

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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January 23, 2014

The Honorable Harry Reid
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

Dear Members of the U.S. Senate:

The New York City Bar Association (“the Association”) and its Committee on the United Nations (“the Committee”) applaud the United States on the adoption of The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (“the Hague Child Support Convention” or “the Convention”), concluded at the Hague Conference on Private International Law on November 23, 2007, and signed by the United States on the same day. The Association is an independent, non-governmental organization of 23,000 legal professionals from the United States and over 50 other countries. The Committee is a dedicated supporter of human rights and a keen monitor of developments in international law, legal issues, and norms.

The Association and Committee monitor developments in the areas of international law and human rights and believe the adoption of the Convention by the United States to be a strong commitment to children’s rights – protecting children both domestically and internationally. The Convention, by ensuring that ratifying states act accordingly, will establish a set of international norms with the potential to benefit hundreds of thousands, if not millions, of individuals globally and contribute to the reduction of welfare and social security dependency.

In order for the Convention to take effect in the United States, Congress must adopt and enact implementing legislation. The House of Representatives passed the International Child Support Recovery Improvement Act of 2013 (H.R. 1896), on June 18, 2013, which, among other things, amended section 459A of the Social Security Act to incorporate the Convention. The Senate Finance Committee approved the Supporting At-Risk Children Act (S. 1870) (the “Act”),

which, if enacted, would, among other things, also amend section 459A of the Social Security Act to incorporate the Convention, on December 12, 2013. The Act was sent to the Senate Floor for consideration on December 19, 2013, and is currently pending. We respectfully urge the U.S. Senate to timely pass implementing legislation for the Convention.

Introduction

While issues of family law are often complex in the domestic sphere, ensuring the enforcement of child support and maintenance obligations is particularly difficult in the transnational context. For many international cases, U.S. courts and state Child Support Enforcement (CSE) agencies will recognize and enforce foreign child support decisions across international boundaries on the basis of comity. Many countries, however, refuse similar recognition and enforcement in the absence of a treaty obligation. The Hague Child Support Convention draws on the principle of reciprocity as a means to combat the challenges of child support and family maintenance recovery in the transnational context. At its core, the Convention establishes that ratifying signatories agree to recognize and enforce each other's child support and maintenance orders.

Quite apart from any legal obstacles, practical problems remain, resulting in minimal to no support or maintenance reaching the custodial parent and child. Representing a modern and innovative multilateral solution to the problems of cross-border child support collection, the Convention provides procedures that are uniform, simple, efficient, accessible, and cost-free.

United States' officials played an active and key role in the negotiations of the Convention. Indeed, U.S. legislation and practice, and in particular the Uniform Interstate Family Support Act (UIFSA), were highly influential with respect to key provisions of the Convention, including provisions on legal assistance for child support applications, administrative cooperation, and enforcement. The United States also demonstrated its approval of the Convention by serving as the Convention's first signatory on the day of its adoption.

Benefits of the Convention

The primary purpose of the Hague Child Support Convention is to ensure the effective international recovery of child support and other forms of family maintenance. According to the Hague Conference on Private International Law,¹ instrumental in the drafting of the Convention, the Convention envisions achieving its objective by establishing an agreed upon set of international standards including: (i) an efficient and responsive system of co-operation between Contracting States in the processing of international applications; (ii) a requirement that Contracting States make available applications for establishment and modification, as well as for recognition and enforcement, of maintenance decisions; (iii) provisions which ensure effective access to cross-border maintenance procedures; (iv) a broadly based system for the recognition and enforcement of maintenance decisions made in Contracting States; (v) expedited and simplified procedures for recognition and enforcement; and (vi) a requirement of prompt and effective enforcement.

¹ The Hague Conference on Private International Law has developed and serviced Conventions responding to the global needs of individuals in the areas of child protection and maintenance since 1893. *See* http://www.hcch.net/index_en.php.

Incorporating several novel features intended to maximize the likelihood of providing support to children and custodial parents, the Convention addresses the multitude of practical considerations affecting international claims for child support recovery, including language requirements, standardized forms, and the exchange of information regarding national laws. Additionally, the Convention encourages the use of new information technology to reduce the costs and delays common in international claims. One concrete and innovative information technology program is the development of a global case management system called “iSupport.” The iSupport system will provide an electronic bridge between interested States to communicate, process data, and transfer payments, thereby assisting in the effective implementation of the Convention and reinforcing the internationally agreed upon norms set forth in the Convention.

In light of the reciprocity principle, foreign courts that would otherwise disregard decisions made in a U.S. court, in the absence of treaty obligation, would recognize and enforce U.S. child support and family maintenance orders. Ratification of the Convention, therefore, will ensure that more children residing in the United States will receive the financial support they are entitled to, regardless of the residence of the parents.

Moreover, implementing the Hague Child Support Convention offers the United States an opportunity to join a multilateral treaty, eliminating the time and expense that would otherwise occur when negotiating bilateral agreements with individual countries.

Convention Status and the Need for Implementing Legislation by the U.S. Senate

Before the Hague Child Support Convention enters into force in the United States, Congress must adopt and enact implementing legislation. While implementing legislation is pending before the U.S. Senate in S. 1870, the Senate has nonetheless acted affirmatively in support of the Convention. By a two-thirds majority vote, the U.S. Senate consented to the Convention’s provisions by approving the Resolution of Advice and Consent regarding the Hague Child Support Convention on September 29, 2010. The Senate should now provide further support for the Convention by passing S. 1870 or similar implementing legislation.

As noted above, the Convention applies to child support and family maintenance cases arising in the transnational context. It will not affect purely intrastate or interstate cases in the United States. Instead, the Convention will only apply to cases in which the custodial parent and child reside in one country and the non-custodial parent resides in another. The Convention is primarily consistent with current U.S. law, and practice and compliance with the Convention’s provisions will require minimal modifications to existing legislation. Specifically, the proposed federal implementing legislation will require all U.S. states to adopt, within two years, the current version of the UIFSA as a pre-requisite to receiving federal funds for child support programs.²

The U.S. has not yet ratified any of the long-standing international treaties or conventions related to the recognition and enforcement of child support and maintenance obligations. In light of the strength of the Hague Child Support Convention and its potential to drastically improve

² Currently, the 2008 version of UIFSA is enacted in 10 states and introduced in three additional states in 2013. *See* [http://www.uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20\(2008\)](http://www.uniformlaws.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008)).

the lives of children in the United States and abroad, the U.S. Senate should act to ensure successful implementation of the Convention.

We respectfully urge the U.S. Senate to act swiftly and pass implementing legislation for the Hague Child Support Convention.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Carey R. Dunne", with a long horizontal flourish extending to the right.

Carey R. Dunne