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“International Child Abduction: Broken Laws and Bereaved Lives”

*Excerpts of Remarks by Chairman Christopher Smith
Africa, Global Health, and Human Rights Subcommittee
May 24, 2011*

Thank you for joining us this afternoon to focus on the deeply troubling and growing problem of international child abduction, which occurs when one parent unlawfully moves a child from his or her country of residence, often for the purpose of denying the other parent access to the child. It is a global human rights abuse that seriously harms children while inflicting excruciating emotional pain and suffering on left-behind parents and families.

International child abduction rips children from their homes and lives, taking them to a foreign land and alienating them from a left behind parent who loves them and who they have a right to know. Their childhood is disrupted, in limbo, or sometimes in hiding as the taking parent seeks to evade the law, or to conjure legal cover for their immoral actions. Abducted children often lose their relationship with their mom or their dad, half of their identity and half of their culture. They are at risk of serious emotional and psychological problems and may experience anxiety, eating problems, nightmares, mood swings, sleep disturbances, aggressive behavior, resentment, guilt and fearfulness. As adults, they may struggle with identity issues, their own personal relationships and parenting.

In 1983, the United States ratified the Hague Convention on the Civil Aspects of International Child Abduction to try to address this serious issue. The Convention creates a civil framework for the quick return of children who have been abducted, and for rights of access to both parents. Under the Convention, courts are not supposed to open or reopen custody determinations, but rather decide the child’s country of habitual residence—usually where the child was living for a year before the abduction. Absent extenuating circumstances, the child is to be returned within 6 weeks to their habitual residence for the courts there to decide on custody

or to enforce any previous custody determinations. This framework is based on the premise that the courts where the child was living before the abduction have access to evidence and witnesses and are the appropriate place for custody determinations to be made.

However, even though more than 80 countries have signed on to the Hague Convention, the return rates of American children are still devastatingly low. In 2010, 978 were abducted to Hague Convention signatories and 360 children were returned. That is only 38 percent.

Some Hague signatories are simply not enforcing return orders. The State Department's 2010 Hague Convention Compliance Report highlights 15 countries (Argentina, Australia, Austria, Costa Rica, France, Germany, Honduras, Hungary, Israel, Mexico, Romania, South Africa, Spain, Switzerland, and Turkey) for failing to enforce return orders. Many other countries (Bermuda, Brazil, Bulgaria, Burkina Faso, Honduras, Mexico, the Bahamas, and St. Kitts and Nevis) are failing to abide by the Hague Convention provisions concerning the central authority charged with implementing the Convention, the performance of their judiciaries in applying the Hague Convention, and/or the ability or willingness of law enforcement to ensure swift enforcement of orders issued under the Convention.

Some taking parents will try to drag out proceedings for so long that the child reaches an age where a court will consider the child's wishes regarding a return. Tragically, abducted children are often the victims of parental alienation, where the taking parent has filled the child's head with lies about the left behind parent. If the child was not of an appropriate age to be heard when the child was abducted, the taking parent should not be enabled to drag out proceedings, or motivated to psychologically manipulate a child to testify that he or she does not want to return to the left behind parent. Countries that permit these practices encourage the child abuse of parental alienation.

In 2010, the U.S. lost 523 children to countries that have not signed on to the Hague Convention, and received back 228—a 45 percent return rate. Japan has by far the worst record of all. It has not issued and enforced a return order for a single one of the more than 321 American children abducted there since 1994 when we began keeping record. Japan is currently protecting the abductors of 156 American children under the age of 16.

Japan announced this week that it is introducing legislation needed to ratify the Hague Convention. However, I am very concerned that Japan will add exceptions and reservations to its ratification that would render its accession to the Convention meaningless.

And tragically—and unbelievably—Japan has already indicated that its approval of the convention will be meaningless to the 156 American children already abducted to Japan. The Hague Convention is not retroactive unless Japan makes it retroactive. I strongly urge Japan not to ignore the abducted children already within their borders. Just this year, the U.S. lost 31 more children to Japanese abduction. I can assure Japan that the hundreds of left behind American parents whose children are in Japan are not going to go away if Japan signs the Hague Convention. Japan will not move past its reputation here in Congress as a safe haven for child abductors until Japan returns all abducted children. These 156 American children are bereaved of one of their parents. They cannot be ignored or forgotten.

In the last Congress I introduced legislation to impress upon both Hague and non-Hague Convention countries that the United States will not tolerate child abduction or have patience with countries that hide abductors behind the Hague Convention. Yesterday, I reintroduced the bill, The International Child Abduction Protection and Return Act of 2011. The new bill, H.R. 1940, will empower the President and Department of State with new tools and authorities to secure the return of abducted American children.

Under this new proposed law, when a country has shown a “pattern of non-cooperation” in resolving child abduction cases, the President will be able to respond decisively with a range of actions and penalties—18 in all. I included penalties in the Trafficking Victims Protection Act to protect women and children from trafficking, and they are part of the International Religious Freedom Act enacted in 1998. Based on past experience, we know that penalties manage to get the attention of other governments, and we know they work.

Also reflecting my anti-trafficking legislation, H.R. 1940 will raise the profile of the issue of international abduction by appointing a new Ambassador at Large for International Child Abduction to head a new office charged with helping left behind parents secure the return of their children and to collect detailed information and report on abducted children in all countries.

The growing incidence of international child abduction must be recognized for the serious human rights violation that it is, and decisive, effective action is urgently needed. Our hearing this afternoon will help us all to understand better the impact that child abduction has on children, parents and entire families, and provide us the opportunity to explore the actions needed to end it.