

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

before the
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE
ONE HUNDRED ELEVENTH CONGRESS
FIRST SESSION

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Senator Cardin, Ranking Member Lugar, and members of the Committee, good morning.

My name is Battle Robinson and I am a retired Family Court Judge of the State of Delaware, having served 14 years in that capacity. Since 1980, I have been a Delaware Commissioner of the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission, and it is on behalf of that organization that I am appearing today.

The Uniform Law Commission is a national organization of lawyers, judges, and legal scholars that has existed since 1892. Its purpose is to provide the states with non-partisan, well-drafted legislation and to work for the enactment of that legislation. The Commission's efforts support the federal system, facilitating both the movement of individuals and the functioning of business organizations across state lines through the enactment of statutes that are uniform throughout the nation. During its history the Commission developed such notable state legislation as the Uniform Commercial Code,

and has been a leader in drafting important uniform state legislation which involves children's issues, including the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Act which brings us to this hearing today--Uniform Interstate Family Support Act (UIFSA). I chaired the Uniform Law Commission's committees that revised UIFSA in 1996 and 2001. I then attended the sessions at the Hague at which the Family Maintenance Convention was developed, and I chaired the ULC Drafting Committee that revised UIFSA during 2007-08 in order to implement the Convention.

The purpose of my testimony is two-fold: first to convey the support of the Commission for the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance and to urge its ratification; and second to support and explain the method of implementation of the Convention which is being proposed.

The past century has witnessed the growth of family support enforcement from criminal proceedings to civil, from modest county-based programs to the establishment of the federal IV-D program in the 1970s, which created a federal-state partnership concerning child support, and the development of legal rules and procedures for the establishment and enforcement of support orders across state lines. In the Family Support Act of 1988 (Public Law 100-485), Congress established the U.S. Commission on Interstate Child Support (Interstate Commission). The purpose of the Interstate Commission, of which I was a member, was to identify ways to improve the efficiency and effectiveness of interstate child support enforcement. After a number of hearings across the country, the Interstate Commission submitted a report to Congress in 1992 with recommendations for

improving interstate establishment and enforcement of child support, and for revising an existing uniform act dealing with child support – the Uniform Reciprocal Enforcement of Support Act (URESAs). The drafting of this revision was spearheaded by the Uniform Law Commission, and this revision became UIFSA, the first version of which was adopted by the Uniform Law Commission in 1992.

UIFSA serves as the basis for interstate establishment and enforcement of support obligations within the United States and has been enacted in all States, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico. UIFSA provides universal and uniform rules for the enforcement of family support orders, sets basic jurisdictional standards for state courts by determining the basis for a state to exercise continuing exclusive jurisdiction over a child support proceeding, establishes rules for determining which state issues the controlling order in the event proceedings are initiated in multiple jurisdictions, and provides rules for modifying or refusing to modify another state’s child support order.

In an age of globalization, the international expansion of consistent rules for enforcement of child support, such as those provided under UIFSA, seems a natural development and one which the Uniform Law Commission believes will be advantageous to the United States. The Hague Convention will provide a mechanism whereby support orders of tribunals of the United States will be recognized and enforced in other countries.

Although tribunals in the United States, as a general matter, already recognize and enforce the orders of foreign tribunals, the reverse is often not the case. In at least some instances this is due to limitations in foreign laws. The Commission believes that the

effect of other nations acceding to the obligations imposed by the Convention, the development of standard administrative protocols and forms, and the adoption of clear rules pertaining to the recognition and enforcement of support orders, will assure acceptance of this country's orders in other lands. No longer will persons in the United States have to re-litigate support matters in a distant country or forego support altogether. For these reasons, the Uniform Law Commission believes the Convention will facilitate the international enforcement of child support and urges its approval by the Senate.

The Commission also supports the implementation of the Convention through a method of cooperation between the federal and state governments. This method, supported in this instance by the U.S. Departments of State and Health and Human Services, will implement important segments of the Convention—namely those dealing with the recognition and enforcement of foreign orders—through a uniform state law, rather than by federal legislation. Specifically, implementation will come about through changes to the existing Uniform Interstate Family Support Act. That Act is used daily in the thousands of interstate cases which are processed through the child support system in this country and is familiar to, attorneys, court personnel and support case workers in all states. Beginning in 2007 a drafting committee of the Commission, which I chaired, worked to develop amendments to UIFSA designed implement the Convention. The committee worked closely with representatives of the federal government – both HHS and State -- and child support organizations to draft uniform state legislation that facilitates accession to the treaty without imposing burdensome changes to existing state practices. The amended version of UIFSA, known as “UIFSA 2008”, was approved by

the full Commission in July 2008 and is ready to be introduced and approved by state legislatures. Recognizing the importance of the changes for international child support orders, Maine, Nevada, and North Dakota have already passed the amendments, which take effect when the Convention is ratified and the United States' instrument of ratification is deposited at The Hague.

When the Commission undertook this project, the drafting committee considered a number of possible means of implementation and concluded that there were many advantages to implementing this particular Convention by a combination of uniform state law and federal legislation. First, family support has always been primarily the domain of state law, albeit in recent years with very significant financial contribution and regulatory guidance from the federal government. Second, UIFSA, and the laws that preceded it, have been the basis for the establishment, enforcement, and modification of support orders across state lines for almost sixty years. Because UIFSA is in force in all states, and thanks to the frequency of its use and the extensive training offered under the auspices of OCSE and national child support enforcement organizations, there is a well trained cadre of judges, lawyers, and child support workers who are familiar with the Act. Incorporating foreign orders into a similar statutory framework is the best approach for all parties. The Commission was well positioned to execute this consensus approach to the Convention because of its experience with the subject matter and its mission of fostering uniformity in state law.

UIFSA 2008 can be described very briefly as follows:

- the legislation is addressed to the recognition and enforcement of court orders;
- it does not deal with the provisions in the treaty which are deemed fundamentally administrative and which are left to the child support agencies, such as designing forms and transmitting information between support agencies;
- except for a very few instances where amendments were necessitated, the familiar provisions of UIFSA applicable to domestic support orders remain unchanged.

UIFSA 2008 features a new Article that integrates the Convention into state law. Article 7 addresses the greatest obstacle to recognition and enforcement of foreign orders by American tribunals: the divergent jurisdictional bases for support orders in the United States and in virtually all other countries. In the United States there must be some personal connection between the support obligor and the state tribunal that issues the order. In contrast, other countries follow what is known as “child based” jurisdiction under which a tribunal in the country where the child lives may issue a support order even though the obligor has had no contact whatsoever with the country. Accordingly, there may be instances where American courts cannot recognize a foreign order because there would be no jurisdiction under American law. In that situation, UIFSA 2008 directs an American tribunal to determine if there is any other basis, consistent with American law, under which the foreign tribunal could have exercised jurisdiction. If so, the U.S. court may proceed to recognize and enforce the foreign tribunal’s order. If not, the U.S. court must provide opportunity for a new support action to be filed.

Because of the participation of the United States delegation in the negotiations leading to the Convention, the Convention adopts many procedures that are already part of American law. Thus, the new Article 7 will be readily recognized by American bench and bar, and by the state IV-D agencies that constitute the heart of child support enforcement in this country. For instance, the Convention basically adopts the procedure used in interstate cases in the United States whereby support orders from other countries are registered in an appropriate tribunal and enforced by that tribunal, subject, of course, to the respondent's opportunity to challenge the order. Consistent with the Convention, Article 7 provides only limited grounds on which a tribunal may deny recognition and enforcement of a Convention support order. The Article also provides, as does the Convention, that international child support proceedings may be conducted by private attorneys, as well as by support agencies.

The Commission recognizes that attempting to implement the Convention by asking fifty separate jurisdictions to enact timely and substantially similar legislation poses substantial practical difficulties. Thus, in order to ensure the widespread enactment of UIFSA 2008 that will be necessary in order to implement the Convention effectively in the United States, and to permit the United States to ratify the Convention, it is necessary for Congress to assist the process of obtaining enactment of UIFSA 2008 by the States, thereby allowing the timely deposit of the instrument of ratification with the Hague.

In the case of this particular treaty, the extensive federal funding of the child support program provides an ideal vehicle for that federal assistance. The Department of Health

and Human Services has recently submitted to the Congress federal implementing legislation – the “Multilateral Child Support Convention Implementation Act of 2009” -- that both provides guidance concerning the administrative aspects of implementing the Convention and requires that all states, as a prerequisite to continued receipt of federal child support funds, adopt the UIFSA 2008 amendments by a date certain.

Such a requirement is not new in the area of child support. The 1996 Welfare Reform Act, also known as PRWORA, made major changes to welfare programs. In that Act Congress made the enactment of UIFSA a condition of state eligibility for the federal subsidy for child support enforcement. The federal mandate required “each State to have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998 by the NCCUSL.” 28 U.S.C 666(f) In conformity with this mandate, all states had adopted UIFSA by 1998. A similar mandate by the Congress in its legislation pertaining to the Maintenance Convention would virtually assure that UIFSA 2008 would be adopted by all states in an expeditious and uniform fashion.

Finally, I want to emphasize the cooperative relationship between the federal officials and the Uniform Law Commission in the development of the Convention and its implementing legislation. The experience has suggested an interesting course for the future. With the expansion of global relationships, there will surely be other instances where integrating international legal developments into familiar state law may be appropriate. I believe adoption by the Congress of the proposal whereby implementation

of the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance will come about through adoption of a uniform state law will provide an important precedent and guide for future actions, and I commend it to you.

In closing, the Uniform Law Commission urges that the Senate give its advice and consent to the Hague Maintenance Convention, and the ULC also supports the implementation of that Convention by the combination of state and federal legislation that I and others testifying before the Committee describe today.

Thank you.