

**UNITED STATES SENATE  
COMMITTEE ON FOREIGN RELATIONS**

**HEARING ON THE HAGUE CONVENTION ON THE  
INTERNATIONAL RECOVERY OF CHILD SUPPORT  
AND OTHER FORMS OF FAMILY MAINTENANCE**

**TREATY DOC. 110-21**

**Testimony of**

**THE NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION<sup>1</sup>**

**October 6, 2009**

The National Child Support Enforcement Association submits this testimony in support of the United States Senate giving its advice and consent to the President of the United States to ratify The Hague Convention on the International Recovery of Child Support Enforcement and Other Forms of Family Maintenance, Treaty Doc. 110-21.

United States membership in The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the Child Support Convention) will give American children with a parent living in another contracting country access to cost-free services to establish, enforce or modify a child support order. Uniform, simple, and inexpensive procedures implemented through a system of administrative cooperation among central authorities will facilitate the transmission of case information, documents, and payments across borders. The Child Support Convention is designed to foster cooperation among international jurisdictions. In a world where borders are more fluid and increasing numbers of children have a parent living abroad, this Convention is needed so that all American children can receive the child support that is so vital to their financial well-being.

Similar procedures are already in place in the United States for processing interstate child support cases, the result of decades of law reform efforts to address our own constitutional, procedural, and structural issues when a parent moves to another state. Our American experience in working among the states to resolve jurisdictional conflicts and to develop uniform laws, standardized forms, and cooperative administrative structures – all fostered by federal oversight – has been critical to our

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<sup>1</sup> Submitted by Howard Baldwin, President of the National Child Support Enforcement Association. Prepared by Marilyn Ray Smith, past president of NCSEA and member of State Department delegations to The Hague Conference Special Commissions in 1995 and 1999, and NCSEA delegations in 2003, 2004, and 2007.

ability to be effective in international negotiations.<sup>2</sup> Indeed, many provisions of the Child Support Convention are drawn from the Title IV-D child support program established by Congress in the Social Security Act,<sup>3</sup> as well as the Uniform Interstate Family Support Act (UIFSA), required by Congress to be adopted by all states in the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA).<sup>4</sup>

The National Child Support Enforcement Association (NCSEA) is uniquely positioned to recommend to the Senate that the Child Support Convention be approved for ratification by the President. NCSEA serves the national and international child support community through professional development, communication, public awareness, and advocacy to enhance the financial, medical, and emotional support that parents provide for their children. Our membership includes child support professionals, program administrators, judges, administrative hearing officers, attorneys, private sector service providers, and advocates for children and families. Once this Convention is ratified, it will be our members, working in conjunction with the Department of Health and Human Services and the Permanent Bureau of the Hague Conference on Private International Law (The Hague Conference), who will contribute significantly to its effective implementation, both at home and abroad.

For more than 50 years, NCSEA has worked to improve child support enforcement in cases where one parent lives apart from the child in another state or another country. NCSEA's members have been extensively involved in the development of U.S. interstate laws and procedures, including making recommendations to Congress for amendments to Title IV, Part D, of the Social Security Act, participating on the Interstate Child Support Commission created by Congress in the Family Support Act of 1988 and convened in 1990, and providing technical assistance to the Uniform Law Commission (ULC)<sup>5</sup> as it drafted UIFSA and subsequent revisions.

Recognizing that enforcing obligations across international borders was the next significant frontier for child support enforcement and that existing maintenance conventions were inadequate and not suitable for U.S. participation, NCSEA's members have been in the forefront of international support enforcement reform. For more than three decades, our board of directors has had an officer position for international reciprocity, and since 2000 the board has included a commissioner for international matters drawn from a foreign jurisdiction such as Canada. For almost four decades, NCSEA has invited our international colleagues to attend our annual training conferences where we have exchanged best practices and developed the professional relationships upon which work of this nature must be based. Before PRWORA authorized the Secretary of State to negotiate bilateral agreements on behalf of all the states, NCSEA

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<sup>2</sup> For an account of the evolution of interstate and international child support enforcement, see Marilyn Ray Smith, *Child Support at Home and Abroad: The Road to The Hague*, 43 Fam. L.Q. 37 (2009).

<sup>3</sup> Pub. L. No. 93-647 (1975); 42 U.S.C. §§ 651 et seq.

<sup>4</sup> Pub. L. No. 104-193 (1996), Sec. 321; 42 U.S.C. § 666(f).

<sup>5</sup> Formerly the National Conference of Commissioners on Uniform State Laws (NCCUSL).

members initiated bilateral reciprocal arrangements at the state level with willing counterparts in some thirty countries.<sup>6</sup>

NCSEA participated in the development of the new Child Support Convention from the very beginning. When work on the new Child Support Convention first began in the late-1990's, we attended planning meetings, prepared white papers, conducted legal analyses, and convened conference workshops well in advance of the first meeting of the Special Commission on the International Recovery of Child Support and Other Forms of Family Maintenance (the Special Commission) convened by The Hague Conference in May of 2003. NCSEA's child support experts encouraged The Hague Conference in its mission to completely replace existing maintenance conventions with a new global instrument that would be more flexible, more effective, and more universal – and one that the United States could join. NCSEA supported the U.S. Departments of State and Health and Human Services in their objectives to ensure that the terms of the new Convention would comply with U.S. constitutional jurisdictional requirements, as well as meet the needs of the Title IV-D child support enforcement program operated at the state level.<sup>7</sup>

Once negotiations began, NCSEA sent a delegation of child support experts – most at their own personal expense – to every negotiation session of the Special Commission as well as to many working group meetings held between the formal sessions. This attendance made our child support experts available on the spot to provide technical assistance and advice to the U.S. delegation regarding whether certain provisions were consistent with the interests of the U.S. child support enforcement program and the children it serves. It also gave us the opportunity for countless informal discussions with our international counterparts on the components of an effective enforcement system, particularly the benefits of cost-free services, administrative cooperation, uniform rules, standardized forms, and automated processes to handle high volume caseloads. These informal discussions created the opportunity for collaborative relationships to develop among delegates who might otherwise have had diverging views on resolution of critical issues before the Special Commission.

The negotiations took place over five years, from early 2003 to the end of 2007. During this period, NCSEA members also participated on international working groups hashing out the details of administrative cooperation, country profiles, and standardized forms, and laying the groundwork for practical, real-world implementation that could quickly produce results once the Convention goes into force. In addition, NCSEA organized plenary sessions and workshops at its annual conferences featuring representatives from The Hague Conference and other negotiating countries, as well as the Departments of State and Health and Human Services. NCSEA also produced two

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<sup>6</sup> For an account of the development of these collaborations and bilateral negotiations, see Gloria Folger DeHart, *Comity, Conventions, and the Constitution: State and Federal Initiatives in International Support Enforcement*, 28 Fam. L.Q. 89 (1994), as well as Smith, *supra*, note 2, at 54-56.

<sup>7</sup> For an account of the Child Support Convention negotiations from the perspective of the U.S. delegation, see Mary Helen Carlson, *United States Perspective on the New Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, 43 Fam. L.Q. 21 (2009).

conferences held in Canada specifically devoted to international issues, including the proposed Child Support Convention. The purpose was to educate and involve those who administer the nation's child support program in the evolution of the Convention's provisions, and to ensure that once adopted, the Convention would receive broad support from program administrators, policy makers, and most importantly, child support case workers who do the day-to-day work of case processing.

As a result of this extensive involvement in the development of the Child Support Convention, NCSEA can assure this Committee and the Congress that our support for its ratification is well-founded. Because of the multitude of interests and issues that had to be resolved by delegations from countries from all parts of the globe, compromises were inevitable, but none that would cast doubt on the dramatic improvement that this Convention represents over existing maintenance conventions. This is a convention that the United States can join, and indeed can take pride in the leadership and vision that the U.S. delegation has been able to offer to this ambitious undertaking. We therefore heartily endorse the Senate's advice and consent to the ratification of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

We wish to comment briefly on several key benefits to American children and the Title IV-D child support program that will result from the United States joining the Child Support Convention.

#### **Reciprocity through a multilateral treaty.**

The Hague Child Support Convention offers the United States the opportunity to join a multilateral treaty, saving the time and expense that would otherwise be required to negotiate bilateral agreements with individual countries around the world.<sup>8</sup> In many international cases, foreign child support obligations are recognized and enforced, whether or not the United States has a reciprocal agreement with the other country. In doing so, U.S. courts act under principles of comity, while Title IV-D child support enforcement agencies act in response to direct applications for service authorized by the Social Security Act. However, in the absence of a treaty obligation requiring reciprocity, the reverse is not always true. Many foreign countries will not enforce U.S. support orders or establish paternity or new support orders on behalf of children living in the United States.<sup>9</sup> Obtaining reciprocity from other countries who are parties to the multilateral Child Support Convention will therefore be one of the most important benefits to the United States from joining the Convention, and will enable us to significantly expand beyond what existing processes provide.

Since 1968, the Revised Uniform Reciprocal Enforcement of Support Act has permitted individual U.S. states to establish reciprocal arrangements with foreign

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<sup>8</sup> *Id.*, at 22-23.

<sup>9</sup> *Id.*, at 23. See also, Letter of Submittal from Secretary of State Condoleezza Rice to the President of the United States with Overview of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, June 27, 2008, p. vi.

countries having substantially similar laws, through agreements called Parallel Unilateral Policy Declarations, or PUPDs.<sup>10</sup> However, in the absence of structured central authorities and standardized procedures, this is a cumbersome and ineffective process. Since 1996, under PRWORA, the Secretary of State, with the concurrence of the Secretary of Health and Human Services, has had the authority to declare reciprocity with foreign countries if the country has established substantially similar procedures for establishing and enforcing child support obligations for children and custodial parents who are residents of the United States.<sup>11</sup> The foreign reciprocating country must have procedures for U.S. residents, at no cost, to establish paternity and to establish and enforce support orders for children and custodial parents. It must also have a central authority to facilitate transmission of documents and ensure compliance with its responsibilities. In turn, where there is a bilateral agreement, U.S. states are required to treat any request by a foreign reciprocating country the same as a request by another U.S. state.<sup>12</sup> The parent from the foreign reciprocating country is therefore entitled to the full range of child support services that the state IV-D child support programs provide to residents of the United States, including locating the other parent, establishing paternity, and establishing, enforcing, and modifying child support obligations. Since 1996, the Departments of State and Health and Human Services have negotiated some two dozen bilateral agreements, primarily with countries in Western Europe, with negotiations underway with several countries in Latin and Central America and elsewhere.<sup>13</sup>

Joining the multilateral Child Support Convention will open possibilities for reciprocal agreements that might not otherwise be easily available to the United States. Our participation will also give a significant incentive to countries desiring a reciprocal agreement with the United States to take the necessary steps to improve their internal procedures for child support. There will be additional pressure for countries to improve, because the Permanent Bureau is expected to monitor compliance with the Convention. Our own American experience, whether in interstate or international arrangements, has taught us that reciprocity requirements – including cost-free services, mandated structures for administrative cooperation, and systems to monitor compliance – spark improvement in domestic procedures among jurisdictions which wish to benefit from the ability to collect maintenance from debtors living elsewhere.<sup>14</sup>

### **Resolution of jurisdictional barriers.**

The United States has not joined other maintenance conventions in large part because of fundamental differences in how jurisdiction is obtained over the parties. In most countries around the world except the United States, jurisdiction to order maintenance is based on the habitual residence of the creditor/custodial parent. This is the jurisdictional basis for both the New York and Hague Maintenance Conventions, for

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<sup>10</sup> DeHart, *supra*, note 6, at 98.

<sup>11</sup> Pub. L. No. 104-193(1996); 42 U.S.C. § 659A.

<sup>12</sup> 42 U.S.C. § 654(32).

<sup>13</sup> Smith, *supra*, note 2, at 57. For complete listing of countries with bilateral agreements, see website of the Office of Child Support Enforcement, <http://www.acf.hhs.gov/programs/cse/>.

<sup>14</sup> Smith, *supra*, note 2, at 38.

example.<sup>15</sup> By contrast, in the United States, jurisdiction for child support matters is based on the ability of the court to obtain personal jurisdiction over the debtor/noncustodial parent, requiring a showing of sufficient minimum contacts of the debtor with the forum state to meet constitutional standards of due process, as set forth by the U.S. Supreme Court in the case of *Kulko v. Superior Court*.<sup>16</sup>

Resolution of these fundamentally conflicting jurisdictional principles is one of the most important achievements of the Child Support Convention. The Convention provides for residence of the creditor in the forum as a basis for jurisdiction, but it also permits contracting countries – most particularly, the United States – to make a reservation to this provision so that we can adhere to our requirement of personal jurisdiction over the debtor. Thus, in circumstances where the country issuing the initial order that is sought to be enforced in the United States did not have personal jurisdiction over the debtor according to our requirements (for example, the noncustodial parent has had no contacts with the country issuing the order), the Convention provides flexibility for a U.S. court having personal jurisdiction over the noncustodial parent to establish a new order and then proceed to enforce that order.

This simple accommodation allows the United States to join the Child Support Convention while preserving our long-standing constitutional standards of due process.

#### **Administrative cooperation.**

Often in international cases, the problem with effective enforcement of child support obligations is not legal or jurisdictional barriers, but ineffective or nonexistent structures in the other country to follow up on cases to make sure that they do not fall through the cracks.<sup>17</sup> Child support workers not familiar with the requirements of international cases may send the wrong documents or wrong information to the wrong address. Child support workers on the receiving end likewise do not know what to do to get the necessary information so that the case can go forward. The case then languishes, often for years, without resolution and without vital support payments going to the children in another country.

To address this problem, the Convention requires contracting countries to designate central authorities to receive and transmit applications for support services and to ensure that documents and payments reach their final destination. To ensure that these central authorities are not empty shells, the Convention calls for detailed information to be included in the application as well as timeframes for central authorities to use in transmitting, receiving, and processing applications. The Hague Conference, in collaboration with the negotiating countries, has already established three important

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<sup>15</sup> Convention on the Recovery Abroad of Maintenance, June 20, 1956, 1268 U.N.T.S. 349, available at [http://untreaty.un.org/unts/60001\\_120000/9/00016561.pdf](http://untreaty.un.org/unts/60001_120000/9/00016561.pdf). Hague Convention of 1958 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations in Respect of Children and Hague Convention of 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, available at website for The Hague Conference on Private International Law at [www.hcch.net](http://www.hcch.net).

<sup>16</sup> *Kulko v. Superior Court*, 436 U.S. 84 (1978).

<sup>17</sup> Carlson, *supra*, note 7, at 26.

working groups to ensure that the Convention is effectively implemented once it goes into force. These groups are developing uniform forms, country profiles to detail the specific requirements of contracting countries, and protocols to ensure effective administrative cooperation among central authorities.

NCSEA particularly supports these measures for administrative cooperation, because these are the same types of strategies that have proven effective in improving the enforcement of interstate child support obligations in the United States. With the federal Office of Child Support Enforcement providing oversight and direction to the IV-D child support programs at the state level, the Uniform Interstate Family Support Act and federal mandates in Title IV-D of the Social Security Act have brought similar discipline to the U.S. child support system – such as uniform forms for use in interstate cases, clear channels of accountability among states sharing interstate cases, and similar rules among states for establishing and enforcing child support obligations.

### **Access to cost-free services.**

The Child Support Convention provides for access to cost-free services to custodial parents needing assistance with child support enforcement in a contracting country. This is a particularly important reciprocal provision for American children, since Title IV-D child support agencies provide cost-free services in many international cases where residents of foreign countries are seeking enforcement against a noncustodial parent living in the United States. Without a reciprocal provision of cost-free services, American custodial parents seeking assistance in collecting support from a noncustodial parent living abroad must often fend for themselves to determine which court has jurisdiction, what documents are required, how to effect service of process, and how to ensure payments are sent to the right address.

Mary Helen Carlson,<sup>18</sup> head of the U.S. delegation to the Special Commission, best summed up the importance of cost-free legal services to the willingness of the United States to join the Convention: “All of the amazing provisions on administrative cooperation, recognition and enforcement, and so forth, would be nothing but empty promises if services were not provided at virtually no cost. In fact, in the U.S. delegation’s view, one of the major failings of existing child support conventions was the failure to require cost-free services. Most child support applicants who use government child support programs are people of modest means, who would simply be unable to pursue recovery of child support if they had to pay high fees, including fees for legal services. This is especially true in international cases where the costs for attorney’s fees and enforcement actions can be greater than the amounts collected.”<sup>19</sup>

The inclusion of a provision for cost-free services is a significant benefit of the Child Support Convention, and one that will go a long way to ensuring that the

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<sup>18</sup> Attorney-Advisor, Office of the Assistant Legal Advisor for Private International Law, United States Department of State.

<sup>19</sup> Carlson, *supra*, note 7, at 29-30.

Convention is effective for American children. This provision is an important factor in NCSEA's support of ratification of the Convention.

### **Impact on State child support programs.**

The Convention and the conforming amendments to UIFSA will not affect state substantive child support law or how in-state or interstate cases are currently handled in the United States.<sup>20</sup> It will apply only to cases where the custodial parent and child live in one contracting country and the noncustodial parent lives in another contracting country. While the Office of Child Support Enforcement will likely be designated by the Department of Health and Human Services as the central authority for the United States under the Convention, it is expected that the state Title IV-D child support enforcement agencies will be responsible for carrying out many of the central authority functions for cases in their states, such as transmitting and receiving applications for services, and initiating and facilitating proceedings in their jurisdictions. Because cases from a contracting country will be processed just like other in-state and interstate cases and the number of international cases is expected to be small, any additional costs to the federal and state governments will be minimal. By contrast, through U.S. participation in the Convention, Title IV-D child support programs – and American children – will gain access to central authorities and no-cost legal services from other contracting countries, with the benefits of this reciprocal access outweighing any additional costs incurred for processing responding cases.

### **Conclusion.**

Since the inception of the Title IV-D child support program in 1975, Congress has been unwavering in its support for working with states to ensure that America's children receive child support on time and in full, so that parents, not taxpayers, take responsibility for providing financial support for their children. The program has evolved as the needs of America's families have changed. Congress has provided the necessary vision and leadership at every step of the way, identifying initiatives that work and providing the mandates and resources for states to put them in place. As more and more American children have a parent living abroad, the next significant frontier is improving international child support enforcement so that American children can receive the child support they are due from a parent residing in a country that is also a signatory to the Convention.

The National Child Support Enforcement Association therefore urges the Senate to give its advice and consent authorizing the President of the United States to ratify The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Treaty Doc. 110-21.

Thank you for the opportunity to submit this testimony and for your consideration of our recommendation.

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<sup>20</sup> Letter of Submittal from Secretary of State Condoleezza Rice, *supra*, note 9, at vi.