that only 29 were submitted to the Japanese Central Authority, and that the Japanese Central Authority has taken no steps to submit the requests for access to either judicial or administrative bodies . Nevertheless, the report indicates that there are zero unresolved cases, despite the fact that as of May 30, 2015 there appear to have been no access had been accomplished pursuant to the Convention, to any of the 40 applicants. The report fails to produce any evidence of efforts to negotiate a Memoranda of Understanding, or other alternate protocol to deal with the pre-ratification cases, despite repeated assurances that these children and their parents would not be abandoned. The documentation fails to identify service members or former service members (despite the fact that at least two known cases were among the pre-ratification cases). In identifying its recommendations to improve resolution of cases the Department does not identify Japan as a country with which they have held bi-lateral meetings, as expressly contemplated by the legislation to encourage governmental officials to comply with their obligations under the Treaty, or to intensify their engagement with the Japanese Central Authority for updates or prompt case processing. Table 3 Recommendations to Improve Resolution of Cases in Countries or Areas with Five or More Pending Abduction Cases during CY 2014 p. 20. However, its discussion of Japan references the Department's efforts as it " continues to encourage the government of Japan to remove ***obstacles*** that parents still face in gaining access to or return of their children." The paragraph closes with the admission that " almost all of these non-Convention cases remained un-resolved" It is unclear what the Department means by "Non-Convention cases" in this context, in that while the pre-ratification abduction cases could be so considered , a new access case would be a Convention case. Finally a review of the "Reasons for Delay in Submission to Authority" found in Table 5 identifies each of the 29 listed access cases as suffering from a delay. Notably, the Department indicates that in 9 of the cases "the case was not submitted to a judicial or administrative authority while the parents pursue mediation" However, if this mediation is program advanced by the Japanese Central Authority in 2013 it has produced no recognizable success not only since access petitions were made a year ago, but since before the Treaty became effective. There is no viable explanation given that there has been no successful access application or abduction application, nor any significant movement on pre-existing cases, how Japan is kept from being identified objectively as demonstrating patterns of non-compliance.

The real danger in the report, of course, is that in its current form its misrepresentation of obstacles to recovery leave parents in the worst possible circumstance. An attorney or Judge attempting to determine whether Japan poses systemic obstacles to recovery, would be entirely misguided in reading or attempting to evaluate the report. In fact counsel could (and will likely

[14] Indeed, a so called "access mediation program" had been offered in December of 2013 only to parents of abducted children who were willing to abandon their abduction claims.

argue) that Japan should be considered entirely Treaty compliant and their reciprocal obligations under the Treaty positively met based upon the purposefully incomplete content of the report.

The Hope of ICAPRA: Working Toward a National Registry for Custody Orders Preventing Travel from the United States

One of the most immediately promising portions of ICAPRA, and certainly the one that would directly impact family law attorneys and judges is found in the amendment to the Homeland Security Act. The new legislation requires the establishment of a federal program through the Commissioner of United States Custom and Border Protection, in coordination with the Department of Justice, Federal law enforcement and the Department of State to prevent children from being removed from the United States in violation of a valid court order. Title III begins this process by establishing a working a group comprised of the major stakeholders, including consultation with representatives from the Department of Defense and the FBI.

It is hoped that in formulating the program, work toward a federal uniform order preventing international travel can be drafted which provides an administrative mechanism for the registration of effective orders. In looking at the components of a meaningful and valid order the working group need not "reinvent the wheel". They can and should refer to the Uniform Child Abduction Prevention Act[15], promulgated by the National Conference of Commissioners on Uniform State Law in 2006. The Act harmonizes the Uniform Child Custody Jurisdiction and Enforcement Act [16] as well as considering a host of other state and federal laws and a myriad of substantive custody issues , including domestic violence concerns. In outlining a recommended process for, and the components of, a valid abduction prevention order, the act enumerates a number of specific measures that a court may order. The UCAPA references travel restrictions, the State Department's Child Passport Issuance Alert Program and includes criteria for expiration, modification or revocation of orders. Currently enacted in 14 states, using the UCAPA as a beginning template which has been drafted and amplified by subject matter experts , can only render a uniform order easier to use and therefore more likely to become a regular and accepted preventative method. Still, it will be helpful for international legal practitioners both in the United States and abroad, to remain engaged, through their professional associations[17] in rendering the process internationally user friendly.

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[15] Uniform Child Abduction Prevention Act (Statutory Text, Comments, Un-Official Notations) Linda Elrod J.D. Reporter 41 Fam L.Q. 23 (2007)

[16] Uniform Child Custody Jurisdiction and Enforcement Act, approved 1997, enacted in all states except Mass where pending. www.uniformlawcommission.com

[17] International Academy of Matrimonial Lawyer Hague Working Group; International Law and Procedure Committee of the Family Law Section of the ABA should provide technical assistance to the working group in addressing best practices to establish validity of orders.

The Promise of ICAPRA for Family Lawyers:

In addition to the reporting and diplomatic functions mentioned above and the steps toward border control, ICAPRA offers real time assistance to left behind parents and their counsel. Now, no longer experiencing their child's abduction as having been relegated to a "domestic dispute," litigants are assured of at least one senior official in each and every diplomatic and consular mission abroad specially assigned to assist parents who need to coordinate legal efforts abroad or may attempt to see their children. Embassies and consulates are to monitor developments in such cases and communicate accurate information back to OCI, and the litigants. For each country in which there are five or more active cases of international abduction, there must be a written strategic plan to engage with the appropriate foreign counterpart and provide predictable mechanisms for working such cases.

ICAPRA was not drafted to supplant or weaken ICARA, or the application of the Hague Abduction Treaty on a global basis. Nothing in the text of the legislation limits the Hague Conference in its current role, or its relevance. The Hague conference will presumably continue with its efforts for international judicial education and sharing of good practice and communicating international legal developments.

ICAPRA articulates Congressional intention that an individual left behind parent and their legal representatives will no longer be forced to litigate "systemic" maladies in the diplomatic relationships between that country and the United States of America. Once it is determined , using entirely objective criteria, that there is a breach in the reciprocal relationship with a Treaty partner, or there is a systemic governmental failure to address international parental abduction, the burden for action shifts to the Department of State to utilize the diplomatic tools available to it to identify and ameliorate the problems. If they can't, when they can't, the President of the United States has an escalating arsenal of measured diplomatic resources to direct attention to the problem and communicate its priority of the American people. That begins with bi-lateral and multi-lateral discussions and agreements to develop alternate protocol for the resolution of international child abduction, particularly where religious and culturally based legal systems make the future likelihood of participation in the Abduction Convention remote. But it also means identifying and disclosing the difficulties with our Treaty partners, so that family lawyers are not lulled into the belief that the Treaty is properly working in a place it does not. Any serious critique of the working of the Abduction Convention will, undoubtedly, include a critical analysis of the treatment of Treaty cases within the United States. We can and should welcome such a review.

There is something worse than a country that has not yet signed the Hague Abduction Convention. When a country is a "Treaty Partner" but is not demonstrating a capacity or desire

to act in reciprocity, the only way the American public and the Members of this body will be able to reliably identify such countries and recognize that they pose genuine obstacles to the recovery of American children, will be when the Department of State articulately and transparently discloses, in the form of its report , the accurate number of cases, their location and the success of efforts the Department of State has made in getting our children back.

Respectfully Submitted

Patricia E Apy