



1760 Old Meadow Road, Suite 500, McLean, VA 22102
Phone 703-506-2880 • Fax 703-506-3266 • www.ncsea.org

TESTIMONY

by

Kay Farley, Past President (2001-2002)

on

No-Cost Improvements to Child Support Enforcement

Submitted to the

**HOUSE WAYS AND MEANS COMMITTEE
HUMAN RESOURCES SUBCOMMITTEE**

Subcommittee Hearing
Tuesday, March 20, 2012
2:00 P.M.
1100 Longworth House Office Building
Washington, DC

Chairman Davis, Ranking Member Doggett, and members of the Subcommittee,

Thank you for the opportunity to testify today regarding implementation of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Convention).

My name is Kay Farley. I am speaking today on behalf of the National Child Support Enforcement Association (NCSEA). NCSEA is a membership organization that 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, court personnel, private sector service providers, and advocates for children and families. NCSEA applied for and was granted non-governmental organization observer status for negotiations of the Convention. NCSEA's delegation actively participated throughout the negotiations (2003-2007) and continues to participate to assist with implementation of the Convention.

International child support enforcement is increasingly more common and important in our global society. NCSEA thanks you for scheduling this hearing for your consideration of implementation of the Convention.

Background

There are two prior international child support treaties.¹ The United States (US) has not joined these treaties 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 child support is based on the habitual residence of the custodial parent. This is the jurisdictional basis for both the New York and Hague Maintenance Conventions. By contrast, in the US, jurisdiction for child support matters is based on the ability of the court to obtain personal jurisdiction over the noncustodial parent, requiring a showing of sufficient minimum contacts of the noncustodial parent 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*.²

Because the US has been unable join one of the international treaties, the US has dealt with international cases by negotiating bi-lateral agreements with individual countries. The US currently has bi-lateral agreements with 14 countries³ and 10 Canadian provinces

¹ 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. 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.

² *Kulko v. Superior Court*, 436 U.S. 84 (1978).

³ Australia, the Czech Republic, El Salvador, Finland, Hungary, Ireland, Israel, The Netherlands, Norway, Poland, Portugal, the Slovak Republic, Switzerland, and the United Kingdom.

and territories⁴. US states also have authority to negotiate bi-lateral agreements with other countries. While these agreements have been beneficial, procedures and forms vary from country to country.

The Hague Conference on Private International (Hague Conference) established a Special Commission in 2003 to develop a new international child support and family maintenance obligations treaty, which would modernize the existing system and encourage global adoption. This Special Commission offered the opportunity to craft a new treaty in which the US could participate.

Introduction to the Convention

The objective of the Convention is to ensure the effective international recovery of child support. The Convention creates four main measures to enable the achievement of that objective: (1) establishing a comprehensive system of co-operation between the authorities of the participating countries; (2) making applications available for the establishment of parentage and child support orders; (3) providing for the recognition and enforcement of support orders; and (4) requiring effective measures for the prompt enforcement of foreign support orders.

The Convention should result in more children residing in the US receiving the financial support they need from their parents, regardless of where the parents live. While courts and child support agencies in the US already recognize and enforce most foreign child support obligations, many foreign countries have not been processing foreign child support requests from the US. They will have to recognize and enforce US support orders once they and the US ratify the Convention. In addition, the Convention is expected to improve administrative cooperation dramatically, making it easier for US and foreign child support workers to successfully handle international cases efficiently and effectively.

The Convention's procedures are similar to those procedures already in place for the processing of interstate child support cases in the US. Many of the provisions of the Convention were drawn from the US experience with the Uniform Interstate Family Support Act (UIFSA).

The Convention will not affect intrastate or interstate child support cases in the US. It will only apply to cases where the custodial parent and child live in one country and the non-custodial parent lives in another country.

International child support cases within the scope of the Convention will continue to be processed under existing federal and state law and practice. Compliance with US obligations under the Convention will require minimal changes to existing US law.

⁴ Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Saskatchewan, and Yukon Territory.

Key Provisions of the Convention

Scope

The Convention applies to support orders arising from a parent-child relationship towards a child under the age of 21. The US state child support enforcement agencies currently provide the required services for children under the age of 21. The Convention also applies to the recognition and enforcement of spousal support when the application is made in conjunction with a claim for child support, also consistent with current policy in the US. A foreign applicant seeking assistance to only enforce a spousal support order will have to file an action directly with a US state court.

Central Authority

Each participating country must designate a “Central Authority” responsible for (1) cooperating with other Central Authorities and promoting cooperation among their state competent authorities and (2) seeking solutions to difficulties arising in the application of the Convention. The US intends to designate the Secretary of the Department of Health and Human Services as the Central Authority for this Convention.

The US also intends to delegate to individual state child support enforcement agencies its responsibilities under the Convention for transmitting and receiving applications and initiating or facilitating proceedings relative to these applications. These responsibilities, detailed in the Convention, are viewed as those functions essential to ensure that children receive support. The responsibilities are similar to those currently performed by state child support agencies under UIFSA.

Applications Made Through the Central Authority

An applicant seeking services under the Convention must make the application through the Central Authority of the country in which the applicant resides. In the US, applications will be made through the state child support enforcement agencies. The Convention includes eight provisions that must, at a minimum, be included in each application, including information to identify the applicant and respondent and the grounds for the application. The application must also include known financial and employment information of the applicant and respondent. The application must be accompanied by any supporting information and documentation concerning the entitlement of the applicant to free legal assistance.

In November 2009, the Special Commission met and approved recommended forms for applications and other supporting documents which countries may use. It is expected that the recommended forms will be used widely and should result in faster, more efficient, and more accurate processing of applications.

Transmittal, Receipt and Processing of Applications

The Central Authority in the requesting country is responsible for assisting the applicant to prepare a complete application and transmitting the application to the requested country. To reduce the cost and time of processing most cases, documents need not be certified unless specifically requested by the responding country’s Central Authority.

The Convention establishes several timeframes in order to ensure that applications are processed in a timely manner. Both the requesting and requested Central Authorities are required to provide timely responses to communication and keep each other informed of the progress of the case and who's responsible for the processing of the case.

In November 2009, the Special Commission also approved a uniform Country Profile format. Using this format, each country that is a party to the Convention will document their relevant federal and state laws and procedures. This information will be posted on the Hague Conference's website and will be valuable information for caseworkers in determining the type of application to submit and anticipating the enforcement measures that will be used.

Legal Assistance

The Convention requires the provision of free legal assistance. Countries must provide the assistance necessary to enable applicants to know and assert their rights and to ensure that applications are fully and effectively dealt with in the requested country. The means of providing such assistance may include, as necessary, legal advice, assistance in bringing a case before an authority, legal representation, or exemption from cost of proceedings.

Cost of Services, Including Legal Assistance

The Convention recognizes that most child support applicants who use government child support programs are people of modest means who would be unable to pursue recovery of child support if they had to pay high fees, including fees for legal services. As a general standard for applications made through a Central Authority, countries must provide applicants with effective access to procedures, including enforcement and appeal procedures and, where necessary, access to free legal assistance. While a country has the option of declaring that it will condition the provision of free legal assistance on the result of a means test of the child, it is expected that the US and most countries will not make such a declaration.

Restriction on Bringing Proceedings

To reduce the potential for conflicting support orders, obligors seeking to modify an existing support order established in a country where the obligee continues to reside must initiate any action to modify an existing order or establish a new order in the country of the obligee's residence. This provision is similar to current state law under UIFSA.

Recognition and Enforcement of Child Support Orders

To eliminate lengthy delays in the enforcement of foreign child support orders, the Convention sets forth a streamlined system, similar to the process used in the US under UIFSA. The Convention also lists the only documents that can be required to accompany an application, eliminating the onerous and costly document requirements now required by some foreign countries; these documents do not need be certified unless challenged or requested by a competent authority in the requested country.

While the Convention establishes six factors that would require a country to recognize and enforce a support order, the US intends to take a reservation with respect to the following three factors:

- Jurisdiction based on the residence of the custodial parent (in that there is no nexus between the noncustodial parent and the forum);
- Jurisdiction based solely on the parties' agreement to the forum taking jurisdiction, when the forum has no nexus to either party; and
- Jurisdiction based solely on jurisdiction over the marriage, even though the forum does not have personal jurisdiction over the parties.

Enforcement

Enforcement takes place in accordance with the law of the requested country, and in the US, in accordance with the substantive law of the state. Enforcement must be prompt. As in the US, recognition and actual enforcement must be a single proceeding, eliminating the need for applicants to file a separate action to get actual enforcement. Any limitation on the period for which arrears may be enforced is determined by whichever country has the longer period, identical to the limitation under UIFSA. Countries must provide at least the same range of enforcement methods for cases under the Convention as are available in their own domestic cases. Countries are required to have effective measures for prompt enforcement of support orders under the Convention. While no specific measures are required, the Convention lists examples of effective measures for educational purposes. All of the measures listed in the Convention are currently employed in the US. In addition, countries are encouraged to promote the most cost-effective and efficient methods for transferring child support payments.

A country may refuse to recognize or enforce a support order if:

- Recognition or enforcement is manifestly incompatible with the public policy of the requested country;
- The respondent has neither appeared nor was represented in the proceedings when either the law of the country (1) provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard or (2) does not provide for notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to challenge or appeal it on fact and law;
- The order was obtained by fraud in connection with a matter of procedure;
- Proceedings between the same parties and having the same purpose are pending before an authority of the country addressed and those proceedings were the first to be instituted; or
- The order is incompatible with an order rendered between the same parties and having the same purpose.

General Provisions

Other provisions of the Convention include the following:

- Limitation on the use of personal data to the purpose for which it was gathered and shared;

- Re-enforcement of the responsibility to ensure that information is kept confidential in compliance with the laws of the country;
- Provision that information gathered or transmitted in an application shall not be disclosed if to do so could jeopardize the health, safety or liberty of a person;
- Requirement that the Central Authorities take into account determinations made by other Central Authorities in cases of family violence; and
- Authorization for the recovery of costs from an unsuccessful party, as long as the recovery of costs does not take precedence over the recovery of the child support.

These general provisions are also consistent with US policy.

How the Convention Would be Implemented

The Uniform Law Commission developed and approved the 2008 UIFSA Amendments to comply with the terms of the Convention. The intent is for Congress to require states to adopt the 2008 UIFSA Amendments verbatim or lose federal funding for the state child support enforcement program.

The 2008 amendments were limited to only those changes required to comply with the requirements of the Convention. Existing Articles 1-6 were modified to include “foreign support orders” when procedures for handling Convention cases would be the same as in current UIFSA procedures for domestic cases. The 2008 UIFSA Amendments include a new Article 7: Support Proceeding Under Convention, which will apply only to international cases and address the requirements unique to the Convention. If there is a conflict between the provisions of Article 7 and the other parts of UIFSA, Article 7 governs.

Under the new UIFSA Article 7, if the US cannot recognize a foreign support order because it was based on the residence of the custodial parent (rather than personal jurisdiction over the noncustodial parent), the US state court is directed to recognize the foreign order if, under the facts of the case, there was any basis under which the court issuing the order would have had jurisdiction under US law. If the US state court still cannot recognize the foreign support order, the US state court is instructed to enter a new child support order.

Under Article 7 obligees may seek the establishment of support orders, including, if necessary, the determination of parentage of a child. Obligees may also request the modification or enforcement of a state or foreign support order. Obligors may seek modification of a state or foreign support order, or request an order limiting enforcement of an existing court order.

The revisions to UIFSA would permit parties to register foreign support orders. It also creates a procedure to enable parties to contest the registration of a foreign support order. A US state court may refuse recognition and enforcement of a registered order on specified grounds, including:

- Doing so would be manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;
- The issuing tribunal lacked jurisdiction;
- The order is not enforceable in the issuing country;
- The order was obtained by fraud;
- The transmitted record lacks authenticity or integrity;
- A proceeding between the same parties and having the same purpose is pending before that state's court and that proceeding was the first to be filed; or
- The order is incompatible with a more recent support order entitled to recognition.

Similarly, parties may register “foreign support agreements,” which may be enforced unless the US state court, on its own motion, finds that recognition and enforcement would be manifestly incompatible with public policy, or, if contested, on grounds similar to those outlined above for contests of foreign support orders.

Why the United States Should Implement the Treaty

In a world where an increasing numbers of US children have a parent living abroad, this Convention is needed so that all children can receive the child support that is so vital to their financial well-being.

Reciprocity through a Multi-lateral Treaty

The Convention offers the US the opportunity to join a multi-lateral treaty, saving the time and expense that would otherwise be required to negotiate and implement bi-lateral agreements with individual countries around the world.

Resolution of Jurisdictional Barriers

The Convention resolves the jurisdictional barriers that have prevented the US from joining the prior international child support treaties. The Convention provides for residence of the custodial parent in the forum as a basis for jurisdiction, but it also permits participating countries, such as the United States, to take a reservation on this provision so that we can adhere to our requirement of personal jurisdiction over the noncustodial parent.

Administrative Cooperation

The Convention provides a structure and uniform procedures to increase the efficiency and effectiveness of processing international cases.

Access to Cost-free Services

The Convention provides for access to cost-free services and legal assistance to custodial parents needing child support enforcement services in a participating country. This is a particularly important reciprocal provision for US children, since Title IV-D child support agencies provide cost-free services where residents of foreign countries are seeking enforcement against a noncustodial parent living in the US.

Conclusion

NCSEA expressed its strong support for the Convention in a resolution, *Supporting Ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and Supporting Conforming Changes at the Uniform Interstate Family Support Act*, which was adopted on August 8, 2008. I want to also advise you that the Convention has widespread support from state organizations, such as the Conference of Chief Justices, Conference of State Court Administrators, the Uniform Law Commission, and the American Bar Association.

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