

HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE (TREATY DOC. 110-21)

JANUARY 22, 2010.—Ordered to be printed

Mr. KERRY, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 110-21]

The Committee on Foreign Relations, to which was referred the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, adopted at The Hague on November 23, 2007 (Treaty Doc. 110-21), having considered the same, reports favorably thereon with two reservations and three declarations as indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and the accompanying resolution of advice and consent.

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I. PURPOSE

The object of this Convention, as provided for in Article 1, is to “ensure the effective international recovery of child support and other forms of family maintenance.” The Convention seeks to achieve this purpose by providing rules that will, for the first time on a worldwide scale, create uniform, simple, and inexpensive procedures for the establishment, recognition, and enforcement of child support and family maintenance obligations in international cases.

II. BACKGROUND

A. DOMESTIC CHILD SUPPORT CASES

The current U.S. Child Support Enforcement (CSE) System, enacted in 1975, is a federal-state program (Title IV-D of the Social Security Act), administered by the Office of Child Support Enforcement (OCSE) in the Department of Health and Human Services (HHS). Its purpose is to help strengthen families by securing financial support for children from their noncustodial parent on a continuing basis, and by helping some families remain self-sufficient and off public assistance. The federal CSE program establishes a comprehensive set of requirements with which U.S. states must comply as a condition for receiving matching federal funds for a state's CSE program. All 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands operate CSE programs.

Under this system, U.S. states are required to enact and implement the Uniform Interstate Family Support Act ("UIFSA"), which governs jurisdiction to hear interstate proceedings aimed at establishing, recognizing, enforcing, or modifying a child support order. Under UIFSA's "one-order system," only one state's order governs, at any time, an obligor's support obligation to any child. All U.S. states have implemented some form of this uniform act.

B. FOREIGN CHILD SUPPORT CASES

Both the federal government and individual states have entered into arrangements with other nations to facilitate the recovery of child support owed to residents of the United States. Under section 459A of the Social Security Act, 42 U.S.C § 659A(a), the Secretary of State can declare another nation to be a "foreign reciprocating country" if it has "established, or undertakes to establish, procedures for the establishment and enforcement of child support owed to persons who are residents in the United States."¹ Even if there is not a federal-level international agreement or arrangement for child support enforcement, there may be arrangements between U.S. states and countries that are authorized pursuant to UIFSA.

There are also existing multilateral child support conventions that date back a number of years. However, the United States chose not to join those treaties principally because they contain jurisdictional provisions that are not consistent with U.S. law. As discussed further below, the jurisdictional provisions of this Convention have been drafted to avoid similar problems.

The United States actively participated in the negotiation of the Convention, which was adopted unanimously by the Hague Conference on Private International Law on November 23, 2007. These efforts resulted in an instrument that includes many procedures that are already the norm in the United States and that are largely consistent with existing U.S. law and practice in the child support enforcement area.

A primary benefit of the Convention for the United States is reciprocity. While United States courts already enforce foreign child support orders in many cases regardless of whether the United

¹The United States has declared each of the following to be a "foreign reciprocating country:" Australia, certain Canadian provinces and territories, the Czech Republic, El Salvador, Finland, Hungary, Israel, Ireland, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Switzerland, and the United Kingdom of Great Britain and Northern Ireland.

States has a child support agreement with the foreign country at issue, many countries do not do so in the absence of a treaty obligation. Accordingly, ratification would enable more U.S. children to receive the financial support they need from both parents, whether they reside in the United States or in a foreign country that is a party to the Convention.

Because HHS and state child enforcement authorities already act in a manner consistent with the obligations of the Convention, the administration does not anticipate that the Convention will impose additional financial or administrative burdens on the federal or state governments. The Convention will not affect intrastate or interstate child support cases in the United States since it applies only to cases where the custodial parent and child live in one country and the non-custodial parent in another.

The committee received statements of support for U.S. accession to the Convention from a broad range of concerned stakeholders in the United States, including the child support community, state organizations like the Conference of Chief Justices and the Conference of State Court Administrators, and the Uniform Law Commission and American Bar Association.

III. SUMMARY OF CONVENTION

A. MAJOR PROVISIONS

A detailed article-by-article analysis of the Convention may be found in the Letter of Submittal from the Secretary of State to the President, which is reprinted in full in Treaty Document 110–21. A summary of the key provisions is set forth below.

Intended to ensure the effective international recovery of child support payments

Article 1 indicates that the Convention is intended to ensure the effective international recovery of child support payments and other forms of family maintenance primarily through: (1) establishing a comprehensive system of cooperation between the authorities of the States Parties; (2) making available applications for the establishment of maintenance decisions; (3) providing for the recognition and enforcement of maintenance decisions; and (4) requiring effective measures for the prompt enforcement of maintenance decisions.

Scope of the Convention

Article 2 provides that the Convention—including its requirements that a country recognize and enforce certain foreign child support decisions—covers decisions relating to children under the age of 21, regardless of the parents' marital status. Article 2(2) allows a State Party to reserve the right to limit the Convention's application to individuals under the age of 18. The administration does not recommend that the United States make a reservation pursuant to Article 2(2) because many U.S. states recognize support obligations until age 21. Further, U.S. states, including those for which support obligations end at 18, will recognize and enforce a decision from another state for a child up to 21.

Parties designate a Central Authority to facilitate implementation of the Convention

The Convention will facilitate the coordination and enforcement of international child support cases between States Parties through the efforts of Central Authorities. Article 4 of the Convention provides that each State Party “shall designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority.” The United States intends to designate HHS as its Central Authority. Article 5 lists the general, non-delegable functions of Central Authorities, which HHS cannot delegate to individual U.S. state child support agencies. Conversely, Article 6 lists the specific functions that Central Authorities must perform, although they may designate other “public bodies” to perform these tasks. HHS would delegate most of the Article 6 responsibilities to state child support agencies, which currently perform most of the day-to-day management of the child support caseload in the United States.

The administration has indicated that the administrative cooperation requirements for Central Authorities under the Treaty are similar to those required for interstate child support agency activities performed under the existing domestic child support enforcement system. Accordingly, the administration informed the committee that the activities related to Central Authorities mandated under the Treaty would not measurably increase costs in the short term, and that it would not expect significant cost increases within the next decade.

Effective access to Convention procedures and free legal assistance for child support applications

Articles 14–17 address the cost of services, including legal assistance. Article 14 establishes the general standard for “effective access to procedures” under the Convention, with a special emphasis on ensuring “free legal assistance,” unless it is not required because the country has simple procedures and provides necessary services free of charge. The legal assistance “shall not be less than those available in equivalent domestic cases.” Article 15(1) specifically requires the requested State to provide free legal assistance with respect to child support applications made through Central Authorities. However, under Article 15(2), States Parties may refuse to provide free legal assistance if the application is on the merits “manifestly unfounded.” Article 16 provides an exception to Article 15(1) in that a State may make free legal assistance subject to a “test based on an assessment of the means of the child.” But under Article 16(3), the requested State may not look behind the applicant’s statement that the child meets the means test unless it reasonably believes that the statement is inaccurate.

In the United States, state child support agencies and the federal government already provide all services mandated under the treaty, including provision of any necessary legal assistance in international cases, free of charge, as required under section 454(32) of the Social Security Act, 42 U.S.C. § 654(32).

Recognition and enforcement of maintenance decisions

The Convention requires countries to recognize and enforce maintenance decisions from other countries under specified cir-

cumstances. Article 20(1) provides that a maintenance decision made in one State Party “shall be recognised and enforced in other Contracting States” if the first State’s jurisdiction was based on one of the grounds enumerated in the Article. Under Article 20(2), a State may make a reservation with respect to three of the bases of jurisdiction discussed in Article 20(1): creditor-based jurisdiction, jurisdiction based on written agreement, or jurisdiction based on a matter of personal status or parental responsibility. If a State makes such a reservation, it shall nevertheless, pursuant to Article 20(3), “recognise and enforce a decision if its law would in similar factual circumstances confer or would have conferred jurisdiction on its authorities to make such a decision.”

This opportunity to opt out of certain bases of jurisdiction allows a State Party to avoid assuming enforcement obligations that would be inconsistent with its domestic laws. The three bases of jurisdiction noted above, Article 20(1)(c), (e), and (f), are not consistent with relevant Supreme Court jurisprudence regarding the due process requirements of the U.S. Constitution. Accordingly, the committee and the executive branch recommend that the United States make a reservation with regard to these jurisdictional bases. Under Article 20(4), if a State Party cannot recognize a decision because of a reservation under Article 20, and the debtor is habitually resident in that country, the State Party must, with few exceptions, “take all appropriate measures to establish a decision for the benefit of the creditor.”

Article 22 provides the grounds for refusing recognition and enforcement of a maintenance decision. One ground for refusing recognition under Article 22 is that such “recognition and enforcement of the decision is manifestly incompatible with the public policy of the State addressed.” The State Department’s submittal letter provides one example of a ground on which this public policy exception could be invoked: “a U.S. competent authority could decline to recognize and enforce a decision against a left-behind U.S. parent in an abduction case where the child had been wrongfully taken or retained, on the grounds that recognition and enforcement of such a decision would be manifestly incompatible with the U.S. public policy of discouraging international parental child abduction.” The procedure for an application for recognition and enforcement is outlined in Articles 23–26, which aim to provide a streamlined and uniform set of procedures for recognition and enforcement.

The enforcement of maintenance obligations “shall take place in accordance with the law of the State” being requested to recognize the child support order, pursuant to Article 32. When a decision has been declared enforceable, it shall proceed “without the need for further action by the applicant.” This requirement is a significant benefit given that other states often require an additional proceeding before their authorities will take steps to collect the debt owed to the applicant. The requested State under Article 33 must provide at least the “same range of enforcement methods for cases under the Convention as are available in domestic cases.”

Confidentiality and disclosure of information

Articles 38 through 40 set forth rules concerning the protection of personal information, confidentiality, and the disclosure of information.

B. RELATIONSHIP TO OTHER INTERNATIONAL INSTRUMENTS

Articles 48–52 provide a framework for the relationship between the Convention and other agreements and arrangements in this area. Pursuant to Articles 48 and 49 and subject to Article 56(2), as between States Parties, the Convention replaces three previous multilateral treaties in so far as their scope of application coincides with the scope of application of the Convention.²

Article 50 clarifies that the Convention does not affect the Hague Convention of 1 March 1954 on civil procedure, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

Article 51 specifies that the Convention does not affect pre-existing international instruments to which Contracting States are Parties and which contain provisions on matters governed by the Convention. Similarly, the Convention does not preclude the negotiation of new instruments that may overlap in scope with the Convention so long as the instruments are consistent with the object and purpose of the Convention and do not affect application of the Convention with respect to other States Parties. Accordingly, the United States may continue to apply existing bilateral child enforcement instruments, and the United States may conclude additional instruments after joining the Convention.

Finally, under Article 52, application of a bilateral or multilateral instrument that provides more effective recovery mechanisms than the Convention is permissible under certain circumstances.

IV. ENTRY INTO FORCE

In accordance with Article 60, the Convention will enter into force “on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, or approval...” There have been no deposits to date. The administration has indicated that Canada, Australia, Norway, and all member states of the European Community support the Convention and are actively considering joining.

V. IMPLEMENTING LEGISLATION

As noted above, the Convention is largely consistent with current U.S. federal and state law and practice in the child support enforcement area. As a result, only minimal changes to U.S. law would be required to allow for implementation of the Convention. The requisite changes would be achieved through adoption of an amended version of UIFSA by states and other relevant jurisdictions, as well as through conforming amendments to Title IV of the Social Security Act.

In July 2008, the National Conference of Commissioners on Uniform State Laws (NCCUSL) approved model state implementing legislation for the Convention through proposed amendments to the

²The treaties replaced by the Convention are the United Nations Convention on the Recovery Abroad of Maintenance of 20 June 1956, the Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, and the Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children. The United States is not a party to these treaties.

UIFSA, referred to as UIFSA 2008. The Bush administration submitted a legislative proposal to the 110th Congress to make the conforming amendments necessary for full implementation of the Convention, but no congressional action was taken on that proposal. The Obama administration re-submitted this proposal (with minor technical modifications) on October 1, 2009. The administration has informed the committee that it does not intend to deposit an instrument of ratification before all of the U.S. states have adopted UIFSA 2008.

VI. COMMITTEE ACTION

The committee held a public hearing on the Convention on October 6, 2009. Testimony was received by Mr. Keith Loken, Assistant Legal Adviser for the Office of Private International Law at the Department of State; Ms. Vicki Turetsky, Commissioner in the Office of Child Support Enforcement at the Department of Health and Human Services; The Honorable Battle Robinson, Uniform Law Commissioner and Retired Judge in the Family Court of Delaware; and Ms. Alisha Griffin, Assistant Director of the Office of Child Support Services in the New Jersey Department of Human Services. A transcript of this hearing is included at Annex I of this report.

On November 17, 2009, the committee considered the Convention, and ordered it favorably reported by voice vote, with a quorum present and without objection.

VII. COMMITTEE RECOMMENDATIONS AND COMMENTS

The Committee on Foreign Relations considers the Convention to be an important step in efforts to ensure that children in the United States receive the financial support they need from a parent living abroad. The administration has estimated that there are over 15 million child support cases in the United States, including 150,000 international cases, and that the number of international cases is likely to increase. The Convention will serve as a useful tool in resolving these international cases: it will not add measurable financial burdens to HHS or state governments and will allow parents in the United States to benefit from the same streamlined procedures that are available to those living abroad and seeking to enforce child support decisions in this country. The committee believes that joining the Convention is beneficial to American children and families and urges the Senate to act promptly to give advice and consent to the ratification of the Convention, as set forth in this report and the accompanying resolution of advice and consent. Consistent with the executive branch's stated intention, the Committee expects that the executive branch will not deposit an instrument of ratification for the Convention until all U.S. states and other relevant jurisdictions have adopted the necessary legislation to implement the Convention.

A. RESOLUTION

The committee has included in the resolution of advice and consent two reservations and three declarations.

Reservations

The first proposed reservation ensures, pursuant to Articles 20 and 62 of the Convention, that the United States will not be obligated to recognize and enforce maintenance obligation decisions when their jurisdictional bases would violate U.S. constitutional due process standards. Specifically, the United States would not recognize or enforce decisions rendered pursuant to any of the jurisdictional bases set forth in subparagraphs 1(c), 1(e), and 1(f) of Article 20.

The second proposed reservation provides that, pursuant to Articles 44 and 62 of the Convention, the United States will not be obligated to accept communications in the French language from the central authorities of other nations to the U.S. Central Authority.

Declarations

The proposed declaration in Section 3 of the recommended resolution of advice and consent, clarifies that, for the United States, the Convention would apply only to the U.S. jurisdictions participating in Title IV-D of the Social Security Act: the fifty U.S. states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. The Convention would therefore not apply to American Samoa, the Northern Marianas, or other U.S. territories that do not participate in Title IV-D. The declaration would be made pursuant to Articles 61 and 63 of the Convention and would be included in the instrument of ratification.

Section 4 of the recommended resolution of advice and consent includes two proposed declarations. The first proposed declaration relates to Article 55 of the Convention, which sets out procedures for the amendment of certain forms annexed to the Convention. The committee and the executive branch share the expectation that amendments to the forms would generally be technical and administrative in nature and would not, in the normal course, require the advice and consent of the Senate. If a proposed or adopted amendment were to go beyond a technical and administrative amendment, the administration has committed to consult with the committee in a timely manner regarding the question of whether advice and consent is warranted. Under such circumstances, the executive branch could make appropriate use of the “reservation” procedure described in Article 55(3) to prevent an amendment from entering into force for the United States before the conclusion of consultations with the committee. The proposed declaration clarifies that the executive branch may make such a reservation without the approval of the Senate.

The second proposed declaration in Section 4 states that the Convention is not self-executing. In the past, the committee generally included such statements in the committee’s report, but in light of the Supreme Court decision in *Medellín v. Texas*, 128 S. Ct. 1346 (2008), the committee has determined that a clear statement in the Resolution is warranted. A further discussion of the committee’s views on this matter can be found in Section VIII of Executive Report 110–12.

Neither of the proposed declarations in section 4 would be included in the instrument of ratification.

VIII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO
RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO TWO RESERVATIONS AND THREE DECLARATIONS

The Senate advises and consents to the ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the “Convention”), adopted at The Hague on November 23, 2007 (Treaty Doc. 110–21), subject to the reservations of section 2, the declaration of section 3, and the declarations of section 4.

SECTION 2. RESERVATIONS

The advice and consent of the Senate under section 1 is subject to the following reservations, which shall be included in the instrument of ratification:

(1) In accordance with Articles 20 and 62 of the Convention, the United States of America makes a reservation that it will not recognize or enforce maintenance obligation decisions rendered on the jurisdictional bases set forth in subparagraphs 1(c), 1(e), and 1(f) of Article 20 of the Convention.

(2) In accordance with Articles 44 and 62 of the Convention, the United States of America makes a reservation that it objects to the use of the French language in communications between the Central Authority of any other Contracting State and the Central Authority of the United States of America.

SECTION 3. DECLARATION

The advice and consent of the Senate under section 1 is subject to the following declaration, which shall be included in the instrument of ratification:

The United States of America declares, in accordance with Articles 61 and 63 of the Convention, that for the United States of America the Convention shall extend only to the following: all 50 U.S. states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

SECTION 4. DECLARATIONS

The advice and consent of the Senate under section 1 is subject to the following declarations:

(1) Article 55 of the Convention sets forth a special procedure for the amendment of the forms annexed to the Convention. In the event that the United States of America does not want a particular amendment to the forms adopted in accordance with Article 55 to enter into force for the United States of America on the first day of the seventh calendar month after the date of its communication by the depositary to all parties, the Executive Branch may by notification in writing to the depositary make a reservation, in accordance with Article 62 of the Convention, with respect to that amendment and without the approval of the Senate.

(2) This Convention is not self-executing.

HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE (TREATY DOC. 110-21)

Tuesday, October 6, 2009

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 2:30 p.m. in Room SD-419, Dirksen Senate Office Building, Hon. Benjamin L. Cardin, presiding.

Present: Senators Cardin [presiding] and Risch.

**OPENING STATEMENT OF HON. BENJAMIN L. CARDIN,
U.S. SENATOR FROM MARYLAND**

Senator CARDIN. Welcome. The Senate Foreign Relations Committee will come to order.

I want to thank Senator Kerry for allowing me to chair this hearing. I consider this hearing to be a very important hearing as to whether the United States should join the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

We all know that many children in the United States and throughout the world are raised by a single parent. Often these parents struggle to make ends meet, to provide for their children. And the absence of child support from a noncustodial parent makes these challenges much, much greater.

Thankfully, here in the United States we have a robust enforcement framework that helps ensure payment of child support obligations. That system and framework is carried out through our States and through the role of the Federal Government.

The challenges in ensuring appropriate support for children are even greater when the noncustodial parent does not reside in the United States. Joining this Convention would help ensure that the mere fact of a parent living abroad does not prevent a child in the United States from receiving needed support.

The Convention was adopted by the Hague Conference on Private International Law on November 23, 2007, and was signed by the United States on the same day. It creates a set of uniform procedures for the establishment, recognition, and enforcement of child support decisions in international cases, and provides a framework for cooperation among the child support authorities in contracting States. It also requires that each party to the Convention designate

a central authority to discharge its duties under the Convention. While the Department of Health and Human Services would be the central authority for the United States, most responsibility under this treatment—treaty—would be delegated to State child enforcement authorities.

A primary benefit of joining the Convention, for the United States, is reciprocity. Currently, U.S. courts and child support agencies often enforce foreign child support requests, regardless of whether the United States has a child support agreement with that foreign country. We try to do what's right in the interests of the child, and we will enforce the orders if we believe it's in the best interests of the child. In contrast, many countries will not enforce U.S. child support decisions absent a treaty obligation. The reciprocal obligations created by the Convention provide the fastest and most effective way to ensure the child support system works for our citizens seeking to support judgments abroad as well as those seeking to support judgments in the United States.

Because the Convention builds upon and embraces existing U.S. child support enforcement practices, only minimal changes to U.S. law, both Federal and State, would be required before the U.S. could join the treaty.

Further, while joining the Convention will enhance our viability to achieve positive results in international child support cases, it would not change our child support enforcement system in domestic cases. HHS has estimated that there are over 15 million child support cases in the United States, and a growing number of cases involve a parent who lives abroad. In my State of Maryland alone, there were over 255,000 pending child support cases in fiscal year 2008.

By providing advice and consent to this Convention, the Senate will help ensure that children in the United States receive the financial support they need to live healthy, excel in school, and pursue the American dream. That is why the Convention has widespread support from the child support communities, State organizations like the Conference of Chief Justices and the Conference of State Court Administrators, and the Uniform Law Commission and the American Bar Association. And that is why I strongly support Senate advice and consent for this Convention.

We are fortunate today to have four witnesses that are very knowledgeable about the treaty and child support enforcement efforts. On the first panel, we have Keith Loken, assistant legal adviser in the Office of Private International Law at the State Department, and Vicki Turetsky, Commission of the Office of Child Support Enforcement at Health and Human Services.

On the second panel, we have the Honorable Judge Battle Robinson, a former Delaware family court judge, who will testify on behalf of the Uniform Law Commission; and Alisha Griffin, the director of Child Support Enforcement Activities in New Jersey, who will give us an insight on how U.S. ratification of the Convention will help state child support efforts.

I would like to welcome each of our guests today. And I thank you very much for making yourself available for this committee hearing.

We'll operate with two panels. I've already introduced the first panel's two guests. We'll start with, Mr. Loken.

**STATEMENT OF KEITH LOKEN, ASSISTANT LEGAL ADVISOR,
OFFICE OF PRIVATE INTERNATIONAL LAW, DEPARTMENT
OF STATE, WASHINGTON, D.C.**

Mr. LOKEN. Thank you, Senator Cardin.

I'm honored to testify today in support of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

The Convention was negotiated over a period of several years in the Hague Conference on Private International Law, and the views of concerned domestic stakeholders were taken into account. The U.S. delegation to the negotiations included, in addition to representatives of the State Department and the Department of Health and Human Services, several experts in the field. Representatives of the National Child Support Enforcement Association, the International Bar Association, and other groups, participated in the negotiation as observers. In addition, throughout the negotiations, a number of public meetings were held to obtain views from the private sector and state-level officials. As a result, there is broad support for the Convention among public officials and private parties who are involved in the enforcement of child support orders in the United States.

Why is this Convention needed? In an era of globalization and increased international movement of individuals, it is increasingly common to find a custodial parent and child in one country and the noncustodial parent in another. There are currently an estimated 150,000 international child support cases in the United States. We've learned that it is difficult, if not impossible, to enforce legal obligations abroad, relating to child support, without a treaty basis.

There are existing multilateral child support conventions that date back a number of years, the most recent being more than 35 years old. But, the United States is not a party to them, for various reasons, for example, because the jurisdictional provisions are inconsistent with U.S. law, or because we consider them ineffective, in that they did not require parties to establish new child support orders or to provide cost-free services. The new Convention remedies these deficiencies.

Why is this Convention good for the United States? A major benefit is reciprocity. Although U.S. courts routinely, on the basis of comity or otherwise, recognize and enforce foreign child support orders, the same is typically not true of foreign courts. Many foreign countries will not process foreign child support requests in the absence of a treaty obligation. Under this Convention, more U.S. children will be able to obtain the financial support they need from a noncustodial parent located overseas.

The United States obtained its key objectives in the negotiation of this Convention.

First, scope: The Convention addresses maintenance obligations arising from a parent-child relationship and spousal support in a manner that is consistent with existing mechanisms under Federal and State law in the United States.

Second, jurisdiction: Jurisdictional rules in the U.S. differ from those in most other countries. The Convention sets forth various mandatory bases for assertion of jurisdiction over the debtor parent, but permits parties to take a reservation with respect to certain bases, including creditor-based jurisdiction. The executive branch recommends that should the U.S. ratify the Convention, it takes such a reservation, as this would be consistent with applicable U.S. jurisprudence.

Third, establishment: The Convention not only addresses the recognition and enforcement of foreign child support orders, but also the establishment of a new child support decision in the requested State, when that proves necessary. This obligation to establish a new decision includes an obligation to establish paternity, where needed.

And fourth, costs: We anticipate that a majority of the requests under the Convention, will occur via the central authority mechanism. Because applicants who rely on government child support enforcement mechanisms generally have limited financial resources, it was vital to U.S. negotiators that the Convention require that assistance in cases processed through the central authorities generally be provided free of charge.

How will this Convention be implemented in the United States? The Convention would be implemented through a combination of amendments to Part D of Title IV of the Social Security Act and adoption by the States of amendments already approved by the Uniform Law Commission to the relevant uniform state law, the Uniform Interstate Family Support Act.

It is proposed that HHS would be the central authority under the Convention. Since 1975, HHS has operated a Federal Parent Locator Service that will facilitate locating noncustodial parents and referring foreign cases to the appropriate state agency, to provide services. Also, since 1996, HHS has acted as the central authority, under bilateral agreements, in arrangements with other countries on child support enforcement. It has the expertise, the established administrative processes, and close relations with child support enforcement officials in all of the states. The State Department and HHS have cooperated effectively for many years on international child support matters.

Finally, will other countries join the Convention? We expect so. The member states of the European Community strongly support the Convention. The European Commission has tabled, with the European Council, a draft proposal to ratify the Convention. It is anticipated that all the member states, and the EC itself, will join together, perhaps, in 2011. Canada, also, is a strong supporter of the Convention, and we understand that the Federal Government there is working with the provinces and territories on implementation under Canada's federal system. We understand that other countries, such as Norway and Australia, are actively considering joining.

The international community is waiting to see what the United States does. U.S. ratification would send a strong signal to others.

Thank you, Senator Cardin, for the opportunity to present our views on this important treaty. We urge that the committee give

the Convention prompt and favorable consideration, and I would be pleased to answer any questions that you may have.

Thank you.

[The prepared statement of Mr. Loken follows:]

PREPARED STATEMENT OF KEITH LOKEN

Senator Cardin and Members of the Committee: I am honored to testify today in support of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance ("Child Support Convention"). The Convention was negotiated over a period of several years in the Hague Conference on Private International Law, the source also of the Hague Child Abduction and Child Adoption Conventions to which the United States is a party. The views of concerned domestic stakeholders were taken into account. The U.S. delegation to the negotiations included, in addition to representatives of the State Department and the Department of Health and Human Services (HHS), several experts in the field. Representatives of the National Child Support Enforcement Association, the International Bar Association, and other groups participated in the negotiations as observers. In addition, throughout the negotiations, a number of public meetings were held to obtain views from the private sector and state level officials. As a result, there is broad support for the Convention among public officials and private parties who are involved in the enforcement of child support orders in the United States.

Why is this Convention needed? In an era of globalization and increased international movement of individuals, it is increasingly common to find the custodial parent and child in one country and the non-custodial parent in another. There are currently an estimated 150,000 international child support cases in the United States. We have learned that it is difficult, if not impossible, to enforce legal obligations abroad relating to child support without a treaty basis. There are existing multilateral child support conventions that date back a number of years (the most recent is more than 35 years old), but the United States is not a party to them for various reasons, for example, because the jurisdictional provisions were not consistent with U.S. law, or because we considered them ineffective in that they did not require parties to establish new child support orders or to provide cost-free services. The new Convention remedies these deficiencies.

Why is this Convention good for the United States? A major benefit is reciprocity. Although U.S. courts routinely, on the basis of comity or otherwise, recognize and enforce foreign child support orders, the same is typically not true of foreign courts. Many foreign countries will not process foreign child support requests in the absence of a treaty obligation. The United States has entered into bilateral agreements and arrangements with several countries. These instruments will remain in effect. This Convention expands upon the provisions of such instruments and includes several procedural improvements that should simplify the process of implementing child support decisions across borders. Under this Convention, more U.S. children would be able to obtain the financial support they need from a non-custodial parent located overseas. The United States obtained its key objectives in the negotiation of the Convention:

- *Scope of the Convention:* The Convention addresses maintenance obligations arising from a parent-child relationship and spousal support in a manner that is consistent with existing mechanisms under federal and state law in the United States.
- *Jurisdiction:* Jurisdictional rules in the United States differ from those in most other countries. The Convention sets forth various mandatory bases for assertion of jurisdiction over the debtor parent, but permits parties to take a reservation with respect to creditor-based jurisdiction, jurisdiction based on a written agreement, or jurisdiction based on a matter of personal status or parental responsibility. The Executive Branch recommends that, should the United States ratify the Convention, it take such a reservation, as this would be consistent with applicable U.S. jurisprudence.
- *Establishment:* The Convention not only addresses the recognition and enforcement of foreign child support orders, but also the establishment of a new child support decision in the requested State where that is necessary, for example, where the requested State does not recognize the jurisdictional basis of a child support order issued in the requesting State. This obligation to establish a new decision includes an obligation to establish paternity, where necessary.

- *Costs:* While the Convention provides a mechanism available to foreign applicants who want to approach directly the relevant court or other authority, we anticipate that a majority of the requests will occur via the Central Authorities. Because applicants who rely on government child support enforcement mechanisms generally have limited financial resources, it was vital to U.S. negotiators that the Convention require that assistance in cases processed through Central Authorities generally be provided free of charge.

How will this Convention be implemented in the United States? The Convention would be implemented through a combination of amendments to part D of title IV of the Social Security Act and adoption by the states of amendments, already approved by the Uniform Law Commission, to the relevant uniform state law, the Uniform Interstate Family Support Act (UIFSA). It is proposed that HHS would be the Central Authority under the Convention. Since 1975, HHS has operated a Federal Parent Locator Service that will facilitate locating non-custodial parents and referring foreign cases to the appropriate state agency to provide services. Also, since 1996, HHS has acted as the Central Authority under bilateral agreements and arrangements with other countries on child support enforcement. It has the expertise, established administrative processes, and close relations with child support enforcement officials in all of the states. The State Department and HHS have cooperated effectively for many years on international child support matters.

Will other countries join the Convention? We expect so. The member states of the European Community (EC) strongly support the Convention. The European Commission has tabled with the European Council a draft proposal to ratify the Convention. We understand that the substance of the Convention presents a situation of mixed competency for the EC, in that the Commission has exclusive competency over some matters covered by the Convention, and the member states have competency over others. Thus, it is anticipated that all the member states and the EC would join together, perhaps in 2011. Canada also is a strong supporter of the Convention and we understand that the federal government there is working with the provinces and territories on implementation under Canada's federal system. We understand that other countries such as Norway and Australia are actively considering joining. The international community is waiting to see what the United States does; U.S. ratification would send a strong signal to others. The first post-adoption conference of the potential parties, known as a Special Commission of the Hague Conference, will be held in November to discuss ways to make implementation of the Convention more efficient. We will use that opportunity to urge other countries to sign and ratify the Convention.

Thank you, Senator Cardin and Members of the Committee, for the opportunity to present our views on this important treaty. We urge that the Committee give the Convention prompt and favorable consideration. I would be pleased to answer any questions that you may have.

Senator CARDIN. Thank you very much for your testimony.
Ms. Turetsky?

**STATEMENT OF VICKI TURETSKY, COMMISSIONER, OFFICE OF
CHILD SUPPORT ENFORCEMENT, DEPARTMENT OF HEALTH
AND HUMAN SERVICES, WASHINGTON, D.C.**

Ms. TURETSKY. Senator Cardin, thank you for the opportunity to testify on the Hague Convention on International Recovery of Child Support and Other Forms of Family Maintenance. This Convention establishes a new and more effective international system for ensuring the receipt of child support.

In 2008, the Child Support Enforcement Program served 15 million cases, or 17 million children, and collected over \$26 billion in support payments. Ratification of the Convention will mean that more children living in the United States will receive the financial support they need and deserve from their parents, even when one of their parents lives in another country.

The United States actively participated in the development of the Convention from the beginning of negotiations in 2003. The United States worked to ensure that a treaty would be compatible with our

system of jurisprudence and patterned closely after the best procedures available in the United States, as well as other countries with advanced child support enforcement procedures. The goal was a convention process that was comprehensive, consistent, simple, expedited, essentially cost-free, and fair. The final text of the Hague Convention creates just such a system.

We do not anticipate an increase in the costs of the program as a result of the Convention, because the United States already provides extensive services in international cases. And we'll handle such actions using the extensive automated data processing systems that already are in place. However, we anticipate a significant improvement in the level of assistance by other countries when the Convention is fully implemented, resulting in more child support paid to custodial parents and their children living in the United States.

The Secretary of Health and Human Services has the responsibility, as the United States central authority, to facilitate support enforcement in these cases. And we are fully prepared and committed to continue providing oversight, assistance, and coordination of such activities under the new Convention.

International child support enforcement under the Convention will operate in a manner very similar to existing interstate processes in the United States. The Convention establishes procedures for administrative cooperation which will greatly improve the efficiency of processing in coming international cases and, we anticipate, also will open many new avenues for American citizens seeking enforcement of their child support orders abroad.

Compliance with our obligations under the Convention will require minimal changes to existing Federal and State law. Most cases under the Convention will be handled in the United States according to the Uniform Interstate Family Support Act, UIFSA, which establishes procedures for processing interstate and international child support cases, and is enforced in all States.

Proposed implementing legislation recently transmitted to the Congress by the Secretary of HHS would ensure all current support services are available to cases covered by the Convention. States will be required to enact conforming legislation as a condition of continued Federal funding of their child support programs.

As head of the Federal Child Support Enforcement Program, I believe this Convention fulfills the needs of the United States, is widely supported throughout the country by all interested groups, and will greatly enhance procedures in international cases, to the benefit of all of those American citizens seeking support from non-custodial parents residing in other Convention countries, as well as foreign citizens seeking support from noncustodial parents living here.

On behalf of the administration, I urge the committee to take prompt and favorable action on the Convention.

I would be happy to answer any questions you may have.

[The prepared statement of Ms. Turetsky follows:]

STATEMENT OF VICKI TURETSKY

Senator Cardin, thank you and Chairman Kerry and Senator Lugar, for the opportunity to testify on the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

This Hague Convention establishes a new and more effective international system for ensuring the receipt of child support in cases where the custodial parent and child live in one country and the non-custodial parent in another. Ratification of the Convention will mean that more children living in the United States will receive the financial support they need and deserve from their parents, even when one of their parents lives in another country. Currently, the United States recognizes certain foreign orders requiring child support. This Convention would require other countries that are parties to the Treaty to reciprocate.

The Convention builds upon existing United States law and practice to establish uniform, simple, fast, and inexpensive procedures for processing international child support cases. The Convention can be fully implemented with minimal changes to existing United States law and will not impose additional financial or administrative burdens on the Federal or state governments.

The Department of Health and Human Services supports the State Department's efforts to secure ratification of this Convention by the United States. State child support programs and judges, other United States child support interests, the American Bar Association, the National Conference of Commissioners on Uniform State Laws (NCCUSL), the National Center for State Courts, and the National Child Support Enforcement Association (NCSEA) have expressed unequivocal support for the Convention.

BACKGROUND: THE CHILD SUPPORT ENFORCEMENT PROGRAM

In 1975, Congress established a federally-supervised and state-administered program for the enforcement of family support cases under title IV-D of the Social Security Act. The U.S. Department of Health and Human Services (HHS) is charged with oversight of the Child Support Enforcement program. All states and territories administer a child support program, usually located within the state's human services agency, revenue department, or Attorney General's office, with the help of prosecuting attorneys and the courts. In addition, 36 tribes operate comprehensive child support programs. States receive Federal matching funds covering approximately two-thirds of the costs of administering the child support program. Successful state child support programs also receive incentive payments for their performance.

In 2008, the Child Support Enforcement program served 17 million children and collected \$26.6 billion in support payments. Services are available to all children living apart from one of their parents, regardless of family income or residence. Services are provided automatically, and free of charge, to families receiving assistance under the Temporary Assistance for Needy Families, Medicaid, and Foster Care programs. Other families may apply for services at a nominal cost. Extensive Federal and state child support data exchanges allow state child support programs to locate parents and assets across state lines. Cases in which parents and their children live in different states comprise about one-fourth of the child support caseload. In such interstate cases, states may either seek the assistance of another state in securing parental support or take action directly across state lines when jurisdiction to do so exists. For example, a state may initiate an income withholding order directed to an employer in another state.

We estimate that, currently, a small percentage (perhaps one percent) of state child support enforcement cases are international in nature, with the majority of those cases flowing between the United States and its neighbors in Canada and Central America, and between the United States and those European Union countries with which the United States has bi-lateral arrangements to cooperate in enforcing child support. However, we anticipate that the percentage of international cases received and initiated by the Child Support Enforcement program will increase over the next ten years, particularly given the increasing emphasis on international child support cooperation.

DEVELOPMENT OF THE CONVENTION

The Convention was unanimously adopted at the Twenty-First Diplomatic Session of the Hague Conference on Private International Law on November 23, 2007. The United States was one of two countries that signed it the same day it was adopted. As head of the Federal Child Support Enforcement program, I believe that this Convention fulfills the needs of the United States, is widely supported throughout the country by all interested groups, and will greatly enhance procedures in inter-

national cases to the benefit of all of those American citizens seeking support from non-custodial parents residing in other Convention countries as well as foreign citizens seeking support from non-custodial parents living in the United States.

The United States actively participated in the development of the Convention from the beginning of negotiations in 2003. The U.S. worked to ensure that a treaty would be compatible with our system of jurisprudence and patterned closely after the best procedures available in the United States and other countries with advanced child support enforcement procedures. The goal was a Convention process that was comprehensive, consistent, simple, expedited, essentially cost-free and fair. The final text of the Hague Convention creates just such a system.

IMPACT OF THE CONVENTION

Ratification of the Convention will serve the interests of U.S. families by providing for international enforcement of support orders issued in the United States. More American children will receive the financial support they need from both of their parents, even when one parent lives in another country. The Convention will not affect intrastate or interstate child support cases in the United States. It will only apply to cases where the custodial parent and child live in one country and the non-custodial parent lives in another.

The Convention could help a Florida mother who wrote to my office:

Hello!! My son is 14 years old and my daughter is 9 years old, their father lives in Peru and I never collect child support. Is there anyway that you guys can help me with some information about this issue? Thank you.

A mother from New Mexico shared:

I have been trying for almost 4 years to figure out how I can get a Child Support Order enforced in Montreal, Quebec Canada. I understand it is not a reciprocating province and the state, in which I live, New Mexico, does not have an agreement on a state level either. Isn't there some way to get the order enforced? Or some sort of consequence for non payment? He owes me over \$20,000 so far.

It could provide answers to a child support worker trying to help a family:

I have a Georgia Divorce order dated 2004. It was never made payable through a Child Support Office. The non-custodial parent moved to the Philippines. Not working as far as we know. Not supporting the 8 year old child on the order. The Philippines is not one of the UIFSA [Uniform Act] countries. The custodial parent wants to apply for services but is wondering what type of support enforcement could be done?

Long-standing arrangements permit the Child Support Enforcement program to cooperate with a few countries to collect child support payments. Current law authorizes the Secretary of State, with the concurrence of the Secretary of HHS, to enter into a bi-lateral agreement or declare any country a "foreign reciprocating country," if it enforces family support obligations in a manner substantially similar to the process in the United States. Currently there are 25 such arrangements in place, including those with 11 Canadian Provinces. Despite these arrangements, enforcement procedures vary from country-to-country and many barriers remain - such as lack of standard forms, wide variations in the ability of other countries to establish paternity or support orders, limited enforcement remedies, translation issues, and problems with currency exchange. In addition, many countries do not enforce our orders and are unlikely to cooperate in the absence of a treaty obligation.

While the United States will maintain its bi-lateral arrangements with these countries, the new Convention will operate in many of our on-going cases to greatly streamline operations and serve to provide new means of communication and administrative cooperation between countries. The Convention provides for cooperation between the child support authorities of Contracting States, that is, those countries that are party to the Convention. The Convention requires cooperation in establishing paternity and support orders, establishes procedures for the recognition of child support orders, and requires effective measures for prompt enforcement. (Details of the Convention, including specific and necessary U.S. reservations and declarations, were included in the President's September 2008 transmittal package to the Senate.)

We do not anticipate an increase in costs as a result of the Convention because the United States already provides extensive services in international cases and will handle such actions using the expansive automated processing systems which are in place to handle the huge volume of domestic cases. However, we anticipate a sig-

nificant improvement in the level of assistance by other countries when the Convention is fully implemented, resulting in more child support paid to custodial parents and their children living in the United States when the non-custodial parents lives in another country. The Secretary of Health and Human Services has the responsibility, as the United States Central Authority, to facilitate support enforcement in these cases and we are fully prepared and committed to continue providing oversight, assistance and coordination of such activities under the new Convention.

International support enforcement under the Convention will operate in a manner very similar to existing interstate processes. The Convention establishes procedures for administrative cooperation which will greatly improve the efficiency of processing incoming international cases, and we anticipate it also will open many new avenues for American citizens seeking enforcement of their child support orders abroad in countries which do not currently have well-established systems.

U.S. TREATY OBLIGATIONS UNDER THE CONVENTION

Compliance with our obligations under the Convention will require minimal changes to existing Federal and state law. This is because the Convention is largely modeled after our laws and child support enforcement system. Most cases under the Convention will be handled in the United States in accordance with the Uniform Interstate Family Support Act (UIFSA), which establishes procedures for processing interstate and international child support cases and is in force in all states. In July 2008, the National Conference of Commissioners on Uniform State Laws (NCCUSL), working collaboratively with federal and state child support experts from around the country, adopted changes to UIFSA needed to ensure compliance with the Convention.

Proposed implementing legislation, recently transmitted by the Secretary of HHS to the Congress, would make minimal changes to existing law to ensure all current child support enforcement services are available to cases covered by the Convention. The legislation would mandate that all states enact the 2008 version of UIFSA, and would make other technical changes to title IV-D of the Social Security Act, for example, to include specific reference to treaty cases. States will be required to enact those changes expeditiously as a condition of continued Federal funding under title IV-D of the Social Security Act.

The Convention will not have a major impact on states, as all states operate federally-regulated child support programs and routinely provide child support services in international cases. In order to ensure that the United States is fully able to comply with its obligations under the Convention, the U.S. will not deposit the instrument of ratification for the Convention until all the necessary changes in federal law have been enacted and the UIFSA amendments have been adopted by all states.

CONCLUSION

On behalf of the Administration, I urge the Committee to take prompt and favorable action on the Convention. The Convention recognizes that children need the support of two parents, even when one of the parents lives in another country. I appreciate the opportunity to appear before the Committee in support of this historic and important step forward for children and families and would be happy to answer any questions you may have.

Senator CARDIN. And thank you for your testimony.

Let me, if I might, start on the cost issue. You both have indicated that you don't anticipate any significant increase in cost. Ms. Turetsky, you indicated that you're doing some of the services today. So, if a single parent living in the United States has a support order that that individual is trying to enforce in another country, currently what does that parent do as it relates to interacting either with HHS or with the local support agency? Are there services currently available that they are receiving?

Ms. TURETSKY. Yes, but not consistently. Depending upon the country in which the other parent lives, the State may have a bilateral agreement with that country. But, our inquiries to our office from custodial parents living in the States suggests that those procedures are unpredictable. Parents are uncertain about whether procedures are available under bilateral agreements or not, in how to go about pursuing child support. And States, too, have a lot of

questions. So, the Convention will help us standardize and provide a set of administrative procedures that all States can use with any of the countries that ratify the Convention.

Senator CARDIN. As I indicated in my introductory remarks, I support the ratification of the Convention. I believe it will significantly improve child support collections in the United States and where orders are attempted to be enforced outside of the United States. But, it seems to me that, with a more efficient system and with your agency's clear responsibility to help single parents in the United States, this is bound to increase the workload in your agency.

Ms. TURETSKY. Well, because we already work on supporting States in international cases where we do have a bilateral agreement, our workload burden, so to speak, is already built in. In addition, we provide services, through the States, to cases coming into the United States. Where we have—where we struggle, is when we don't have a bilateral agreement, when the custodial parent lives in our country and is seeking to enforce abroad.

Senator CARDIN. I just want to make sure we're realistic as to what you're going to need. I also assume that some of this currently is being done at the State level with a clear international path for enforcing child support orders, working through HHS as the principal agency in the United States. I think it also is going to probably increase the amount of volume in your office.

Ms. TURETSKY. You know, this is a situation where we expect the number of cases to be a small part of our caseload for the foreseeable future. We expect it to grow over time, but we're starting with about 1 percent of our cases. We have the structure already in place to process international cases. States do the primary enforcement of cases, and they are already set up to enforce both interstate and international cases.

Senator CARDIN. And, Mr. Loken, how does this operate through the State Department? What role do you all play if this treaty is ratified?

Mr. LOKEN. Senator, I would answer that in a couple of ways. First, as I mentioned, the State Department has a long history of cooperation with HHS in the matter of—in child support enforcement, internationally, and we would continue that. In terms of the Hague Conference itself, the practice there is to periodically convene meetings in The Hague of potential parties or parties to the Convention, to discuss its implementation and investigate ways to improve the operation of the Convention. And we would expect to be participating actively in those kinds of meetings.

Senator CARDIN. I believe you indicated that, to be in compliance with this obligation, we would have to amend Part D, Title IV, of the Social Security Act and that some States would have to comply with what they've already indicated they will, the uniform statutes.

What is the status here? Have there been bills prepared? Are States moving to conform? How much more work would there need to be done if this Convention is ratified?

Ms. TURETSKY. In terms of the legislation, the legislation has been conveyed to the authorizing committees. It was conveyed both in the prior administration and, most recently, in our administration. It will require minimal changes to existing child support law,

including a requirement that States pass an updated version of UIFSA. So, all States have UIFSA laws in place; this would require them to amend those laws, as they periodically do, to accommodate international enforcement.

Senator CARDIN. Is it fair to say that what the States need to do is more a technical update than substantive change?

Ms. TURETSKY. That's right.

Senator CARDIN. And the Federal requirements to have our laws comply with the technical aspects of international child support, as a practical matter, we're enforcing these orders today?

Ms. TURETSKY. Well, the law would be amended in a couple of significant ways. First—not significant in the sense of IV-D, but distinguished ways. First, the Federal law that we're proposing to the Congress would contain a IV-D requirement that States pass the UIFSA 2008 version. But, secondly, it would require my secretary, the Secretary of Health and Human Services, to use all Federal and State enforcement mechanisms to comply with the treaty and to cut off funding to States if States were not in compliance.

Senator CARDIN. The funding you're talking about is child support?

Ms. TURETSKY. I'm sorry?

Senator CARDIN. What type of funding would be cut off?

Ms. TURETSKY. The child support funding is a 66-percent matching fund.

Senator CARDIN. Right. That's the number that you're using for the States to comply with the Convention.

Ms. TURETSKY. Right, the regular funding. And that's about—

Senator CARDIN. If this were ratified by the United States Senate this year, is there a time requirement for the States to comply their laws?

Ms. TURETSKY. I'm going to have to ask for technical assistance on that.

Senator CARDIN. Because, you know, many legislatures don't meet every year, or they don't have—

Ms. TURETSKY. Yes. Two years.

Senator CARDIN. Two years.

Ms. TURETSKY. Two-year period.

Senator CARDIN. Thank you. I appreciate that.

The reservation that you talked about, Mr. Loken, on jurisdiction?

Mr. LOKEN. Yes, sir.

Senator CARDIN. I want to make sure that we are comfortable with the legal status here. If I understood your testimony, you were talking about debtor statute jurisdiction.

Mr. LOKEN. Right.

Senator CARDIN. Is the concern that, without that reservation, we might be subjecting U.S. citizens to the jurisdiction of other courts, broader than just child support enforcement, which would be inconsistent with our position, as it relates to U.S. citizens?

Mr. LOKEN. Yes, Senator, the issue that we faced in this negotiation was that many other countries recognize jurisdiction in child support enforcement matters based upon the residence of the creditor parent, the parent that is seeking to obtain the child support.

But, to satisfy U.S. constitutional due process requirements, there must be sufficient contacts between the debtor parent and the forum, under our law.

The leading case on this that has to do with child support enforcement is *Kulko v. Superior Court*, a Supreme Court case from 1978.

Article 20 from the Convention sets forth six different bases of jurisdiction for the recognition and enforcement of maintenance decisions. Three of those bases do not comport with our due process requirements; notably, jurisdiction based upon the residence of the creditor alone. The reservation proposed by the executive branch would cover all three of these bases of jurisdiction which are not consistent with our law. The remaining bases of jurisdiction under article 20 are consistent with U.S. law.

Senator CARDIN. And you're satisfied, then, that we're protecting the constitutional issue here?

Mr. LOKEN. We are. Yes.

Senator CARDIN. Senator Risch?

Senator RISCH. Excuse me if you've been asked this earlier. How many parties to the Convention have ratified, so far? How many parties to the Convention have ratified, so far?

Mr. LOKEN. None have, to date, sir. No. The Convention was just concluded recently. And, in fact, the U.S. is in the forefront, here, of efforts to move towards ratification.

Senator RISCH. And what—how many potential countries are there involved in ratification, eventually.

Mr. LOKEN. Well, we would hope, quite a number. The Hague Conference in which the negotiation took place, I believe, consisted of 60 or 70 members. Many of those were actively involved in the negotiation. We know that the European Community and its member states and Canada, among others, are actively pursuing ratification. Several other countries, that we're aware of, are also quite interested in moving towards joining the Convention. We really think that, in this case, what the U.S. does will be quite persuasive, in terms of the reaction of other states to joining the Convention, and we hope that, in the next several years, that we will find a number of countries joining it.

Senator RISCH. How many bilateral agreements do we have right now?

Ms. TURETSKY. We have about 15.

Senator RISCH. And is it impossible to enforce one of these orders if you don't have a bilateral agreement?

Ms. TURETSKY. It's very difficult, yes.

Senator RISCH. Thank you.

Senator CARDIN. Thank you.

You didn't mention Mexico. Can you tell us the level of interest in Mexico?

Mr. LOKEN. Well, I can tell you that Mexico did participate actively in the negotiations, and was supportive of the Convention as adopted. I do not have current information about domestic activity within the—within Mexico to pursue ratification.

Senator CARDIN. I'm going to ask that you try to supplement that to this committee, give us the best information you have, as to

Mexico. I think we are particularly interested in Mexico and Canada, and would want to know the interest level in Canada.

[The information referred to above follows:]

Mr. LOKEN. With regard to Canada: The Secretary of State, with the concurrence of the Secretary of Health and Human Services, may declare any country (or political subdivision thereof) to be a foreign reciprocating country if the foreign country (or political subdivision thereof) has established, or undertakes to establish, adequate procedures for the establishment and enforcement of duties of support owed to residents of the United States. To date, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Ontario, Saskatchewan and Yukon have been declared to be "foreign reciprocating countries" for this purpose.

There is an excellent, long-standing history of cooperation in child support enforcement matters between the United States and the provinces and territories, as well as the federal government, of Canada.

Canada is a strong supporter of the Convention. We understand that the Coordinating Committee of Senior Officials—Family Justice, a committee comprised of officials from the federal, provincial and territorial governments, has established a working group to consider the implementation of the Convention within Canada. The working group is open to officials from the federal, provincial and territorial governments.

With regard to Mexico: The United States has had less success with Mexico. Mexico has not been declared to be a foreign reciprocating country. Although courts and other authorities in the United States have recognized and enforced child support orders from Mexico as a matter of comity, there has been little or no reciprocity. It is our hope that that this situation would improve if the United States and Mexico become parties to the Convention.

Mexico participated actively in the negotiation of the Convention and supported its adoption. So far as we know, the Government of Mexico has not taken steps to become a party to the Convention. Ratification of the Convention by the United States, however, would put the United States in a stronger position to encourage Mexico to take such action.

We understand that the Government of Mexico, like the Government of Canada, intends to participate in the Special Commission of the Hague Conference in November on the implementation of the Convention, and we will consult with Mexico there on its plans for ratification of the Convention.

Senator CARDIN. Let me just go through the logistics, here, just to make sure I understand what is likely to happen if the Convention gets ratified by a significant number of countries.

Currently, if the appropriate order is presented to a U.S. court to enforce child support by a non-U.S. resident against a U.S. resident, what will be done by a typical State court?

Ms. TURETSKY. Typically, that order would be enforced if the noncustodial parent is in the United States.

Senator CARDIN. So, the custodial parent would get legal assistance here in some form—private attorney—and present the court order and the appropriate certifications to the U.S. court in a State, and that State would most likely enforce the order, unless there was a legitimate contest to its legitimacy?

Ms. TURETSKY. Yes.

Senator CARDIN. And if you are a U.S. citizen and have custody of a child and a valid U.S. child support order, and the other parent is not in the United States, and you attempt to enforce it, what is the likelihood of enforcement today, without the Convention? And, if you could, be somewhat specific in identifying countries. Some countries we have good relationship with. Obviously, the closer of interest are Canada and Mexico, but also there's significant interest in Europe.

Ms. TURETSKY. Right. Well, we have bilateral agreements in place with a set of countries, and I can list those for you, Senator: Australia, Czech Republic, El Salvador, Finland, Hungary, Ireland, Israel, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, and the U.K., as well as Canadian provinces.

Senator CARDIN. We don't with Mexico?

Ms. TURETSKY. We do not with Mexico.

Senator CARDIN. And we do not with African countries?

Ms. TURETSKY. We don't have any bilateral agreements with African countries.

Senator CARDIN. You mentioned some in the Middle East; are there any in Asia?

Ms. TURETSKY. No, we don't have a current bilateral agreement with Asian countries.

Senator CARDIN. Okay. Does the likelihood of ease and success of enforcement depend upon a bilateral agreement?

Ms. TURETSKY. Well, the—yes. I mean, I think it's very difficult to enforce a—for a parent living here, to enforce a child support case, when there's no bilateral agreement and no mechanism to enforce, internationally.

Senator CARDIN. How will this Convention affect the 15 countries we have bilateral agreements with? Will it be comparable, harder, or easier to deal with these countries?

Ms. TURETSKY. It will be easier, because the Convention would set up a—an administrative structure and a streamlined structure that would resolve jurisdictional barriers and create a system that is modeled after the United States so that parents will know that, when they seek assistance, that the support order will be enforced in a—in an efficient way, and one—and a way in which that they're accustomed to in the United States.

Senator CARDIN. I have one last question for either or both of you, and that is: How much is this needed in the United States? Do you have any documentation as to the level of child support that goes uncollected and may very well be collected if the Convention is widely ratified? Or is this just your gut? I mean, do we have any documentation of what may be involved, here?

Ms. TURETSKY. Senator, we don't have a hard projection of dollars. We estimate about 1 percent of our caseload is international, in the sense that one parent lives in a different country. What we do have is anecdotal information from parents who have written to us, who say, you know, "I'm living here. I have a support order. My—the parent of my child lives in another country. I don't know what to do. I understand there's no agreement with that country. What can I do?" And so, we know that there are a number of families that are going to be affected by a fully ratified treaty. We don't know how that caseload will grow over time.

But, we're—you know, we're sensible of the fact that we're, you know, an increasingly global world, and that parents do move around. And in our caseload, where parents are living apart, the likelihood of one parent living in one country and another parent living in our country is likely to grow over time. So, we're really planning for the future, here.

Senator CARDIN. Thank you.

Senator Risch, anything further?

Senator RISCH. No, thank you.

Senator CARDIN. Thank you both very much for your testimony.

I will be mentioning, at the end of this hearing, that the record will remain open for 2 days, so there may be some additional questions asked by members of the committee.

But, thank you very much for your work on this. Good work.

Ms. TURETSKY. Thank you, Senator.

Mr. LOKEN. Thank you.

Senator CARDIN. Our second panel consists of Judge Battle Robinson from the Uniform Law Commission, and Alisha Griffin, from the New Jersey Department of Human Services. [Pause.]

Senator CARDIN. Judge Robinson, we'll be glad to hear from you.

I should point out that all of the witnesses' full testimonies will be included in our record, without objection.

And you may proceed as you see fit.

STATEMENT OF HON. BATTLE ROBINSON, UNIFORM LAW COMMISSIONER, JUDGE, FAMILY COURT OF DELAWARE (RET.), GEORGETOWN, DELAWARE

Ms. ROBINSON. Thank you, Senator Cardin, and good afternoon, to you and to the members of the committee.

I'm appearing today on behalf of the National Conference of Commissioners on Uniform States Laws, also known as the Uniform Law Commission. The Commission is a national organization of lawyers, judges, and legal scholars. Its purpose is to provide the States with nonpartisan, well-drafted legislation in areas of the law where uniformity is desirable. Some of its more notable achievements include the Uniform Commercial Code, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Interstate Family Support Act, which I will be speaking about today.

The purpose of my testimony is twofold: 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 ones, from modest county-based programs to the creation of a nationwide Federal-State partnership under the Title IV-D Program, to the development of legal rules and procedures that facilitate the establishment and enforcement of support orders when parties live in different States.

In an age of globalization, the international expansion of consistent rules for enforcement of child support seems a natural development. Further, the Convention will provide a much-needed 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. The Commission believes that the effect of other nations acceding to obligations imposed by the Convention, the development of standard administrative protocols and forms, and the adoption of clear rules pertaining to the recognition and enforce-

ment of support orders will assure acceptance of this country's orders in foreign lands. For these reasons, the Commission urges approval of the Convention 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 will implement important segments of the Convention through a uniform State law, rather than by Federal legislation. Specifically, implementation will come about through changes in the existing Uniform Interstate Family Support Act, known as UIFSA. UIFSA serves as the basis for interstate establishment and enforcement of support obligations within the United States, and it's already the law in all States. It is used daily in the thousands of interstate cases which are processed through the child support system in the country, and is familiar to attorneys, court personnel, and support caseworkers in all States.

Beginning in 2007, a drafting committee of the Uniform Law Commission worked to develop amendments to UIFSA which are designed to implement the Convention. The amended version of UIFSA was approved by the full Commission in July 2008 and is ready to be introduced in, and approved by, States' legislatures. It will be known as UIFSA 2008. Indeed, 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.

Briefly, UIFSA 2008 is concerned primarily with the recognition and enforcement of support orders under the Convention. The familiar provisions of UIFSA applicable to domestic support orders remain largely unchanged. A new Article 7 is the heart of the effort to integrate the Convention into State law. That Article contains the special rules which pertain to cases brought under the Convention.

The Commission recognizes that attempting to implement the Convention by asking 50 separate jurisdictions to enact timely and substantially similar legislation poses substantial practical difficulties. Thus, in order to assure the widespread enactment of UIFSA 2008, it is necessary for the Congress to assist in the process of obtaining these enactments. 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 that requires that all States, as a prerequisite to continued receipt of Federal child support funds, adopt UIFSA 2008 by a date certain. Such a requirement is not new in the area of child support. In the 1996 Welfare Reform Act, Congress made the enactment of UIFSA a condition of State eligibility for the Federal subsidy. A similar mandate by the Congress in its legislation pertaining to the Maintenance Convention would virtually assure that UIFSA 2008 will 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 Maintenance Convention will come about through adoption of a uniform state law, will provide an important precedent and a guide for future actions, and I commend it to you.

Thank you.

[The prepared statement of Ms. Robinson follows:]

PREPARED STATEMENT OF BATTLE R. ROBINSON

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 (URESA). 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 to 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.

Senator CARDIN. Thank you very much for your testimony.
Ms. Griffin?

STATEMENT OF ALISHA GRIFFIN, ASSISTANT DIRECTOR, OFFICE OF CHILD SUPPORT SERVICES, NEW JERSEY DEPARTMENT OF HUMAN SERVICES, TRENTON, NEW JERSEY

Ms. GRIFFIN. Thank you. Good afternoon, Senator Cardin and Senator Risch.

I appreciate the opportunity to come before you and speak regarding the importance of approving the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

As a child support director in the—for the State of New Jersey, I've been in that position for 12 years and have had the privilege, during the last 7, of working side by side, along with my colleagues, here, from the Office of Child Support Enforcement and HHS, the State Department, and other child support and family law experts in this country, as well as in those 67 other countries and nongovernmental organizations, to develop this treaty that provides a significant new framework for the international establishment of enforcement and child support orders. I appear before you to urge the adoption and your approval of United States participation in this Convention.

Child support is a critical family service program, one that research has shown lifts families out of poverty. The child support program, since welfare reform, has made substantial improvement in our performance. Today, we collect, nationally and in New Jersey, over 65 percent of all the child support due children. Unfortunately, that still means that there's about 35 percent that don't receive all they deserve and need to get by.

The child support community has been committed to doing better to improve their performance and to make child support a more reliable source of income. This treaty will assist us in that quest.

In 1996, along with the child—the welfare reform legislation, Congress passed, as you've heard, the Uniform Interstate Family Support Act, UIFSA, which paved the way for significant improvement of cooperation and enforcement across all U.S. States and territories. Like UIFSA, the Hague Convention contained procedures for processing cases that will be uniform, simple, efficient, accessible, and inexpensive for us to implement. It will also improve our opportunities for obtaining reciprocity with other contracting countries.

I just returned, this morning, from a reciprocity meeting with provincial directors in Canada, where we had the opportunity to discuss our continuing case concerns. And while the U.S. has, as you have heard, good relationships with Canada and bilateral agreements in place, our colleagues in Canada and our State directors feel very strongly that this will improve the processing of our cases, even with our close neighbor, Canada.

In addition, the Convention will give us the ability to coordinate and effectively communicate through a central authority structure, and to effectively address some of those jurisdictional boundaries and barriers that you've heard about earlier, as well as providing access to cost-free services for U.S. citizens needing assistance in other countries.

But, there is nothing more critical in all of this than the benefit that children and families will receive and the health and safety

and stability that they may see in having a reliable source of income. This certainly has been demonstrated by the current economic downturn facing our nation, that we need to do everything possible to ensure that children grow up in safe, stable homes, and that are afforded the best chances possible to grow healthy and strong. Child support is a critical component to that stability and provides—and helps parents provide the best they possibly can, particularly when times are tough.

We know that the job markets have changed and we've become a global community. More children are living in countries different from their parents than ever before. They deserve the best we can give them in establishment and enforcement of orders to ensure they have support from both of their parents.

In New Jersey alone, our international caseload is now over 3100 cases and has been growing every year. We are just one of the 54 States and jurisdictions operating a child support program. And so, the impact and benefit from this Convention will be significant to the children and families we serve.

Just as Congress did with the passage of UIFSA when it provided for reciprocity across States and territories, it must do so now with this new opportunity worldwide. Therefore, I urge the Senate to promptly grant its advice and consent to the ratification by the President of this Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

Thank you again for the opportunity to speak, and I'm willing to answer some questions.

[The prepared statement of Ms. Griffin follows:]

PREPARED STATEMENT OF ALISHA GRIFFIN

Senator Cardin, Senator Lugar, and members of the committee, thank you for the opportunity to testify regarding the importance of approving the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. I am Alisha Griffin, Assistant Director in the Division of Family Development responsible for the Office of Child Support Services within the New Jersey Department of Human Services. I have been the child support director for over twelve years, prior to which I served over 20 years in Child Welfare and Child Protection and as a practicing Family Psychologist. During the past seven years, I have had the privilege of working side by side with colleagues from this country as well as 67 other countries to develop this treaty document that provides a significant new framework for the international establishment and enforcement of support orders. I appear before you today to urge your approval of the United States' participation in this convention.

Child support is a critical family service program, one that research has shown lifts families out of poverty. It has made substantial improvements in performance over the last twelve years, and today, both nationally and in New Jersey, we collect 65% of child support due. Unfortunately, 35% of the families we serve do not yet get what they deserve and need. The child support community is committed to doing better to make child support a reliable source of income for all families. In 1996 Congress passed legislation mandating that all states adopt the Uniform Interstate Family Support Act (UIFSA), which paved the way for significant improvement of cooperation and enforcement across all US states and territories.

Like UIFSA, the Hague Convention contains procedures for processing international child support cases that are uniform, simple, efficient, accessible, and inexpensive. It is founded on the agreement of contracting countries to recognize and enforce each other's support orders. It is based on a system of administrative cooperation among central authorities of contracting countries to facilitate the transfer of documents and case information—using electronic technology where feasible—so that the necessary information is available for expeditious resolution of international child support matters. Similar procedures are already in place in the

United States for processing interstate child support cases. Indeed, many provisions of the Convention were drawn from the US experience with UIFSA.

The major benefit to the United States from joining this Convention will be obtaining reciprocity from other contracting countries. For many international cases, US courts and state Title IV-D child support enforcement agencies already recognize and enforce child support obligations, whether or not the United States has a reciprocal agreement with the other country. However, many foreign countries will not enforce US support orders in the absence of a treaty obligation. Ratification of the Convention by the United States will mean that more children residing in the United States will receive financial support from their parents residing in countries that are also signatories to the Convention.

Another significant benefit to joining the Convention will be the ability to effectively coordinate the enforcement of international child support cases with contracting countries through communication with central authorities designated to receive and transmit applications for services and to facilitate case processing. In addition, the ability to use uniform forms for transmitting information and uniform protocols for transferring child support payments in different currencies will minimize delays in enforcing orders and delivering payments, while reducing transaction costs for both parents.

The Convention effectively addresses jurisdictional barriers that have prohibited the United States from joining other child support conventions. Existing maintenance conventions base jurisdiction to order support on the habitual residence of the creditor (i.e., the custodial parent or child) rather than on minimum contacts with the debtor (the non-custodial parent), as required by US constitutional standards of due process. The Convention provides flexibility for a court of the United States having jurisdiction over the non-custodial parent to establish a new order in circumstances where U.S. jurisdictional requirements were not met in the country issuing the initial order that is sought to be enforced.

The Convention also provides for access to cost-free services for US citizens needing assistance with child support enforcement in a contracting country, an important element of reciprocity for US citizens. The small number of countries that may be required by their own internal procedures to assess fees must use a means test based on the income of the child, not the parents, with the result that any fees will be minimal as compared to current practice where custodial parents must often retain local private counsel in order to establish or enforce a support order.

The Convention does not affect substantive child support law, which is generally left to the individual states. Its primary focus is on uniform procedures for enforcement of decisions and for cooperation among countries. There is nothing more critical to the benefit of children than the health, safety and stability of the family. That has certainly been demonstrated by the current economic downturn facing this nation. We need to do everything possible to ensure children grow up in safe stable homes and are afforded the best chances possible to grow healthy and strong. Child support is a critical component and ensuring that parents provide the best they can for their children, particularly during tough economic times.

As we know, job markets have changed and we have become a global community. More children are living in countries different from their parents. Nonetheless, they deserve the best we can give them in establishment and enforcement of orders to ensure that they have support from both parents. In New Jersey alone, our international caseload is over 3,000 cases and has been growing every year. We are just one of 54 states and territories operating Title IV-D programs, so the impact and benefit will be significant.

Just as Congress did with the passage of UIFSA when it provided for reciprocity across states and territories, it must do so now with this new opportunity, worldwide. Therefore, I urge the Senate to promptly grant its advice and consent to the ratification by the President of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

Thank you for the opportunity to speak to you today, and for your consideration of this important international convention which is critical to the well-being of children and families.

Senator CARDIN. Well, thank you for your testimony.

I think it's fair to say that most States believe that they have laws—strong laws—to meet the needs of their citizens as it relates to child support enforcement. So, my first question—and I'll ask this to each of you—do you agree with the characterization on the last panel that the changes that we are requesting the States to

make in their child support enforcement laws—are basically technical?

Judge Robinson?

Ms. ROBINSON. Well, there are definitely—

Senator CARDIN. Microphone.

Ms. ROBINSON. There are provisions in UIFSA 2008 which are complex and which are difficult. I don't know if I would say they are purely technical.

Senator CARDIN. I guess my question is: Are they more in technical compliance to the international treaties, and will have minimal impact on the current collection proceedings that are operating in the 54 jurisdictions that you refer to?

Ms. ROBINSON. As far as the domestic orders are concerned, it will have very little impact. It should speed up and help the processing of the international cases, because there will be standard procedures to be followed.

Senator CARDIN. I understand it'll affect the international orders, but, as far as the domestic support order enforcement, do you envision any significant change as a result of the required amendments of the local laws?

Ms. ROBINSON. I do not.

Senator CARDIN. And the second question is, Do you believe it's reasonable to require the States to conform to these requirements within 2 years? I believe that's the requirement if we were to ratify the Convention. Is that a reasonable period?

Ms. ROBINSON. It's going to be a tight period, Senator. There will be a lot of work that has to be done to see that 50 different jurisdictions enact this. But, I think there is a lot of momentum out there, and I think that the States will follow and do this. Last night, I had an email from the head of the Title IV office—IV-D office in Delaware, saying, "We fully support the treaty, and we're ready to go." So, I think there will be a lot of support in getting this legislation through the State legislatures.

Senator CARDIN. Well, the consequences here are pretty dramatic: loss of Federal child support funds. It would be devastating for any State to lose those funds. So, I want to make sure this is doable. I know how local politics can be. This doesn't always get to be the first order up. Some legislatures work on a 2-year cycle, and when we take up this ratification, Congress is unlikely to give much attention to the requirements on the States. So, is it reasonable to expect that if there's a 2-year window, every State will have ample time to get the amendments ratified?

Ms. ROBINSON. Well, of course it's been done, as I pointed out in the earlier—

Senator CARDIN. Yeah.

Ms. ROBINSON. In 1996, the States were required to adopt UIFSA, and they did so. Really, I think this is a question that probably HHS should answer, because they are the ones who have included that date in their legislation.

Senator CARDIN. No, I don't think so. I'm a former State legislator, and I think I knew better than the Federal Government did as to how long it would take, in Maryland, to change our statutes. Our political structure is different than the Federal, and when

you're counting the territories that are impacted, it's an issue that I think we're going to need to look at.

Ms. Griffin, let me ask you both of those questions. First, do you agree that these changes would not have any significant impact on States' ability to collect child support and enforce child support judgments in regard to in-country enforcement?

Ms. GRIFFIN. No, it will not have any impact on it. We've already looked at that, and we actually, in New Jersey, are positioned to move the UIFSA 2008 forward in the next legislative session, or as soon as this implementing legislation is passed. I do think that a number of States, as you heard, already—Nevada, North Dakota, Maine—already moved the legislation forward. So, States are positioned and have looked at the current legislative package that has been put forward by the Uniform Commission.

Senator CARDIN. Now, you're from New Jersey, but I would like this to be broader. The second question I asked Judge Robinson, Do you believe a 2-year period is a reasonable period for all States to be able to conform to the requirements of this Convention, once ratified by the United States Senate?

Ms. GRIFFIN. I do believe it is, because, as Judge Robinson said, we did it in 1996. I was here then. We did it in 1996. My colleagues did it then. I've served as the president of the National Council of Child Support Directors. I know that they're fully behind this treaty and the need to move international cases forward.

The new legislation really is fairly simple. There are not a lot of domestic changes to the body of UIFSA. It sets out a new chapter that will give us very specific guidance around international cases. So, I think that that will be, really, much easier, in some respects, for State legislators to understand it and to follow it and to help it through that process.

Senator CARDIN. And I understand that you were part of the negotiations that took place on this Convention. So, my last question deals with the issue of federalism and as to whether you're satisfied, as a State official, that we have the right balance here, utilizing a Federal agency because of the international aspects to the enforcement that would be impossible at the State level. But, do we respect the integrity and independence of our States as being principally responsible to collect child support for their citizens?

Ms. GRIFFIN. I do. I think it's a very effective balance. Currently, even in the bilaterals that we now have with all of the countries, that you heard from Commissioner Turetsky, we play that—we work that through now, and we have our—each of our States has our own family law construct, and we have the ability to work within that State's family law construct, our individual enforcement techniques and tools. But, we also benefit from the support and assistance of HHS in other areas crossing territories between States and within the United States, but also in those bilaterals. And I think that that's a balance that we've shown has been very effective to date. And I think this will just further that balance.

Senator CARDIN. Thank you.

Senator Risch?

Senator RISCH. Thank you.

Well, first of all, let me say to Senator Cardin, I don't have a concern necessarily, particularly regarding the 2-year matter. I—cer-

tainly, it's a concern if States can't get it done in 2 years. But, even—in Idaho, that's probably the low-water mark, as far as not wanting to be bridled and led by the Federal Government. I think this could probably easily be done in 2 years. And not only that, but with the Uniform Law Commissioners—Commission behind this, they have been—they have tremendous credibility in the States, and I think that this can probably get done. And I guess, at the end of the day, if it had—if 48 States have done it, and there were two that hadn't, it could be extended for another year, or what have you.

But, this is not something that becomes political or controversial or anything. I think most States understand that it is in everyone's best interest to do what can be done to collect child support, because it comes out of—unpaid child support comes out of every citizen's pocket, and—so, I think that probably the States will jump onboard with this very quickly.

I share your concern, obviously, you—we don't want any States to be—to lose, simply because they didn't meet an artificial timetable, but I suspect that this timetable would probably be probably be legitimate. And I'm like you, I come out of a State legislative background.

So, thank you.

Senator CARDIN. No, I appreciate that comment. I certainly agree with you that sometime concerns in State legislatures are the urgent issues that they have to deal with and these types of amendments sort of get put on a calendar that are always preempted by something else, until you get right near the deadline and the finance officer comes in and says, "You know, you're jeopardizing Federal funds." And all of a sudden, they start to take it up. I mean, I think you have to have the deadline, and I think you have to have the consequences; otherwise, it may get delayed, not because of opposition, but just because of the priority of legislative calendars.

So, I agree, though, with your point. I think 2 years is a reasonable expectation with due notice.

I think the greatest concern here, right now, is the other countries also moving forward with this. If this is going to work effectively, then we do need to see a significant number of countries enter into the Convention and ratify it. The United States is not the problem. The United States currently is enforcing child support orders from other countries. I expect that the United States will see this as a very positive change to help our citizens. We just hope that other countries will move quickly to consider ratification of the Convention.

If there are no further questions, let me thank our witnesses.

And as I indicated earlier, the record will remain open for 2 days. We may have some additional questions asked on the record.

And I want to thank you again for your testimony, but, more importantly, thank you for what you do, Ms. Griffin, in helping the family issues in your State, and, Judge Robinson, for being involved in the Uniform Law Commission.

I actually had some involvement in the Uniform Law Commission when I was in the State legislature, and I know the work that you do, and it's very important work.

Thank you all very much.

With that, the committee will stand adjourned.

[Whereupon, at 3:32 p.m., the hearing was adjourned.]

APPENDIX I

CONFERENCE OF STATE COURT ADMINISTRATORS

RESOLUTION 2

IN SUPPORT OF RATIFICATION OF THE HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE AND IN SUPPORT OF CONFORMING CHANGES TO THE UNIFORM INTERSTATE FAMILY SUPPORT ACT

WHEREAS, the Conference of State Court Administrators (COSCA) recognizes that international child support enforcement is increasingly more common and important in this global society;

WHEREAS, on November 23, 2007, after four years of deliberation, the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance was adopted at the conclusion of the Twenty-First Diplomatic Session of the Hague Conference on Private International Law at The Hague, The Netherlands;

WHEREAS, this Convention contains procedures for processing international child support cases that are uniform, simple, efficient, accessible, and inexpensive;

WHEREAS, this Convention is founded on the agreement by contracting countries to recognize and enforce each other's support obligations and is based on a system of administrative cooperation among the contracting countries to facilitate the transfer of documents and case information—using electronic technology where feasible—so that the necessary information is available for expeditious resolution of international child support matters;

WHEREAS, similar procedures are already in place in the United States (US) for processing interstate child support cases, as many of the provisions of the Convention were drawn from the US experience with the Uniform Interstate Family Support Act (UIFSA);

WHEREAS, state courts and state child support enforcement agencies in the US already recognize and enforce child support obligations, whether or not the US has a reciprocal agreement with the other country, so the major benefit for the US in joining this Convention will be obtaining child support enforcement services from other contracting countries for US citizens;

WHEREAS, this Convention effectively addresses jurisdictional barriers that have prohibited the US from joining other international child support conventions by providing flexibility for a US court having jurisdiction over the noncustodial parent to establish a new order in circumstances where US jurisdictional requirements were not met in the country issuing the initial order that is sought to be enforced;

WHEREAS, the Convention and the conforming amendments to the UIFSA will not affect intrastate or interstate cases in the U.S. and will apply only to cases where the custodial parent and child live in one contracting country and the noncustodial parent lives in another contracting country;

WHEREAS, the Convention does not affect substantive child support law, which is generally left to the individual states, as its primary focus is on uniform procedures for enforcement of decisions and for cooperation among countries; and

WHEREAS, the Uniform Law Commission (ULC) worked closely with the U.S. Departments of State and Health and Human Services and a wide variety of orga-

nizations with expertise in child support enforcement to develop the 2008 amendments to UIFSA to ensure that state law will conform to the requirements of the Convention.

NOW THEREFORE BE IT RESOLVED that the Conference urges the President to submit to the United States Senate a resolution seeking its advice and consent to ratify the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, adopted by The Hague Conference on Private International Law on November 23, 2007;

BE IT FURTHER RESOLVED that the Conference urges the United States Senate to promptly grant its advice and consent to ratify the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance; and

BE IT FURTHER RESOLVED that the Conference urges the Congress to act promptly to amend the Social Security Act as necessary to comply with the provisions of the Convention, including an amendment to section 466(f) of the Social Security Act to require every state to enact the 2008 version of the Uniform Interstate Family Support Act as a condition of receiving federal funding for the state's Title IV-D child support enforcement program.

Adopted as proposed by the Courts, Children, and Families Committee at the 2008 Midyear Meeting on December 4, 2008

APPENDIX II

CONFERENCE OF CHIEF JUSTICES

RESOLUTION 5

IN SUPPORT OF RATIFICATION OF THE HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE AND IN SUPPORT OF CONFORMING CHANGES TO THE UNIFORM INTERSTATE FAMILY SUPPORT ACT

WHEREAS, the Conference of Chief Justices (the Conference) recognizes that international child support enforcement is increasingly more common and important in this global society; and

WHEREAS, on November 23, 2007, after four years of deliberation, the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the Convention) was adopted at the conclusion of the Twenty-First Diplomatic Session of the Hague Conference on Private International Law at The Hague, The Netherlands; and

WHEREAS, the Convention contains procedures for processing international child support cases that are uniform, simple, efficient, accessible, and inexpensive; and

WHEREAS, the Convention is founded on the agreement of contracting countries to recognize and enforce support obligations ordered by other contracting countries and is based on a system of administrative cooperation among the contracting countries to facilitate the transfer of documents and case information (using electronic technology when feasible) so the necessary information is available for expeditious resolution of international child support matters; and

WHEREAS, similar procedures are already in place in the United States for processing interstate child support cases, as many of the provisions of the Convention were drawn from the U.S. experience with the Uniform Interstate Family Support Act (UIFSA); and

WHEREAS, the Uniform Law Commission worked closely with the U.S. Departments of State and Health and Human Services and a wide variety of organizations with expertise in child support enforcement to develop the 2008 amendments to UIFSA to ensure that state law will conform to the requirements of the Convention; and

WHEREAS, state courts and state child support enforcement agencies in the U.S. already recognize and enforce foreign child support obligations, whether or not the U.S. has a reciprocal agreement with the other country, so the major benefit for the U.S. in joining the Convention will be obtaining child support enforcement services from other contracting countries for U.S. citizens; and

WHEREAS, the Convention effectively addresses jurisdictional barriers that have prohibited the U.S. from joining other international child support conventions by providing flexibility for a U.S. court having jurisdiction over the noncustodial parent to establish a new order in circumstances where U.S. jurisdictional requirements were not met in the country issuing the initial order that is sought to be enforced; and

WHEREAS, the Convention and the conforming amendments to the UIFSA will not affect intrastate or interstate cases in the U.S. and will apply only to cases where one of the parties lives in a foreign contracting country; and

WHEREAS, the Convention does not affect substantive child support law as its primary focus is on uniform procedures for the enforcement of decisions and for cooperation among countries;

NOW, THEREFORE, BE IT RESOLVED that the Conference urges the President to submit to the United States Senate a resolution seeking its advice and consent to ratify the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, adopted by the Hague Conference on Private International Law on November 23, 2007; and

BE IT FURTHER RESOLVED that the Conference urges the United States Senate to promptly grant its advice and consent to ratify the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance; and

BE IT FURTHER RESOLVED that the Conference urges the Congress to act promptly to amend the Social Security Act as necessary to comply with the provisions of the Convention.

Adopted as proposed by the CCJ/COSCA Courts, Children, and Families Committee at the CCJ/COSCA Annual Meeting in August 2009.

APPENDIX III

ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY MEMBERS OF THE COMMITTEE

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO KEITH LOKEN BY SENATOR JOHN F. KERRY

Question. The State Department's letter of submittal states that the Convention "will be implemented through a combination of existing law and practice and certain necessary conforming amendments to federal legislation and relevant uniform state law (the Uniform Interstate Family Support Act (UIFSA))." The letter further provides that it is not expected that the United States would deposit its instrument of ratification until the necessary changes to federal law have been enacted and all states have adopted the amendments to UIFSA.

Are there any factors that would lead the Executive Branch to conclude that U.S. ratification of the Convention would be advisable prior to the adoption of amendments to UIFSA by all states?

Answer. The Executive Branch does not contemplate any situation in which it would deposit an instrument of ratification before all of the states have adopted the 2008 amendments to UIFSA, which will ensure that the states implement fully the United States' obligations under the Convention.

Question. The State Department's letter of submittal states that the Convention "will be implemented through a combination of existing law and practice and certain necessary conforming amendments to federal legislation and relevant uniform state law (the Uniform Interstate Family Support Act (UIFSA))." The letter further provides that it is not expected that the United States would deposit its instrument of ratification until the necessary changes to federal law have been enacted and all states have adopted the amendments to UIFSA.

What options would be available to the Executive Branch to ensure full implementation of the Convention if a state (or states), subsequent to U.S. ratification, amended its law in a manner that was inconsistent with U.S. obligations under the Convention?

Answer. In light of state compliance with similar federal requirements in the child support enforcement area since 1975, it is unlikely that a state would amend its law in a manner inconsistent with the requirements of the proposed Multilateral Child Support Convention Implementation Act of 2009 or the 2008 version of the Uniform Interstate Family Support Act (UIFSA). Should a state take such action, it would risk the loss of substantial federal fund-

ing for child support enforcement (over \$4 billion annually) as well as for the Temporary Assistance for Needy Families (TANF) programs (approximately \$16.5 billion annually) pursuant to titles IV-D and IV-A, respectively, of the Social Security Act.

In the unlikely event that a state did enact inconsistent legislation, the Department of Health and Human Services (HHS) would ask that state to take action to bring its laws into compliance with the Convention. The proposed Multilateral Child Support Convention Implementation Act of 2009 would authorize HHS to take such steps as are necessary within existing HHS authorities to ensure compliance with the Convention. One such step could include cutting off the funding referred to above. The Department of State and HHS would then consult to discuss what other steps might be needed to ensure USG compliance with the Convention, possibly including new federal legislation.

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD
SUBMITTED TO KEITH LOKEN BY SENATOR RICHARD G. LUGAR

Question. In its 2008 decision in *Medellin v. Texas*, 128 S.Ct. 1346 (2008), the Supreme Court concluded that the United States lacked the authority in U.S. law to give effect to a judgment of the International Court of Justice relating to U.S. obligations under the Vienna Convention on Consular Relations. The Foreign Relations Committee has previously stressed its view that it is important that the United States comply with its treaty obligations, and has observed that the Committee generally does not recommend that the Senate give advice and consent to treaties unless it is satisfied that the United States has sufficient domestic legal authority to implement them. With these considerations in mind, please indicate what authorities federal and state governments will rely on to implement the various obligations the United States would assume upon becoming party to the Convention.

Answer. On October 1, 2009, the Department of Health and Human Services sent to the Speaker of the House of Representatives and to the President of the Senate the Administration's draft bill, the "Multilateral Child Support Convention Implementation Act of 2009." That bill would, among other things, require that as a condition for receiving certain federal funds, states enact the July 2008 amendments to the Uniform Interstate Family Support Act (UIFSA). The funds at issue are substantial federal funding for child support enforcement programs as well as funding for the Temporary Assistance for Needy Families (TANF) program. The July 2008 amendments were adopted by the Uniform Law Commission to bring the provisions of UIFSA into conformity with the obligations of the United States under the Convention. As stated in the testimony of Battle R. Robinson, Uniform Law Commissioner, Delaware, three states (Maine, Nevada and North Dakota) have adopted the amendments. We understand that the Uniform Law Commission maintains on its website (www.nccusl.org) a list of states that have adopted these amendments.

Should the Senate provide its advice and consent to ratification of the Convention, enactment by Congress of the Multilateral Child

Support Convention Implementation Act of 2009 and enactment by the states of the July 2008 version of UIFSA would together enable the United States to comply with its treaty obligations. The United States would not deposit its instrument of ratification until both of these actions were completed.

Question. Article 55 of the Convention envisions the possibility that parties to the Convention may agree to amend the forms annexed to the Convention for use in processing applications and cases under the Convention. What process does the Executive Branch intend to follow with respect to considering any such proposed amendments? Does the Executive Branch intend to submit any such amendments to the Senate for advice and consent? If not, will the Executive Branch commit to consulting with state governments and with the Senate before agreeing to any amendments to these forms?

Answer. Article 55 of the Convention provides that amendments to the forms annexed to the Convention may be adopted by the Contracting States present at a Special Commission to which all Contracting States are invited. Article 55 further provides that such adopted amendments shall enter into force for all Contracting States on the first day of the seventh calendar month after the date of their communication by the depositary to all Contracting States, except for those Contracting States that make a reservation with respect to that amendment before the end of the stated period.

The forms contain check lists of information that must be provided by the Central Authorities in submitting or acknowledging receipt of an application. The forms are aimed at facilitating and harmonizing the transmission of such information in order to expedite processing of applications in implementation of the Convention. The forms repeat verbatim the confidentiality provisions of the Convention to remind the Central Authorities of those obligations and provide a standardized way for the Central Authorities to indicate whether they have made a determination under Article 40(1) of the Convention regarding confidentiality. Based on the intended purpose of the forms, our expectation is that any amendments to the forms would be technical and administrative in nature and would not, in the normal course, require the advice and consent of the Senate. If, however, a proposed or adopted amendment were to go beyond a technical and administrative amendment aimed at facilitating implementation of the Convention, the Executive Branch would consult with the committee in a timely manner regarding the question of whether advice and consent is warranted. Under such circumstances, the Executive Branch could make appropriate use of the “reservation” procedure described in Article 55(3) to prevent an amendment from entering into force for the United States before the conclusion of consultations with the Committee.

During the negotiation of the Convention, the Department of State and the Department of Health and Human Services worked closely and consulted extensively with a variety of domestic stakeholders, including representatives of state child support enforcement agencies and the Uniform Law Commission, to ensure that

their views were taken into account. We would expect to do the same with regard to any proposed amendments to these forms.

Because Article 55 requires parties to “make a reservation” in the event that a State does not wish to be bound by a particular amendment to the forms, we recommend that language be included in the Senate’s Resolution of advice and consent along the following lines:

Article 55 of the Convention sets forth a special procedure for the amendment of the forms annexed to the Convention. In the event that the United States does not want a particular amendment to the forms adopted in accordance with Article 55(2) to enter into force for the United States on the first day of the seventh calendar month after the date of its communication by the depositary to all parties, the Executive Branch may by notification in writing to the depositary make a reservation, in accordance with Article 62 of the Convention, with respect to that amendment and without the approval of the Senate.

Question. The Convention does not establish procedures for amendments to the Convention’s text (as distinct from amendments to the forms attached to the Convention addressed by Article 55). What procedures would apply for the adoption of any amendments to the Convention’s text? Does the Executive Branch intend to submit any amendments to the Convention’s text to the Senate for its advice and consent?

Answer. Like other Conventions developed under the auspices of the Hague Conference on Private International Law to which the United States is a party (such as the 1993 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the 1980 Convention on the Civil Aspects of International Child Abduction, the 1970 Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, and the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters), this Convention’s text is silent on the procedures for amending the text of the Convention itself (other than to the forms annexed to the Convention that are subject to a special amendment process).

In such cases of silence, customary international law rules regarding the amendment of multilateral treaties, as reflected in Article 40 of the Vienna Convention on the Law of Treaties, would apply. The Executive Branch would ordinarily expect such amendments to this Convention to be transmitted to the Senate for its advice and consent.

Question. Currently, only one other country—Burkina Faso—has signed the Convention. What steps does the Administration plan to take to encourage other countries to become parties to the Convention?

Answer. Should the United States become a party to the Convention, we intend to take every opportunity to encourage other States to take similar action. In the meantime, we have been monitoring the progress of other countries’ ratification efforts and in fact, a number of countries are taking steps to become parties to the Convention. The member states of the European Community (EC)

strongly support the Convention. It is anticipated that all the member states and the EC would join together, perhaps in 2011. Canada also is a strong supporter of the Convention and we understand that the federal government there is working with the provinces and territories on implementation under Canada's federal system. We understand that other countries such as Norway and Australia are actively considering becoming parties.

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD
SUBMITTED TO VICKI TURETSKY BY SENATOR RICHARD G. LUGAR

Question. Articles 4 through 8 of the Convention address functions that Central Authorities are obligated to perform under the Convention. Please indicate what costs federal and state governments are expected to incur to implement these obligations. Please also indicate to what extent, if any, these costs would be additional to costs federal and state governments already incur as part of existing federal and state programs.

Answer. The administrative cooperation requirements for Central Authorities under the Treaty are similar to those required for interstate child support agency activities as performed under the existing title IV-D program. Therefore, none of the activities mandated under the Treaty would measurably increase costs in the short term as the federal and state governments already incur these expenses as part of existing federal and state programs.

Currently, less than one percent of the existing 15 million cases in the title IV-D caseload involve a parent living in another country. Even over the next 10 years, as more countries ratify and implement the Treaty, costs are not expected to increase significantly. Those countries expected to be the first to ratify the Treaty are, for the most part, the countries with the most developed child support systems that are working already with State child support agencies under our existing Federal bi-lateral or State-level arrangements. While we expect that the international caseload will continue to increase over the long term, the added efficiencies (uniform forms, standard operating procedures) of the treaty and future anticipated enhancements in communication and technology are expected to greatly reduce the cost-per-case.

Question. Article 15 of the Convention requires state parties to provide free legal assistance in connection with applications concerning maintenance obligations. Please indicate what costs federal and state governments are expected to incur to implement this obligation. Please also indicate to what extent, if any, these costs would be additional to costs federal and state governments already incur as part of existing federal and state programs.

Answer. State child support agencies and the Federal government already provide all services mandated under the treaty, including provision of any necessary legal assistance, in international cases free of charge, as required under sections 454(32) of the Social Security Act. Since we are currently providing services in international cases, and do not anticipate an imminent substantial increase in cases coming into this country, we do not anticipate

measurably increased costs to federal or state governments in the foreseeable future.

Treaty countries are not required to provide free legal services “if and to the extent that the procedures of that State enable the applicant to make the case without the need for such assistance and the Central Authority provides such services as are necessary free of charge.” Most child support activities under the IV-D program in the United States are conducted without the need for a lawyer or other legal assistance. A majority of international cases already have orders which we expect can be routinely recognized and enforced without significant cost because most enforcement activities are automated and do not involve individual case processing. Moreover, at least half the States rely extensively on administrative, rather than court-based, procedures to establish orders when required.

Even in those cases requiring establishment or modification of an order, the Convention provides many procedures which will greatly simplify and reduce costs, in existing cases as well as future expenses. For instance an “abstract or extract of the decision drawn up by the competent authority” may in some instances be substituted for the complete order, greatly reducing translation costs of extraneous passages in a divorce decree. The possibility of electronic transmission of many “documents” also is contemplated in the treaty and it is expected that other innovations in presentation of witness testimony and corroborating evidence will similarly be utilized. A basic premise of the Convention is that it should “take advantage of advances in technologies and create a flexible system which can continue to evolve as needs change and further advances in technology create new opportunities.”