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Resolving International Parental Child Abductions to Non-Hague Convention Countries

*Excerpts of Remarks by Rep. Chris Smith
Subcommittee on Africa, Global Health, Global Human Rights, and Int'l Orgs.
2172 Rayburn HOB
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Thank you for joining us this morning to focus once again on the persistent and devastating problem of international parental 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.

The damage to the child and the left behind parent is incalculable and too often life-long. The children especially 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. These victims are American citizens who need the help of their government when normal legal processes are unavailable or fail.

In 1983, the United States ratified the Hague Convention on the Civil Aspects of International Child Abduction to try to address this serious issue. This Convention creates a civil framework for the quick return of abducted children, and for rights of access to both parents. Absent extenuating circumstances, the child is to be returned within 6 weeks to their country of habitual residence for the courts there to decide on custody or to enforce any previous custody determinations.

The Convention has helped return many children, but it is far from a silver bullet. Even in countries where the Convention is allegedly working, only about 40 percent of children are returned. Other cases are “resolved,” but too often with dubious application of the Convention.

Susceptible to abuse by taking parents or unwilling judges, the Convention has too often been stretched to provide cover for abduction rather than recovery of the child. Taking parents have figured out that they can drag out hearing after hearing, appeal after appeal for years until the courts can claim that, “Yes, the child should have been returned but that the child is settled in the new country now and does not have to be returned under an exception in the Convention.

Some Hague Convention signatories are simply not enforcing legitimate return orders. The State Department’s 2012 Hague Convention Compliance Report highlights 5 countries—Argentina, Australia, France, Mexico, Netherlands, and Romania—for failing to enforce return orders. Other countries—Costa Rica, Guatemala, The Bahamas, Brazil, and Panama—are non-compliant with the Convention or showing patterns non-compliance.

In other words, abducted American children are not coming home from these countries and American families need other options.

The same is true for many countries that have not signed the Hague Convention. In 2012 alone, more than 634 children were abducted to countries that have not signed the Hague Convention—countries like Japan, Egypt, and India.

More than 300 children have suffered abduction from the United States to Japan since 1994. Congress does not know of a single case in which the Government of Japan has issued and enforced an order for the return of an abducted child to the United States. According to U.S. State Department statistics, the United States is monitoring 54 ongoing cases involving 74 children who were abducted from the United States to Japan and 21 additional children from the United States who may not have been abducted, but who are being denied access to their American parent.

Although Japan has recently taken steps to join the Hague Convention, Japan’s ratification will not address current cases for return. Moreover, experts question whether the ratification includes reservations that will make it impossible for even new abduction cases to be resolved with returns.

The United States does not have a bilateral or other agreement with Japan to facilitate the return of American citizen children who are currently abducted—citizens like Jade and Michael Elias, whose father will testify before us today.

Under the Convention alone, if ratified by Japan, the best that American parents of currently abducted children can hope for is a visit with their child. Such visits are projected to look like one hour, once a month in a secure facility—hardly dignified or unfettered.

Despite our multi-billion dollar investment in Egypt, neither the Mubarak government or the Morsi government has seen fit to return abducted American citizen children Noor and Ramsey Bower. They, along with 30 other American children in Egypt, are forced to live without half of their culture, half of their identity, and without the love and guidance of an American parent who daily fights for their return. The United States does not have a bilateral agreement with Egypt to facilitate the return of American citizen children, and has so far been

unwilling to make prioritization of these cases a condition for the continued funding of the Egyptian government.

India also has been a source of immense frustration and grief for American parents. In 2012, 32 more children were abducted to India, bringing the total number to 78 open abduction cases involving 95 children. Although some Indian courts make “Hague-like” decisions to return some children, returns are uneven. Parents attempting to utilize India’s courts for the return of abducted children report corruption and incessant delays. The United States does not have a bilateral agreement with India to facilitate the return of American citizen children Convention.

In the last Congress I introduced legislation—the Sean and David Goldman Child Abduction Prevention and Return Act—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. The bill would empower the President and Department of State with new tools and authorities to secure the return of abducted American children.

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 18 actions and penalties. Based on past experience—particularly with the Goldman case in Brazil—we know that penalties manage to get the attention of other governments, and help them prioritize resolution.

The bill also calls for the State Department to work out memorandums of understanding with countries that have not signed the Hague Convention in order to create agreed-upon routes to abduction resolution between countries, rather than the never-ending and torturous maze American are currently forced to run.

The status quo is simply not adequate, while well meaning and sincere, current policy has failed far too many children and their left behind, broken hearted, parents. To combat the cruelty and exploitation of human trafficking, over a decade ago I authored the Trafficking Victims Protection Act. To tangibly assist abducted American children and their Left Behind Parents I again today introduce “The Sean and David Goldman Child Abduction Prevention and Return Act.” The United States can and must do more to protect innocent American children and their left behind parents from the horrors of international child abduction.