

SENATE CONCURRENT RESOLUTION 98—URGING COMPLIANCE WITH THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION (Senate - March 23, 2000)

Mr. DeWINE (for himself, Mr. Helms, Mr. Thurmond, Mr. Warner, Mr. Rockefeller, Mr. Robb, Mr. Thomas, Mr. Dodd, Ms. Landrieu, Mr. Hatch, and Mr. Stevens) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. Con. Res. 98

Whereas the Department of State reports that at any given time there are 1,000 open cases of American children either abducted from the United States or wrongfully retained in a foreign country;

Whereas many more cases of international child abductions are not reported to the Department of State;

Whereas the situation has worsened since 1993, when Congress estimated the number of abducted and wrongfully retained American children to be more than 10,000;

Whereas Congress has recognized the gravity of international child abduction in enacting the International Parental Kidnapping Crime Act of 1993 (18 U.S.C. 1204), the Parental Kidnapping Prevention Act (28 U.S.C. 1738a), and substantial reform and reporting requirements for the Department of State in the fiscal years 1998-1999 and 2000-2001

Foreign Relations Authorization Acts;

Whereas the United States became a contracting party in 1988 to the Hague Convention on the Civil Aspects of International Child Abduction (in this concurrent resolution referred to as the `Hague Convention') and adopted effective implementing legislation in the International Child Abduction Remedies Act (42 U.S.C. 11601 et seq.);

Whereas the Hague Convention establishes reciprocal rights and duties between and among its contracting states to expedite the return of children to the state of their habitual residence, as well as to ensure that rights of custody and of access under the laws of one

Contracting state are effectively respected in other contracting states, without consideration of the merits of any underlying child custody dispute;

Whereas Article 13 of the Hague Convention provides a narrow exception to the requirement for prompt return of children, which exception releases the requested state from its obligation to return a child to the country of the child's habitual residence if it is established that there is a "grave risk" that the return would expose the child to `physical or psychological harm or otherwise place the child in an intolerable situation' or `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 the child's views';

Whereas some contracting states, for example Germany, routinely invoke Article 13 as a justification for non-return, rather than resorting to it in a small number of wholly exceptional cases;

Whereas the National Center for Missing and Exploited Children (NCMEC), the only institution of its kind, was established in the United States for the purpose of assisting parents in recovering their missing children;

Whereas Article 21 of the Hague Convention provides that the central authorities of all parties to the Conven-

tion are obligated to cooperate with each other in order to promote the peaceful enjoyment of parental access rights and the fulfillment of any conditions to which the exercise of such rights may be subject, and to remove, as far as possible, all obstacles to the exercise of such rights;

Whereas some contracting states fail to order or enforce normal visitation rights for parents of abducted or wrongfully retained children who have not been returned under the terms of the Hague Convention; and

Whereas the routine invocation of the Article 13 exception, denial of parental visitation of children, and the failure by several contracting parties, most notably Austria, Germany, Honduras, Mexico, and Sweden, to fully implement the Convention deprives the Hague Convention of the spirit of mutual confidence upon which its success depends: Now, therefore, be it Resolved by the Senate (the House of Representatives concurring), That Congress urges—

(1) all contracting parties to the Hague Convention, particularly European civil law countries that consistently violate the Hague Convention such as Austria, Germany and Sweden, to comply fully with both the letter and spirit of their international legal obligations under the Convention;

(2) all contracting parties to the Hague Convention to ensure their compliance with the Hague Convention by enacting effective implementing legislation and educating their judicial and law enforcement authorities;

(3) all contracting parties to the Hague Convention to honor their commitments and return abducted or wrongfully retained children to their place of habitual residence without reaching the merits of any underlying custody dispute and ensure parental access rights by removing obstacles to the exercise of such rights;

(4) the Secretary of State to disseminate to all Federal and State courts the Department of State's annual report to Congress on Hague Convention compliance and related matters; and

(5) each contracting party to the Hague Convention to further educate its central authority and local law enforcement authorities regarding the Hague Convention, the severity of the problem of international child abduction, and the need for immediate action when a parent of an abducted child seeks their assistance.

Mr. DeWINE. Mr. President, I rise today to submit a resolution urging compliance with the Hague Convention on the Civil Aspects of International Child Abduction. Joining me in introducing this resolution are Senators Helms, Warner, Thurmond, Robb, Rockefeller, Thomas, Dodd, Landrieu, and Hatch. Congressmen Nick Lampson of Texas and Steve Chabot of Ohio have introduced a similar measure in the House.

The Hague Convention on the Civil Aspects of International Child Abduction sets forth the legal mechanism for returning internationally abducted children to their countries of habitual residence, where custody can then be decided. Fifty-four countries, including the United States are signatories to the Convention.

According to the State Department, each year the United States sends an estimated 90% of kidnapped children back to foreign countries. But, the rate at which other nations belonging to the Convention return American children is much lower. A State Department report singles out several countries for their noncompliance with the accord, including Austria, Honduras, Mauritius, Mexico and Sweden. Notably absent from the report, however, was Germany, which also has established a disturbing pattern of noncompliance.

According to "Insight Magazine," State Department records show that of the 243 Hague cases filed in Germany, there were only 40 court-ordered returns.

Last fall, the General Accounting Office (GAO) testified before the House International Relations Committee on their preliminary review of the federal government's response to international parental child abduction. They cited noncompliance with the Hague Convention on the part of other countries as one of the problems with our federal government's response to international parental kidnappings. According to GAO's testimony: "The State Department acknowledges that more systematic and aggressive diplomatic efforts are needed to address problems with the Hague Convention.' The GAO also noted that while increased diplomatic efforts are needed, recommendations developed by the State Department and Department of Justice to rectify the noncompliance problem "seek to review, study, and explore Hague implementation issues, but fail to identify how these activities will actually help solve Hague implementation problems."

What we have to remember in any case where a parent abducts a child is that each of these cases involves the destruction of a family. A good illustration of this is what happened to Tom Sylvester of Cincinnati, the father of a little girl named Carina, whom he has seldom seen since his ex-wife abducted her from Michigan in 1995, and took her to Austria. The day after the kidnapping, Mr. Sylvester filed a complaint with the State Department and started legal proceedings under the terms of the Hague Convention. An Austrian court heard his complaint, and the court ordered the return of Carina to Mr. Sylvester. However, this court order was never enforced and Carina's mother took the child into hiding. Eventually, though, when Carina's mother surfaced with the child, the Austrian courts reversed their decision on returning Carina to her father, finding that Carina had 'resettled into her new environment'—a decision clearly contrary to the terms of the Hague Convention.

While the State Department recently has indicated some willingness to work more aggressively through diplomatic channels in individual cases, like that of Tom Sylvester, we must do more to improve compliance with the Hague Convention overall. The resolution we are introducing today encourages all of the contracting parties, particularly those countries that consistently violate the Convention—namely Austria, Germany and Sweden—to comply fully with both the letter and the spirit of their obligations under the Convention. In order to improve compliance rates, the resolution urges all Hague signatories to educate their judges and law enforcement personnel about the Convention. And, finally, this resolution urges countries to return children under the Convention, without reaching the underlying custody dispute, and to remove barriers to parental visitations.

Mr. President, as a parent and grandparent, I cannot begin to imagine the nightmare that so many American parents face when their children are kidnapped by a current or Former spouse and taken abroad. But, tragically, this is a very real and daily nightmare for hundreds of parents right here in this country. That's why the resolution I have introduced is critical to encouraging the safe return of children to the United States. It gives us an opportunity to help make a positive difference in the lives of children and their families. I urge my colleagues to support it with their cosponsorship.