

STATEMENT OF MARY A. RYAN

ASSISTANT SECRETARY FOR CONSULAR AFFAIRS

UNITED STATES DEPARTMENT OF STATE

**BEFORE THE COMMITTEE ON INTERNATIONAL RELATIONS,
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

**IMPLEMENTATION OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS
OF INTERNATIONAL CHILD ABDUCTION**

October 14, 1999

Mr. Chairman and Members of the Committee

I am pleased to appear before the Committee today to address the important topic of international parental child abduction. Mr. Chairman, I want you to know how much I appreciate your focus on this issue because there is no greater responsibility than the welfare of our children.

The protection of Americans abroad, including those children victimized by international parental child abduction, is of the highest priority to the Department of State. Matters involving the welfare and custody of children are some of the most difficult and emotional cases with which we must deal. When a parent abducts, or wrongfully retains, a child from his or her home, and prevents the child from having a relationship with the other parent, the trauma to the child is immediate and compounded each day the child is not returned home.

International child abductions are often complicated by the fact that many abducted children are from multi-cultural relationships. They are often citizens of both the United States and the country to which they were abducted. Ultimately the fate of these children is decided by the courts of the countries to which they have been abducted or in which they have been wrongfully retained. Often custody orders entered into by US state courts are not enforceable outside our country. Even when everyone involved is a US citizen, these cases are often difficult to resolve once the child has been removed from the United States.

Hague Convention

The United States has long taken a lead in creating a mechanism for the return of children abducted internationally. The United States was instrumental in the negotiation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, to which the US became party in 1988. The Convention provides a civil legal mechanism in the country where the child is located for parents to seek the return of, and access to, their child. It applies only to cases where children resident in a Hague Convention country have been abducted to, or wrongfully retained in, another country party to the Convention.

The Bureau of Consular Affairs' Office of Children's Issues acts as the Central Authority for the Convention in the United States. Pursuant to the Convention, a Hague proceeding does not decide custody; instead, it decides in which country custody determination should be made. It should, with very few and limited exceptions, result in an order from the court where the abducted child is located for return to the country of habitual residence so that the parents may pursue the resolution of custody.

Overall, the Convention is a success story. In the first ten years that the United States has been party to the Convention, proceedings have resulted in the return of over 2,000 children to the United States. Further, we believe the existence of the treaty's return mechanism has deterred an untold number of abductions. Approximately 60% of the cases in which we provide assistance are now covered by the Convention. When the US joined the Convention in 1988, only nine other countries were party. Today the Convention is in effect between the US and 53 other countries. We have an active program to encourage countries to join the Convention as the best possible means of protecting children from the harmful effects of abduction. For example, in my August trip to Japan, which is not currently party to the Convention, I discussed with a Justice Ministry official the benefits of the Convention for both our countries. As we look to improve the Convention's effectiveness, we must remember the many parents who wish that they had even this less than ideal mechanism to seek return of their children.

While the Hague Convention has facilitated the return of many children to the United States, and while it is a vast improvement over the lack of any international mechanism whatsoever, it is an imperfect instrument. It does not always facilitate the return of children in cases where it should. The world has changed since the Convention was conceived 19 years ago when the majority of taking parents were fathers. Now, 70 percent of taking parents are mothers, and courts in some countries are reluctant to compel children's return to their fathers in the United States. Nevertheless, before we became party to the Convention, return to the US of abducted children was approximately 20 percent. Under the Convention about 72 percent of cases result in return or access. The rate of returns from the US to other countries is even higher, approximately 90 percent, including voluntary returns.

The Hague Convention does not guarantee a satisfactory result for every left- behind parent.

Implementation of the Convention varies among foreign jurisdictions. Even when the left-behind parent has filed an application in a timely fashion, hired legal counsel, and literally done everything “right”, that parent, and the United States, may be bitterly disappointed with the result. There have been some decisions by foreign courts in Hague cases with which we do not agree. However, these decisions are made by independent judiciaries in independent sovereign states. The Hague Convention cannot make a biased judicial system fair, or a nationalistic judge more objective, nor can it remove gender bias from a judicial system.

This reality offers little comfort to the left-behind parents who have suffered the frustration and anguish of losing contact with a beloved child. Nor does it comfort the traumatized child who has been abruptly wrenched from the arms of one parent and asked in effect to choose sides. That is why we continue to work to improve the implementation of the Convention.

Education and Prevention

The best means of protecting children from the harmful effects of international parental child abduction is prevention through education about and understanding of the Convention. One way to accomplish this is through increased education both domestically and internationally of family court judges and law enforcement officials. As one means of addressing this issue internationally, we are inviting judges and Hague Central Authorities from a number of common law countries to a conference in Washington next fall to discuss how to improve consistency of decisions and better implementation of the Convention.

Noncompliance Report

As mandated by the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, this past spring the Secretary of State provided Congress with a report on compliance of party countries. In that report, we found Austria, Honduras, Mauritius, Mexico and Sweden to have demonstrated a pattern of noncompliance with the obligations of the Convention with respect to applications for return of children to the United States.

Honduras and Mauritius

The Government of Honduras has chosen to take no action on applications filed by left-behind parents for the return of children in Honduras, claiming that Honduras is not bound by the Convention, due to an error in its domestic ratification process.

Mauritius was found noncompliant because of a Mauritian Supreme Court decision claiming that the Convention is not binding on Mauritian courts. This situation has been particularly dif-

difficult because of two pending cases where small children were taken to Mauritius by their mothers. Although the fathers filed for a Hague return in a timely fashion, the Government of Mauritius stated there was nothing it could do to require the courts to give effect to the Convention. Our Ambassador to Mauritius subsequently obtained the commitment of the Mauritian Minister of Justice that he would ensure this issue was resolved. We will continue to work with the Government of Mauritius with respect to individual cases and on the broader issue of their obligations under the Hague Convention.

Austria

Austria was found noncompliant due to an apparent lack of understanding in the Austrian judiciary about the aims of the Convention. This fact was most clearly illustrated in the case of Carina Sylvester, whose father, Thomas Sylvester, will be testifying today.

Immediately following Carina's abduction to Austria by her mother, her father filed for her return under the Hague Convention. After Mr. Sylvester received a final Austrian court order for return, the mother fled into hiding with the child. When the mother and Carina resurfaced over 18 months after the original abduction, the Austrian courts refused to enforce the still valid final Austrian return order citing that the child had been "resettled into her new environment" in Austria.

The mother's refusal to comply with the return order has become the basis for the court's subsequent decision not to enforce the original return order. This outcome is a perversion of the Convention. The abducting parent must not be allowed to generate the justification for non-return of an abducted child. It rewards abducting parents for ignoring lawful court orders, and encourages them to go underground with children, thereby causing even further harm to the child. In this case, Mr. Sylvester followed the law. He believed in the system. Regrettably, the result is that Carina is still not home. We will not stop trying and we will continue to work through every channel available to us to resolve our differences with the Government of Austria over this and any other case that might arise.

Mexico

Mexico has been noncompliant because of the large number of cases that have remained unresolved for over 18 months from the date of filing. Almost 60% of our 18-month old cases are with Mexico. The Mexican Central Authority has been unable to locate many children abducted from the US, causing even greater anguish for the left-behind parent. Delays in processing these cases by the Mexican Central Authority compound the harm already done to these children when they were abducted.

Recently, staff from our Office of Children's Issues met with the Mexican Central Authority at a conference in California and then traveled on to Mexico City for additional meetings. When I traveled to Mexico in September for a meeting of the Migration and Consular Affairs Working Group of the US-Mexican Binational Commission, I raised with my Mexican counterpart,

Undersecretary for Foreign Affairs Juan Rebolledo, the difficulties we have had with these cases. Mr. Rebolledo agreed with me on the importance of this issue and suggested that US and Mexican experts meet as soon as possible to explore solutions.

These efforts have been small steps in improving communication and coordination between the US and Mexican Central Authorities. One bit of good news is that it has led to the recent return of six children pursuant to the Hague Convention and two other court ordered returns from Mexico to the US. We plan to continue close contact to improve service to families caught in this dreadful and tragic situation.

Sweden

We found Sweden to be noncompliant with its obligation under the Convention to locate children abducted to or retained in Sweden. The most egregious example is the case of Gabriel Marinkovich whose father Paul Marinkovich will address you later this morning.

Gabriel's mother, a US citizen, abducted him from the United States to Sweden in 1996, and Mr. Marinkovich immediately filed for his return under the Convention. Despite a Swedish court order for Gabriel's return to the US pursuant to the Convention, Sweden has failed for over three years to find Gabriel. It is inconceivable that, in a country with such a highly socialized welfare system as Sweden has, authorities are unable to find this child and the abducting parent.

In the case of Amanda Johnson, Sweden refused to return her, stating that Amanda's habitual residence had shifted to Sweden during her two-year stay there with her mother, despite the parents' mutually agreed US custody order which included the agreement that a state in the US would remain the place of her habitual residence. The agreement further stipulated that the US state court would maintain continuing and exclusive jurisdiction to resolve all future custody issues.

The Swedish judicial system has allowed Amanda's mother unilaterally to violate a mutually agreed-to custody order, after Mr. Johnson allowed Amanda to travel to Sweden honoring the agreement. He put his faith in the Hague Convention to protect his child, and his faith has been violated. The Swedish system is not allowing Amanda's father to have appropriate access and visitation with his daughter, citing concern that the child may be taken to the US. It is outrageous that the Swedish system now seeks to deny her a loving relationship with her father.

Recently, a Swedish court reinstated interim joint custody with unsupervised visitation. Practically speaking, because there is no consistent, effective enforcement mechanism for civil orders, this may be a hollow victory.

The Director of the Office of Children's Issues met with officials from the Swedish Central Authority in Stockholm this past March to discuss these cases. Rest assured that we will not stop our advocacy on behalf of Amanda and Tom Johnson and Gabriel and Paul Marinkovich. We will continue our efforts to win greater cooperation from the Government of Sweden on these difficult cases.

We have identified a number of the biggest obstacles to the effective implementation of the Hague Convention. These include:

- Locating children: Many countries, including Mexico and other Latin American countries, Sweden, Norway and Denmark, have difficulties locating children believed to have been taken to their country. The problem in Mexico appears to be primarily a lack of resources and infrastructure, while the problem in the Scandinavian countries may be more of a lack of inter-agency cooperation and coordination within the country. Often social welfare agencies do not share information with the Hague Central Authority. Other countries have laws that prohibit information sharing among government agencies.

- Duration of cases: Although Article II of the Hague Convention calls for expeditious processing of return cases, and specifies that courts may be asked the reason for delay if they have not decided a Hague case within six weeks, the courts in some countries do not proceed in a timely fashion.

- Non-enforcement of orders: Many civil law countries do not have effective mechanisms for enforcement of their own civil orders for the return of abducted children. The country may not have any penalty for noncompliance with a court order, may levy only a small fine, or have no authority responsible for enforcing a civil order. In some instances, a left-behind parent may have to hire a designated authority (such as a bailiff) to enforce a civil order.

- Consent of the child: The Convention allows judges to refuse to order the return of a child if the child objects to being returned "... and has attained an age and degree of maturity at which it is appropriate to take account of its views." While in the United States we would expect that judges would consider a child of perhaps ten or twelve years old to be mature enough to think independently of the taking parent's influence, we have seen the views of significantly younger children taken into account in some countries. In Germany, for instance, we have seen judges take into consideration the wishes of children as young as five.

Undertakings: The courts in a number of Commonwealth countries, including the United Kingdom and Australia, often require the left-behind parent to agree to extensive "undertakings" (conditions for return) before an order for the return of an abducted child will be issued. These

undertakings expand rather than limit the exceptions for return of abducted children under the Convention. Examples have included requiring the left-behind parent to pay the abducting parent's transportation costs back to the United States, providing housing costs once the taking parent returns to the US, and/or furnishing the abductor with an automobile for the duration of custody hearings. In at least one instance, the left-behind parent was required to demonstrate that he had pre-paid a substantial sum to the taking parent's attorney. These undertakings are not provided for in the Convention, have the effect of rewarding abduction and impose additional hardships on the left-behind parent.

While Germany was not included in the report, there have been problems in a number of cases apparently stemming from the inconsistent application of the Hague Convention by German courts. Germany recognized the problem and through legislation reduced the number of courts that would hear Hague cases from approximately 600 to 24. This change took effect July 1, 1999. Our hope is that this development will create more consistent Hague decisions and provide more focus to German efforts to educate their judiciary about effective implementation of the Convention.

US Federal Response to International Parental Child Abduction

Since the US became party to the Hague Convention in 1988, the Department of State has worked to improve its implementation. The first year we created a new child custody division to coordinate our work in this area. In 1994, we formed the Office of Children's Issues, redoubling our efforts on this important subject and increasing the level of attention it received in the State Department. The benefits of this new office were quickly realized. In 1994, the Office was recognized by the Administration when it won State's first Vice Presidential "Hammer Award" for reinventing government due to its work to return children home. Our efforts have increased steadily since that time.

The new Office of Children's Issues saw the need for a comprehensive interagency coordinated response to address the scourge of international parental child abduction — from prevention, to recovery, to reunification. In 1994, it co-hosted, with the American Bar Association, the North American Symposium on International Child Abduction, funded by the Department of Justice, and aimed at improving the operation of the Hague Abduction Convention.

In an effort to coordinate assistance to abducted children and their families, the Office of Children's Issues entered into a cooperative agreement with the Department of Justice and the National Center for Missing and Exploited Children on September 1, 1995, to work together on these cases. While the National Center had always helped us locate missing children, the agreement formalized this arrangement and expanded the National Center's work to include Hague cases in which children were abducted to, or retained in, the United States.

There were other issues needing attention. One was the matter of legal costs. Although the Hague Convention provides that countries will pay the legal fees of parents in Hague return cases, the Convention allows party countries to take a reservation in this regard and the US made that reservation. As a result, some Americans pursuing return of their children under the Convention were receiving free or reduced fee legal assistance in other countries, while foreign parents pursuing return of their children abducted to, or wrongfully retained in, the US did not receive equal benefits.

At the 1994 intergovernmental meeting of Convention Central Authorities, the US was roundly criticized by other party countries because the high cost of US litigation was effectively denying parents from pursuing Hague remedies in the US. As a result of that criticism, the Department of Justice, in coordination with the Office of Children's Issues, agreed in 1995 to fund the American Bar Association's creation of the International Child Abduction Attorney Network (ICAAAN) to expand the pool of attorneys who provide pro bono or reduced fee legal assistance in Hague cases involving children in the United States.

In 1998, the Office of Children's Issues received another award from the Administration as a member of the team, which included the Department of Justice and the National Center for Missing and Exploited Children, that created the family reunification program to help needy parents pay for the costs of returning their children home. We have a robust interagency cooperative effort and are dedicated to using every tool at our disposal.

Despite all the efforts of the Departments of State and Justice to coordinate and cooperate, both the agencies involved and, more importantly, the left-behind parents believed that the US federal response to their cases was not sufficient and that more needed to be done. There were failures in coordination on cases, in part because of the inherent tension between the civil aspects of a case in which the goal is to affect the abducted child's return and the criminal efforts to prosecute abducting parents. The Senate Foreign Relations Committee invited the Attorney General to testify on international parental child abduction in October 1998. Prior to her testimony, the Attorney General spoke with the Secretary of State and together they committed their two agencies to taking a hard look at how the federal response to international parental child abduction could improve.

The Attorney General and the Secretary of State subsequently formed a Senior Interagency Policy Group to undertake a comprehensive review of the federal government response to international parental child abduction. The Policy Group in turn created a working group. Since they were created, the Policy Group and its Working Group have met at least once a month. The Policy Group, with the input of the Missing and Exploited Children Task Force's Subcommittee on International Parental Child Abduction, prepared "The Report to the Attorney General on International Parental Kidnapping" which the Attorney General submitted to Congress in June. The report outlined the gaps in the federal response and recommendations to

improve the situation. The Policy Group developed an action plan to implement the report's recommendations, wherever possible, and to the extent resources permitted.

The action plan addresses:

- The creation of a comprehensive tracking system for international parental child abduction cases;
- An enhanced role for the National Center for Missing and Exploited Children;
- The strengthening of inter-agency coordination;
- Enhanced diplomatic initiatives;
- Increased education and training;
- Strengthened mechanisms to prevent departure of abducted children and abducting parents;
- Expansion of services for parents and children;
- Coordinated budget and resource estimates.

Implementing the international parental child abduction recommendations will be expensive, having a price tag in the millions, and taking several years. As a core function of the Department of State, the Office of Children's Issues should be funded with appropriated resources. I am concerned, Mr. Chairman, that the Department's ability to implement these recommendations will be influenced by the outcome of Congress's consideration of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriation Bill, 2000. I am very concerned that the level of funding in that bill for Department of State activities will significantly delay the implementation of the international parental child abduction recommendations. Please note, Mr. Chairman, that I am not suggesting that funds be earmarked for Children's Issues; the problem for the Department of State is the overall funding found in that bill.

We are well on our way to completing the requirement study for the interagency case tracking system. The contractor has had over a dozen meetings with Children's Issues staff and the interagency community that will be using this system. With needed funding, implementation of the first phase of this system is scheduled for this spring. We have increased the staff of the Office of Children's Issues so that country officers have fewer cases. We will soon be advertising for a management analyst to oversee further development of the comprehensive tracking system, to create accurate statistics on all abduction cases, both to and from the US

We have also expanded our cooperative agreement with the National Center for Missing and Exploited Children to include additional assistance for parents and children in all international child abduction cases. We recently established a National Center coordinator position within the Office of Children's Issues. The passport custody lookout function currently in Passport Services will be transferred to the Office of Children's Issues in early

2000.

As we seek to improve services to parents, we recognize the need for continuing feedback from our customers. Recently, Children's Issues has had a number of meetings with left-behind parents to receive their input on how we might do things better. One of the new positions in Children's Issues will be specifically devoted to enhancing our service to American citizen customers. We have also established Children's Issues coordinators at our embassies and consulates around the world.

Recently, we have seen an example of how our increased interagency communication has aided the return process. Five children abducted from the US to Syria were returned home following extensive interagency cooperation involving the FBI, Department of Justice, local law enforcement and the National Center for Missing and Exploited Children, efforts coordinated by Children's Issues. Children's Issues initiated numerous conference calls among the relevant organizations, ensuring that the return of these children remained the focus of all US Government efforts. Following excellent work by our Embassy in Damascus, one of the abducting parents was arrested in Syria and all five children were returned using Justice Department "family reunification funds" and State Department repatriation loans.

I want to acknowledge the important role that our states can and do play in the recovery of internationally abducted children. Each state in the US has criminalized parental child abduction and has victim compensation and victim assistance programs funded in part by the Department of Justice to help needy left-behind parents. California, in particular, has a very comprehensive program whereby the District Attorney's office in each county has a child abduction unit to assist in the recovery of abducted children. In numerous cases, these units have sent investigators to other countries to retain local attorneys, attend judicial proceedings and accompany the abducted children home at the expense of the county. The California program is a model for other states.

In considering the complexity of both Hague and non-Hague abductions, we must remember that these cases are all centered on children and their need to feel secure in their homes and not live in fear of abduction. Thank you, Mr. Chairman, for the opportunity to address the Committee on this important topic for our children and their parents.