

**TESTIMONY**  
**OF**  
**PATRICIA E APY**

**BEFORE THE**  
**U.S. HOUSE OF REPRESENTATIVES**  
**TOM LANTOS HUMAN RIGHTS COMMISSION**

The Rights of Parents and Children: How to Better Implement the Goldman  
Act on Child Abduction

September 29, 2021- 1:00 p.m.  
2172 RHOB and Virtual, via WebEx

**Co- Chairmen McGovern and Smith, and distinguished members of the Commission,**

My name is Patricia Apy.<sup>1</sup> I continue to be honored to have been invited to return to offer testimony before this Commission, to respectfully address my observations and recommendations as an international legal practitioner regarding the prevention of international child abduction, the repatriation of children and the restoration of families devastated by parental abduction. I intend to offer my observations, as that of an international legal practitioner, to the work of the Department of State in the application of the Sean and David Goldman International Parental Kidnapping Prevention and Return Act, 22 USC 9111 ET. seq. (the “Goldman” Act), and offer recommendations of myself and a number of my international legal colleagues regarding to assist in the Congressional oversight of that legislation.

### **The Goldman Act**

#### **Prevention of Child Abduction and Use of the Annual Report**

When the Goldman Act became law there was an inarguable acknowledgement by all involved that among the most crucial aspects of the structure of the legislation was to prevent child abduction from occurring.

The comprehensive annual report to Congress, and the 90 day supplemental action report, were intended to provide objective comprehensive information regarding the number of abduction cases and their treatment abroad, an assessment of the obstacles to the recovery of any child which

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<sup>1</sup> Patricia E Apy is a Fellow of the International Academy of Family Lawyers, and the recipient of the American Bar Association’s National Grassroots Advocacy Award recognizing her body of legislative work and advocacy including having served as one of the principal authors and subject matter consultants on the Sean and David Goldman International Parental Kidnapping Prevention and Return Act.

was subjected to wrongful removal or retention, and a description of the practical efforts which have been or will be taken in diplomatically and practically removing those obstacles.

### **Use and Content of the Report**

The Goldman Act has been used to assist lawyers, judges and parents, in recognizing the existing obstacles to recovery of a child in the event that they are wrongfully removed or retained away from their home. It is crucial to remember that reflected in a growing number of state statutes and domestic case law, judicial officers are *required* to consult this annual report to determine the status of compliance whenever they are requested to evaluate requests to approve international travel, to consider whether a parent should be permitted to relocate, or to consider the imposition of a range of available protective measures when confronted with allegations of risk factors associated with parental abduction.

As a result, it is crucial that the information included in these reports be accurate, comprehensive and thorough. Regrettably, the reports seem to be growing less specific, difficult for judges, lawyers and parents to navigate, misleading in their conclusions, and burdened by ubiquitous “boiler plate” language that renders the content unhelpful.

### **Non-Compliant States**

This is particularly obvious in a careful review of that portion of the report that addresses Non-compliant States. In the 2021 report there are 11 countries identified as demonstrating patterns of non-compliance. The portion of the report entitled “ Recommendations of the Department” essentially repeat one of three phrases.

For non compliant countries which are nominal Treaty partners with the United States, the standard recommendation is, the “Department will continue intense engagement with [ insert country] authorities to address issues of concern” . ( Argentina, Brazil, Costa Rica, Ecuador, Peru and Romania ) For countries which are signators to the Hague Conference, but not yet Treaty partners , the phrase “ Department will engage with [ insert country ] regarding potential partnership” . For countries which are Non-Signators to the Hague Conference the phrase is “Department will continue to engage [insert country] to accede to the Hague Convention.” Clearly with “recommendations” such as these, there is no genuine ability to evaluate performance, let

alone reflect accountability or assist in legislative oversight. These phrases are used throughout the entire report.

The statutorily required action report, which should provide an opportunity to review the actions actually employed and review the substantive steps taken, reflects little specificity and no consequences for Treaty non-compliance. In the case of all of the countries cited as recalcitrant in the 2021 report, some of which have remained non compliant since reporting began decades before ICAPRA, the only censure is a demarche, which continues to be completely ineffective.

Two of the countries listed, Jordan and Egypt, have had, since at least a decade ago, entered into MOUs regarding parental abduction. Yet, there is no evidence in the 90 day action report of any intention to reevaluate, update and potentially reinstate the MOU process.

Presently, there are at least five countries for which previous MOU's were negotiated ( Jordan, Egypt, Lebanon, Taiwan and Saudi Arabia.) None of the MOU's have specific detailed language identifying the primary obstacles to cooperation , or outlining a protocol for resolution. I shudder to imagine if this were the way that our Status of Forces Agreements ( SOFA's) involving the presence of our military members at our bases abroad , were drafted.

A perfect example of the absurdity of this process is to review specific examples regarding individual countries.

### **Argentina**

Argentina's lack of Treaty compliance is at least five years under the reporting functions of the Goldman Act, and preceded the Act under the prior reporting statute.

Despite the steps which are recounted in the action report, there is absolutely no evidence of genuine engagement by Argentina to come into compliance.

Not only have our own diplomatic efforts been entirely ineffective , my inquiries to esteemed international family lawyers in Argentina confirm their concurrence in the total lack of Treaty adherence.

I contacted esteemed Argentinean counsel Fabiana Marcela Quaini who has served as an officer of the International Academy of Family Lawyers. She provided me her observations of

current status of Argentina's lack of compliance and invited me to share them with this Commission.

She recounted a case in which the Argentine government intervened to issue a replacement passport to assist in perfecting the unlawful removal of a dual national child from the United States. In response to a Hague Petition to return the child to the United States, Argentine judiciary at all levels denied the request for return on the basis of their assessment that the Argentine Judge was within his power to order the Argentine consulate in Houston to issue the emergency passport in the United States. Notably, the General Attorney of the Supreme Federal Court, in his opinion denied the return under the grounds of Article 20 ( United States did not respect human rights for the girl and her mother ). The final decision took 26 months. "K.,K.J c/ P.,C.S s/RESTITUCIÓN INTERNACIONAL P/ RECURSO EXTRAORDINARIO PROVINCIAL" Case 544/2020" Corte Suprema de Justicia de La Nación. 03/23/2021 Yet, as extraordinary as this case is, there is no where these obstacles and this lack of adherence to the Treaty is documented in the report.

Additional conditions that Advocate Quaini notes was that there was an increase in the Argentine courts denying returns. There is an increase in the use of unfounded allegations of gender violence , and often left behind parent go more than six months not seeing the child. Orders require the left behind parent to contribute to child support during the pendency of their petition. This support usually requires the renting of an apartment and 30% of the parent's income ( typically a left behind father ), and is clearly designed as a deterrent to use the Treaty as remedy. If a parent cannot afford it, the child doesn't have to return. The process to reach a decision takes in excess of two years. Even if a favorable outcome occurs, the execution of the final decision takes several months.

Nevertheless, there is no information contained in the report, alerting American Judges, lawyers and parents, of these specific cases or obstacles. Worse, the case described by this counsel, could be reflected in the US State Department Report as "resolved". The United States must , after years of non-compliance, utilize an increasing number of diplomatic sanctions to address non-compliance.

## **India**

Hundreds of American children are impacted by parental abduction regarding India, and those cases are growing. There is absolutely no reason, given our close relationship with India, and given the great number of Americans who travel regularly to India that this issue shouldn't be given a greater sense of urgency and expertise. Even after a persistent refusal to participate in a proposed joint commission regarding child abduction, the only sanction applied was a demarche. India will not seriously contend with this issue, or agree to the engagement of a meaningful protocol to begin to work toward the restoration of abducted children and provide pathways to the resolution of these cases, without serious consideration of diplomatic sanctions when they do not.

## **Israel**

Even countries with whom we have strong and communicative diplomatic relationships can develop significant obstacles to the recovery of children, particularly if American parents are unaware the development of caselaw, or the imposition of policy concerns which may dramatically impact upon the return of a wrongfully retained child.

For example, the Israeli Central authority has taken the position in some recent cases, that they will not support the initiation of a Hague Petition for Return of a Child to Israel, in a case in which the petitioning parent files any request for affirmative relief in the country to which the child has been taken. This policy is inconsistent with the terms of the Treaty which invite many remedies. This creates significant difficulties in retention cases, in which a parent believes that the family will be returning, for example, to Israel and the retaining parent in the US files an urgent (often secret) claim to prohibit the child from leaving the jurisdiction. Sometimes the parent will unilaterally seize the child. If the responding parent doesn't file an emergent application to dismiss the restraints, the child may be irreparably harmed. Further, a parent fully intending to file under the Treaty could be completely unaware that due to the change in the Israeli Central Authority policies, if they file to restore their children, they are deemed to have waived their right to have the Central Authority act.

Additionally, the report of another colleague, Edwin Freeman, an Israeli Fellow of the IAML and frequent litigator in the United States and Israel, has indicated recent Israeli case law which conditions the return of a child, wrongfully removed from their habitual residence, upon the payment of extraordinary amounts of money, to the “abductor” in very short time frames, in order to insure a “safe harbor” for a mother ordered to return the child. Not only did the court decline to order the reimbursement of counsel fees and costs to the successful petitioner, as provided at law and consistent with the Treaty, but permitted the child to remain in Israel unless \$70,000.00 US was paid within 90 days, a decision upheld on appeal. Like the Argentine case, these policies are inconsistent with underpinnings of the Treaty.

### **Resolved and Unresolved cases:**

The Department of State designation of a case having been “resolved” or “unresolved”, has continued to be frustrating to both the preventative reporting function of the report and the expectations of left-behind parents.

This point was expressly raised in the 2000 report, well before the enhancement of the reporting function found in ICAPRA. Quoting from the report issued 21 years ago “*The Department takes this opportunity to clarify any confusion that may arise from the use of the word "resolved" and the Department's decision to report as "resolved" cases that are determined by the U.S. Central Authority to be "closed" as Hague cases or "inactive." As in other signatory countries, the U.S. Central Authority closes or inactivates Hague cases for a variety of reasons, including: return of child; parental reconciliation; withdrawal of request for assistance; inability to contact the requesting parent after numerous attempts; exhaustion of all judicial remedies pursuant to the Convention; or access rights granted and enforced. In all of these cases, regardless of the outcome, no further proceedings pursuant to the Hague Convention are anticipated. Considering these cases "resolved" and closing them as Hague Convention cases is consistent with the practices of other Convention signatories. Regrettably, the exhaustion of all judicial remedies pursuant to the Convention may result in a case which is "closed" under the terms of the Convention, but in a resolution that is unsatisfactory to the left-behind parent. The resolution of the case may or may*

*not have been consistent with the Convention's requirements, independent of whether the left-behind parent is satisfied.”*

The problem with this response is that it fails to alert parents when there remains significant lack of judicial compliance with the Treaty, by giving the impression that the reciprocal responsibilities of the Treaty will be met in the event a child is retained there, when that could be far from the truth.

**Recommendation: While the information presented and the content of the reports continues to improve, the role these reports play in fashioning preventative measures require the Department of State to accurately portray the current status of compliance or cooperation, not its aspirational goals. In cases in which countries have been denominated as persistently non-compliant the provisions of the Act for the recommendation of diplomatic sanctions must be addressed.**

**Memoranda of Understanding:**

The Goldman Act specifically references the use of and negotiation of MOUs for the purpose of either improving the Treaty Compliance of existing Treaty partners, or developing protocols to assist in the location and return of children for Non-Treaty partners. Yet the recommendations in these reports for all Non-Treaty signators is limited to encouragement to ratify the Convention. The existing MOU's are either dated, too generalized, or both. The State Department had a long-standing policy against the use of MOUs or other bi-lateral instruments believing that using them would create a disincentive to consideration of Treaty.

However, when countries spend decades as “non-compliant” states and there is no path identified to identify, let alone, ameliorate the problem, there can be no expectation of assistance.

**Recommendations: The Department should seek country specific recommendations and assistance to identify the obstacles to the recovery of children and the obstacles to**



**Treaty compliance. They should seek specific recommendations as to the practical content to be found in any MOU's. All dated MOU's should be re-evaluated and revised. Refusal to cooperate in the MOU process, ( see India ) should result in increased sanctions.**

### **Prevent Department Program**

Most custodial arrangements and disputes are resolved by agreement. Practitioners need to have clarity as to the mechanism to employ and language to include in entering an order prohibiting the departure of a child from the United States. Judges and lawyers need to have confirmation that the orders that they have entered have been accepted and acted upon, and the border protections initiated, before they release children from other more stringent forms of preventative measures. Right now there is no standard form of order which a Judge can sign to quickly facilitate the placement of a child on the Prevent Departure program and no mechanism to confirm that the child has been successfully placed on the Do Not Depart List.

**Recommendation: A standard form of order for use by the court limited to the placement of a child on the Do Not Depart list should be approved by the appropriate authority , ( Department of State or Homeland ) and available on the website of the Office of Children's Issues to expedite the process of review of proposed orders. An expedited standard process to notify the issuing Court that the order has been entered should be confirmed and implemented**

### **Conclusion:**

As I have previously testified, my former client David Goldman is not the only left-behind parent, and I am most certainly not the only family lawyer working to see that families and children are protected from the scourge of international parental abduction. It is absolutely imperative that private practitioners who actually litigate these cases, located both here and abroad, assist in addressing the obstacles to the recovery of children. The International Academy of Family Lawyers, the American Bar Association, Family Law Section and

International Section , continue to provide incredible insight and advice and a willingness to work with the members of Congress to improve the working of the Treaty.

Diplomatic efforts are not enough, and available diplomatic sanctions have to be requested and applied on behalf of children to elevate the priority given and urgency needed to bring every abducted child, home.

Thank you.